

Chairman Duane, Members of the Committee.

Good morning. My name is Michael Rosen. I am the Senior Vice President for the Food Industry Alliance.

The Food Industry Alliance is a statewide not-for-profit trade association representing the interests of all sizes of food stores. The membership includes multi-state chain operations like A & P/Pathmark, Price Chopper and Wegmans; New York chains like D'Agostinos and King Kullen; independent grocers like ShopRite, Key Foods, C-Town and IGA; convenience store operations like 7-Eleven as well as grocery distributors like Krasdale in the Bronx and the Key Food Cooperative on Staten Island.

We have approximately 800 members, which operate close to 10,000 stores.

We appreciate the opportunity to submit comments on these three issues.

As background, let me begin by noting that a majority of our members offer a variety of fresh baked goods as well as prepared foods as a means of meeting customer expectations and as a valuable tool in competing with big box stores who have aggressively entered in the retail food business. Our members believe that this is an area where they can offer more localized product and provide added value as a means of attracting and maintaining customers. Additionally, offering fresh baked goods and prepared foods create good paying jobs for our associates.

We hope that the legislature will not act either to ban these popular products or to impose costs that make them uncompetitive when competing with other formats that have a more standardized menu.

With respect to the prohibition on the use of artificial trans fat, the vast majority of our members report that they have already phased-out the use of artificial trans fat in fried foods and in most of their baked goods. However, some deserts still pose a problem in that the members tell us that they have either not found suitable substitutes for a limited number of items like icings, pastries and pie crusts or that the substitutes that they have found are as bad or worse from a public health perspective. For example, bakers can substitute tropical oils for artificial trans fat, but the alternative product will be very high in saturated fats.

Additionally, we note that prepackaged products are not covered by this prohibition. If food stores want their fresh baked goods to compete with prepackaged products, then they either can switch to saturated fats or package their own backed goods. In the end, we are not sure what is being accomplished.

We respectfully request that deserts be exempted from the artificial trans fat ban at least until suitable substitutes can be developed.

With respect to the calorie labeling bill, we have a few concerns. The first issue relates to which stores are covered. The bill seeks to include retail food stores, which are part of a group of 15 or

more stores that operate under common ownership, as a franchised outlet or “doing business under the same name.”

“Doing business under the same name” includes stores like C-Town, Key Food, Met Food and IGA that are independently owned and operated, but do business under a common trade name. If 15 or more Key Foods offer a ham sandwich, then they are covered by this proposal. There is no centralized purchasing or guidelines for preparing the foods for these stores. This proposal would force independent operators to individually test each of the prepared foods they offer through a menu or menu board, which would be cost prohibitive. We request that independently operated stores be exempted from this proposal.

Another issue affects many chain stores, because they “offer substantially the same menu items in each store within the chain.” Even though the chains have a standard menu for items available in every store, they also offer selective products in only one or two stores. For example, Price Chopper uses a menu for a variety of products that are available in every store, but also operates a kosher deli which uses a menu at only one location in the chain. Wegmans does the same thing. Tops offers chicken wings in Buffalo under a licensing agreement with the Anchor Bar, which is where chicken wings popularized, but not outside the Buffalo area. Price Chopper and Wegmans offer special foods using the Spiedies marinade in their stores in the Southern tier, but not elsewhere. It would be prohibitively expensive to have to test these items for the caloric value since they are only offered at one or two locations. We respectfully request that the bill be amended to exempt products which are not offered for sale in the majority of a chain store’s location.

We also note that the information provided for many items like submarine sandwiches, which may be customized, will not be all that meaningful to the consumer. For these items, the store will provide a range of the total calorie count. Since the variations are almost endless based upon which bread, fillings, dressings the customer chooses, whether they select cheese or not and, if so, what cheese they select, the range will be substantial. If the customer asks the server what the calorie amount is for the sandwich they choose, the server will have no clue.

With respect to the new budget proposal, we view the proposed sugar tax as being an extremely regressive and misguided proposal. The tax covers a broad range of beverages including fruit drinks, flavored waters, sports drinks, energy drinks, iced teas and iced coffees.

The tax rate is set at 1¢ per fl. oz., which equates to \$1.44 per 12 pack of 12 oz cans. However, since the tax is imposed at the bottler or distributor level, it has a built in multiplier effect for the consumer in that each party in the distribution chain will be forced to include the excise tax into their margin and then build it into the wholesale price or retail price.

Soda is a direct delivery product so the 12 pack will be delivered directly from the bottler to the retailer. Most food stores operate on a 20% margin. Assuming the soda companies don’t add anything to cover their costs, the \$1.44 will go to \$1.73 at which point the grocer will set the retail at the next price point which might be at \$1.75 or possibly higher. The consumer then will pay sales tax on the new retail.

For other products like fruit drinks and iced teas, product typically is shipped from the bottler to a wholesaler and then to a retailer before it reaches the consumer. In this distribution scheme, you will have an additional markup taken at each stage, which means the impact of the tax on the public will be greater.

We think this proposal will hit families pretty hard in an already bad economy. We hope the state can find other means of raising money rather than in taxing food.

Thank you for giving me an opportunity to testify this morning. I will be happy to answer any questions.