BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON HEALTH

PUBLIC HEARING:

TO CONSIDER INCLUDING
ELECTRONIC CIGARETTES IN THE EXISTING
CLEAN INDOOR AIR ACT AND REGULATING LIQUID NICOTINE

Legislative Office Building
Van Buren Hearing Room A - 2nd Floor
172 State Street
Albany, New York 12247

May 12, 2014
11:00 a.m. to 1:00 p.m.

PRESIDING:

Senator Kemp Hannon
Chairman

PRESENT:

Senator Martin Golden

Senator Ruth Hassell-Thompson

Senator Brad Hoylman

Senator Gustavo Rivera (RM)

Senator Diane J. Savino

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SENATOR HANNON: Good morning.

This is a hearing of the Senate Health Committee on e-cigarettes and e-liquids.

I'm joined with Gustavo Rivera, the ranking Democrat on the Committee, and by Diane Savino, a member of the Committee.

We will have testimony by several people, and we've also received a large number of comments and written statements, especially from people who sell the vapor cigarettes.

All of those will be made part of the record, and that will be held open, because we need to consider all aspects of this legislation.

We actually reported, one of the bills about the Clean Indoor Act last week from Health Committee, but as Senator Rivera pointed out, a technical problem with it, so that will be being amended and we'll move forward.

Our first person to testify is Dr. Harlan Juster, who's director of the Bureau of Tobacco Control from the Department of Health in the state, and he's here to give us a general overview of cigarettes and other things.

He's not here, because that's not part of the way this Administration works, to testify on

specific bills, so, I just have to caution my fellow Senators that you just can't do it.

But, he brings tremendous background and expertise to this area. It's obviously a very extensive area for the state.

And, Dr. Juster, we'll let you start.

HARLAN JUSTER, Ph.D.: Okay, thank you very much.

Good morning, Chairman Hannon and members of the Committee.

My bureau administers the statewide tobacco-control program as part of the New York State Department of Health.

And thank you for this opportunity to present today regarding the possible inclusion of electric cigarettes in the existing Clean Indoor Air Act and regulation of liquid nicotine.

The New York State Department of Health's tobacco-control program has been a national leader in promoting tobacco-control policy, health-systems change, and developing innovative approaches to address the negative consequences of tobacco use.

The program is evidence-based. It follows guidance on best practices from federal Centers for Disease Control, and relies on reports from the

U.S. Surgeon General, the Institute of Medicine, the National Cancer Institute, and the peer-reviewed scientific literature.

SENATOR HANNON: Could you pull your mics forward to you?

HARLAN JUSTER, Ph.D.: Closer?

SENATOR HANNON: Maybe the audience can -- this -- under the new reconstructed hearing rooms, we have difficulty hearing up here because the speakers are in there.

HARLAN JUSTER, Ph.D.: I can't hear you very well, either; so, we're even.

How's this?

SENATOR HANNON: Great.

HARLAN JUSTER, Ph.D.: The three pillars of tobacco control are the high cost of tobacco, comprehensive clean indoor air laws that are strongly enforced, and an evidence-based, population-oriented tobacco-control program.

This approach is working in New York.

From 2001 to 2012, the adult smoking rate in New York declined by almost one-third, from a prevalence of 23 percent, to just 16 percent.

Prevention activities have produced even more impressive results among youth.

In 2000, 27 percent of high school-age youth reported smoking in the last 30 days.

In 2012, just 12 percent of high school-age youth smoked a cigarette.

That's a 56 percent decline.

Among middle-school ages, the decline was 70 percent.

Our surveillance data indicates that the declines in New York are occurring at a rate that is faster than in the rest of the nation.

The declines in youth initiation of cigarette use have had a positive impact on the trajectory of adult smoking; that is, youth who did not initiate smoking in the first decade of this century are now non-smoking young adults.

And in 2010, for the first time since we've been monitoring these data, the 18-to-24-year-old young-adult age group is no longer the age group with the highest smoking rate.

This positive trend, attributed to nonsmokers as they age, will continue as long as the tobacco initiation rate among youth continues to decline.

There is great concern in the tobacco-controlled community that new products, like those being discussed today, could undermine and

potentially reverse the substantial gains that have been made in New York in reducing tobacco use.

In order to effectively evaluate or regulate electronic nicotine-delivery systems, which is how we refer to them, or, "ENDS," E-N-D-S, it is important to use a comprehensive definition that covers all products.

Electric cigarettes, or e-cigarettes, are just one of a number of similar personal-use devices.

And you can see them up on the slides that I have in front of you.

There's also e-hookah, vaping pens, e-cigars, hookah pens, and this list will undoubtedly grow.

And here's a few pictures of some of the items.

(Slide show involved.)

HARLAN JUSTER, Ph.D.: That's a vaping pen.

That's a rechargeable device. That looks a mini mag flashlight to me, but it's one of these units that's a personal vaporizer.

They come in many forms, and to be sure, surely more to come.

That's an electronic hookah.

They all do the same thing.

All of these devices are designed to heat a liquid containing nicotine so it is hot enough to create an emission, or vapor, which is then inhaled by the user.

This inhaled emission is absorbed through the lungs and other internal surfaces into the bloodstream where nicotine travels to the brain and binds with specific neurotransmitter sites.

No matter what we call them, all of these devices are designed for and capable of delivering nicotine which is a highly addictive component in all tobacco products.

Many of the liquids used in these devices contain flavorings designed to appeal to youth and young adults.

There are flavors called "French vanilla," "cherry crush," "watermelon splash," "bubble gum," "gummy bear," "cola," "strawberry," "cherry," and "cookies-and-cream milkshake."

Clearly, these flavors are meant to appeal to a younger population.

And it is important to note that flavors like these are prohibited by federal law from being used in traditional cigarettes, because federal law

recognizes that the purpose of these flavorings is to addict children to nicotine and create new generations of tobacco users.

And here's some of what the containers look like.

And there's "Rainbow Sherbet."

Now, these devices are different from combusted or burned tobacco cigarettes.

There is generally no burning, no tobacco leaf, and they may have fewer or different toxins compared with tobacco cigarettes.

However, recent reports from the Food and Drug Administration, and elsewhere, have found contaminants and tobacco-specific compounds believed to be among the more carcinogenic components of tobacco smoke.

And another recent study showed that when used in a particular way, levels of formaldehyde in the emissions can reach levels equal to that of combusted or burned cigarettes.

So even if there are fewer toxins than cigarettes, that does not mean these are safer for the individual or for the population as a whole.

Much of the analysis depends on how the products are used by the public, and researchers and

public-health officials are really just beginning to learn about attributes of products, consumer behavior, patterns and methods of use, intended and unintended consequences.

Today, the safety of these products is unknown and their value as a cessation tool is entirely unproven.

Research is scant, but what little has been conducted is concerning.

We know that a great deal of marketing of these products appeals to youth, and that youth are responding to these marketing techniques.

The vast majority of teens and young adults are aware of these products and are exposed to the advertising.

As a result, youth use of these products has dramatically increased, and we know that most youth who use these products are also smoking cigarettes, a combination that can lead to long-term nicotine addiction and cigarette use.

For adults, we know that there have been no spikes in cessation attempts, quitting attempts, among adult cigarette smokers concomitant with the spike in ENDS use.

We are certain that more research is needed,

but, to date, no study has shown that quitting is enhanced by ENDS use -- ENDS use of these products, and their use may make it even harder to quit cigarette use.

Determining safety and assessing health impacts requires much more research than currently exists, and multiple issues must be considered.

The scientific community is only at the beginning stages of determining the safety and health impacts of these products.

As a public-health professional, I'm concerned that nicotine-delivery devices will result in one or more of the following negative health outcomes:

Youth using ENDS, these nicotine-delivery devices, will become addicted to nicotine, and many will transition to the use of tobacco cigarettes.

Tobacco cigarettes deliver nicotine more efficiently than nicotine-delivery devices, and the transition seems to be a logical extension of ENDS use.

Two, nicotine devices will re-glamorize the active smoking. This is a battle fought by public health for a long time, and continues to be a key strategy to reducing initiating youth initiation.

Three, nicotine devices will be used to maintain and strengthen nicotine addiction in cigarette smokers, who then continue to also smoke tobacco cigarettes, known as "dual use."

And, four, former smokers will return to nicotine use and addiction through the use of these devices, and then relapse to tobacco use.

Now, advocates for the use of these products as cessation devices argue that because there are likely fewer toxins in the emissions compared with combusted cigarettes, or burned cigarettes, that these products must be safe to use.

They're making a harm-reduction argument, but that argument is incomplete and flawed.

Harm reduction works when there is a clear benefit to the user that outweighs the costs to the rest of society.

We already have harm-reduction products in tobacco control.

The FDA has approved five nicotine-delivery devices that have been shown in extensive research to be safe and effective.

These are the nicotine-replacement therapies, and include the patch, gum, lozenge, inhaler, and nasal spray.

There are also two non-nicotine -- non-nicotine prescription medications, bupropion, and varenicline, also shown to be safe and effective at increasing smoking-cessation rates. They reduce the harm of nicotine addiction by helping users of combusted cigarettes to quit, but they do not attract the new users who find these products appealing. This is successful harm reduction.

While we await the availability of the results of additional research, the department will consider a variety of policy solutions, but recent events in which reports to poison control centers that young children have gained access to and drank the liquid nicotine solutions indicate that child-proof packaging must be one consideration.

On April 25th of this year, the FDA proposed a new rule, known as the "deeming rule," to extend its authority to include electronic nicotine-delivery devices.

Proposed regulations include prohibiting the sale and distribution of free samples to minors and requiring the disclosure of ingredients.

However, the proposed regulations do not address many issues of concern to the tobacco-control community, including providing a

legal definition for e-cigarettes, prohibiting characterizing flavors, prohibiting Internet sales, prohibiting brand-name sponsorship, or marketing and advertising restrictions.

The FDA's proposed timeline is already lengthy. And just last week, the tobacco industry requested that the formal comment period be doubled, from 75 days, to 150 days.

This process could take years.

In the interim, these products are being sold widely in shopping malls, in stores that are otherwise unlicensed to sell tobacco products, and on the Internet. Quality control is highly variable, and the devices are being used by our youth in creative but dangerous ways.

The companies are using all the old-time marketing methods to sell these products to youth.

Dr. Thomas Frieden, director of the CDC, recently said that, quote, Tobacco is really the number one enemy of health in this country and around the world, unquote.

Tobacco use causes 30 percent of all cancers, including 85 percent of lung cancers.

Cigarette smokers are two to four times more likely to develop coronary heart disease than

nonsmokers, and the U.S. Surgeon General has concluded that tobacco use negatively affects every organ system in the human body.

The single most effective intervention that can improve the health of more people in New York and around the world would be to reduce or eliminate tobacco use.

In spite of the progress we've made, 24,000 New Yorkers still die each year from tobacco use, and hundreds of thousands suffer from serious illness.

The financial cost to the State is enormous.

We have the tools to end the tobacco problem in New York State for the next generation, but the unregulated market that is electronic nicotine-delivery systems threatens the gains that have been made in New York, and must not be allowed to undermine the important progress made in denormalizing tobacco use, especially among youth and young adults.

We must continue to conduct well-designed studies to better understand the impact of these products on public health, but, the paucity of research cannot be used as an excuse to refrain from action.

Thank you for inviting me to speak with you today, and I'd be happy to respond to any questions you may have.

SENATOR HANNON: A very powerful set of conclusions, and any number of different aspects of this.

I was intrigued.

Senator Savino had to go do an interview, and will be back. A media interview.

But I was intrigued by even when smoking starts in the cohort of the population, because she has a bill that would raise the age for everybody to 21.

And I hadn't ever focused on that aspect before. And I see -- and you cited it, and it's supported by federal --

HARLAN JUSTER, Ph.D.: It's a little hard for me to hear you, but --

SENATOR HANNON: It's supported by a federal study.

HARLAN JUSTER, Ph.D.: Yeah, 80 percent of adult smokers start before the age of 18.

That's a key demographic for the tobacco industry to target, because they are the future smokers that are going to replace those who quit and

those who die.

SENATOR HANNON: How -- one of the things you said during your testimony was the -- watching the cessation rates.

How was that measured?

HARLAN JUSTER, Ph.D.: We conduct surveillance of a whole host of indicators related to tobacco use, and one of them is -- are the cessation rates across the state.

We have surveys that we do by telephone, we do them by mail, we do -- we use cell phones now to get to the demographics that are hard to reach. And we've been doing this since 2003.

We actually have data on a similar survey back to 1985.

So we've been watching the cessation rates for a long time.

Through the '80s, there was a significant drop.

Through the '90s, things seemed to level off.

And through the 2000s, again, a big drop in prevalence of smoking and increase in cessation rates.

So we asked people, if they're smokers, have they tried to quit in the past 12 months? Do they

intend to try and quit in the next 3 months?

We ask all these questions.

So for the last three or four years, those numbers have been, essentially, flat.

In 2009, I believe 62 percent of smokers -- adult smokers said they tried to quit for at least one day or more in the past year.

In 2012, it was 64 percent.

Essentially, no difference.

So, we know that the ENDS devices are being used at a much higher rate, but the quit rate for smoking isn't changing.

So what we're seeing is, I think, the beginnings of that dual use.

We need to understand it better, but, there's no indication that quit rates are going up.

SENATOR HANNON: And questions of addiction, how -- one of the studies, like, that show you how long it takes for someone to become addicted to smoking tobacco; how long -- you know, how difficult it is to get out of smoking; and, what methods of cessation in terms of withdrawal?

HARLAN JUSTER, Ph.D.: Nicotine addiction is one of the most difficult addictions there is. It's probably more difficult to quit that than to quit

alcohol addiction.

Youth who have been smoking for just a month or two begin to show the signs of addiction -- you know, the early signs of addiction. You know, smoking earlier and earlier, first thing in the morning, difficulty quitting, feelings of craving, and things like that.

So, that's the nicotine. Nicotine is extraordinarily addictive.

And if you look at the rates of relapse following cessation attempts, it's exactly the same relapse rate that you see with all other kinds of addiction: heroin addiction, alcohol addiction.

When you look at the relapse rates, something, like, 50 percent relapse within 30 days, and I believe 80 or 90 percent within 6 months.

And it's the same curve for every one of those addictions.

And that's why there is the development of the FDA nicotine -- approved nicotine-replacement therapies, like the patches and the gums, that provide nicotine to a person, which is a safer alternative when provided in approved form, than getting your nicotine through tobacco smoke, for instance, which has all the other chemicals

associated with it.

The problem with these devices is, they're not regulated, they're not approved, you don't know what people are getting. You don't know how much nicotine you're getting from them.

People use them all different ways.

Just saw a study in which youth are actually disassembling the devices and pouring the liquid nicotine directly onto the heater within the device, which is not how it's supposed to be used, but it produces a much higher level of nicotine emission that they can inhale. But in the same time, they're also getting formaldehyde and some other things that are produced at high temperature, that aren't produced if they use in the expected way.

Nicotine addiction is an extremely difficult addiction to break, but people do it. And, actually, most of them still do it without help, without assistance.

It's a bit of a conundrum there to get people to try these products.

They seem to want to quit on their own, is a popular thing that we hear from people who are trying to quit. They don't want help.

But help will increase the likelihood of them

quitting with these devices.

SENATOR HANNON: Thank you.

Senator Rivera.

SENATOR RIVERA: Thank you, Dr. Juster.

First of all, thank you, obviously, for being here.

This is a brief, but I think very thorough kind of outline of what are the concerns that we have.

And I want you to -- and I wanted for you to talk a little bit more about, in particular, the way that these products are being marketed.

I think it was -- I was -- kind of, as I was hearing, I was reading along, and I kind of jumped ahead a little bit, and there was some sections that really outlined the fact that, for the most part, they are -- these companies are borrowing the advertising strategies that were used by tobacco companies before they were regulated or prohibited from doing so.

And that if you take that model and you just put it on to the -- on to what's happening now, that we're just looking at exactly the same marketing type of strategies.

So, I wanted you to talk a little bit more

about that.

HARLAN JUSTER, Ph.D.: Sure, sure.

The marketing of tobacco in the past was an extraordinarily successful marketing technique.

It set the tone for the use of these products.

It made them look glamorous to the public.

It provided status symbols.

Made people think they were going to be healthier using these products.

They were amazingly successful.

And the strategies include things like, endorsement from celebrities.

Long time ago, it used to be doctors doing the endorsements.

They got rid of that, but, still, celebrity endorsement is important.

The flavorings that make it easier -- well, they taste better, but also makes it easier to use the products, are very popular.

You saw some of the flavorings I showed you. Clearly, those are meant to appeal to youth and young people.

See, celebrity endorsements and flavorings and -- and, I guess, as I said, it's the old

playbook all over again.

There's -- the themes of the ads are, I think I said in my -- in the longer comments, you know, rugged individuality, and also rebelliousness.

And these are the themes that young people, especially adolescents, take to.

They are attracted very much by being -- by wanting to appear more individual -- more of an individual, and rugged, and tough, and sort of rebellious, is a key to, you know, grabbing the attention of young people.

And they do this very well.

SENATOR RIVERA: Okay, and as it relates to cessation, there's two points that you mentioned, that I want to underline, as well.

One of them is that there is -- in the evidence that you've seen so far, even though the use of these types of devices has spiked in the population of smokers, you don't see, necessarily, a -- an uptick in the type of -- in the amount of people that want to actually quit.

HARLAN JUSTER, Ph.D.: Correct.

SENATOR RIVERA: So, therefore, that doesn't necessarily -- it's not -- you know, it's not a double-blind study, et cetera, but there's,

obviously, not --

HARLAN JUSTER, Ph.D.: There was one.

SENATOR RIVERA: There was one?

HARLAN JUSTER, Ph.D.: One double-blind -- or, I'm sorry, not double-blind.

But there was a random controlled trial. People knew what they were getting.

One random controlled trial -- it's in the longer comments -- that compared an e-cigarette with nicotine to a patch -- nicotine patch, to nothing, I think.

And the quit rates, quit rates are not high for any of those products.

The quit rate for the patch was about 5.8 percent, and the quit rate for the e-cigarette was 6.8 percent; slightly higher, but a nonsignificant difference, as if they're -- the quit rates were identical.

And, of course, it doesn't take into account the quality-control issues and the marketing to youth, and all that.

And, again, the harm-reduction argument says:

Will it help the individual?

Will it help the population as a whole?

And you have to balance both of those.

People who tend to look at these as cessation devices aren't looking at the population as a whole.

They're looking at the individual user only and saying this might help this user.

Well, but not if it gets 10 new kids to smoke.

That's not worth it. That's not a calculation I'm willing to make.

SENATOR RIVERA: And, ultimately, the -- as your conclusion here, it seems to be that you're saying, even though there might not be enough research yet to be able to determine whether this -- you know, it might be a good cessation device, it might be good for that purpose, to make the argument that there's not enough evidence yet that it is or it isn't; therefore, we shouldn't regulate it, is not a smart public-safety or public-health decision.

HARLAN JUSTER, Ph.D.: Not given the history of this industry, which, as we know, was convicted of racketeering and marketing directly to kids.

Judge Kessler said they're marketing to kids, even when they weren't supposed to, and they were convicted for that.

This is the same industry that did that -- did those things.

And those -- the three big companies, you know, Lorillard, R.J. Reynolds, and Altria, are now in the e-cigarette business. All three of them have a product.

Blu; Vuse, V-U-S-E, whatever that is; and MarkTen, are now e-cigarette products. And when they get in the business, then you start to worry.

We worried before.

SENATOR HANNON: I have a -- this is what I got yesterday when I was buying a windshield wiper at Pep Boys. Right at the counter was, M-I-S-T-I-C; hence Mistic.

SENATOR RIVERA: It sounds -- it sounds awesome.

HARLAN JUSTER, Ph.D.: It sounds awesome, and it looks awesome.

And if you look at the products, they're very cool.

I think some of them come with USB connectors to recharge them in your computer, because they're rechargeable units.

These are very cool, interesting products that any of us would be interested in, as long -- if you didn't know what they were.

SENATOR HANNON: Yeah.

Well, thank you very much. I deeply appreciate it.

And I think there's a very solid foundation you've helped lay for this whole thing.

HARLAN JUSTER, Ph.D.: Great.

Thank you.

SENATOR RIVERA: Thank you, Doctor.

SENATOR HANNON: I'd like to ask Dr. Lawrence Eisenstein to join us.

Dr. Eisenstein is not only the health commissioner of the county of Nassau, protecting my health, he is also the president of the New York State Association of County Health Officials, NYSACHO, representing the whole state.

Thanks for joining us this morning.

DR. LAWRENCE EISENSTEIN: Thank you, Senator Hannon. It's my pleasure to be here.

Good morning.

My name is Dr. Lawrence Eisenstein. I'm the commissioner of health for Nassau County, and I currently serve as the president of the New York State Association of County Health Officials, also known as "NYSACHO."

NYSACHO represents all 58 county health officials, and they send their regards.

I want to thank the Senate Standing Committee, and send greetings from all 58 county health officials, Senator Rivera.

And, of course, a special thanks to Committee Chairman Senator Kemp Hannon who represents my county. He's been a great partner in health care.

Our association had a monthly meeting last week and we discussed the pending legislation.

NYSACHO loudly applauds and supports the efforts of regulating electronic tobacco-delivery devices and related components, also known as "e-cigarettes."

And for the purpose of this testimony, we'll call them "e-cigarettes."

I do want to comment that a lot of what you're going to hear from me was just said in what I also thought was a very thorough, excellent introduction.

And I'm very appreciative of Dr. Juster's presentation, because when you hear the same theme over again, independently reached upon by different health officials, it really tends to lend credibility.

And I -- it's not -- it was -- at first I was thinking, Hey, this guy's stealing my thunder.

But, in fact, it's really important to hear the same themes over and over again, and that we're all looking at the same data and evidence.

As public-health officials, we're always searching for new tools to help smokers to quit.

E-cigarettes are marketed as a smoking-cessation tool or a safe alternative to traditional tobacco products.

But, in fact, we have no solid evidence that e-cigarettes really help people quit smoking.

In fact, there are new studies, numerous new studies, suggesting that they serve as a gateway to, especially our youth, smoking actual cigarettes later on, and, there remains questions about their safety.

We know that the nicotine in e-cigarettes is addictive.

We do not know for certain what else is in the vapor they produce.

Very often we hear it marketed as "water vapor," but the fact is, it's hard to believe it's just water vapor when we can all clearly smell some kind of chemical odor when we're around people using e-cigarettes.

Water vapor should not have a chemical-odor

smell. We want to know exactly, what is that?

What chemicals are coming out of the vapor of e-cigarettes into the general air that everybody else has to breathe?

Till we have clear evidence that e-cigarettes are both safe and effective for smoking cessation, NYSACHO believes and supports that our legislators regulate their manufacture and quality control.

Unless we can assure their safety, e-cigarette use and exposure should be limited, and we're very excited to support the pending legislation.

While we await federal regulation of this industry and these devices, NYSACHO supports our state's leaders, in particular, in taking action to protect all of the residents of New York State.

We find the statewide legislation to be vital.

We commend those localities that have already taken action or are considering it, but, similar to the New York State Clean Indoor Air Act, state legislation would standardize safety measures to the benefit of all New Yorkers.

The current package of proposed legislation before your Committee is a crucial first step.

There's much we still need to learn about e-cigarettes, and there are many studies ongoing, but what we already know is troubling.

We know that they are aggressively marketed to children and young adults, a theme you heard earlier, but I think it's really important to reemphasize.

A CDC study published, tells us that the rate of e-cigarette use doubled, "doubled," for both middle and high school students in just one year, between 2011 and 2012.

Make no mistake, this is the result of direct marketing to our youth.

An example of marketing to minors is the use of flavors in e-cigarettes.

While the federal government has banned flavoring of traditional cigarettes, e-cigarettes are sold in cherry, vanilla, cola, bubble gum, and chocolate flavors.

Ads for e-cigarettes make them look glamorous, sexy, and rebellious, and as was just stated, they look cool.

A recent University of California study published in the Journal of the American Medical Association Pediatrics version, just this month,

found that e-cigarettes can be concluded to be gateways; that is, they encourage teenagers who use e-cigarettes to progress to smoking traditional cigarettes.

The data clearly showed that teens who use e-cigarettes have a much higher rate of using cigarettes -- actual cigarettes later on.

This was from, again, the Journal of the American Medical Association Pediatrics Edition.

New York State's 2012 ban on the sale e-cigarettes to minors has proven difficult to enforce.

Unlike traditional tobacco sellers, vendors are not required to register with the Department of Tax and Finance, making it difficult to establish where e-cigarette products are sold.

For this reason, county health officials support Senate Bill 7139. It requires e-cigarette retailers who are not registered with State Tax and Finance to register with the State Health Department.

Major public-health risk with e-cigarette liquid is nicotine poisoning. One tablespoon of this poisoning can be lethal to adults, and just a small teaspoon is lethal to children.

Right now, these e-liquids can be sold in large quantities -- barrels, gallons, whatever large quantity you want -- with no protective packaging or warnings.

Nicotine-poisoning calls, to further emphasize this point, to poison-control centers nationwide have risen, from 1 per month in 2010, to 215 calls per month by February 2014.

More than half of these calls related to nicotine poisoning from the liquids in children under the age of 5.

What an absolutely unacceptable risk to our children's health.

County health officials strongly support Senate Bill 7027, which requires labeling and warnings to make adults aware that this these liquids are hazardous, and it prohibits the sale of liquid nicotine to minors.

The financial burden of tobacco use for New York State is estimated at about $8.2 billion annually. This includes more than $3 billion every year in Medicaid costs for tobacco-related illnesses.

We need to keep making progress to rein in these costs, not reverse it.

But a recent study by the CDC states that the number of Americans who have ever used e-cigarettes quadrupled between 2009 and 2010.

And as discussed earlier, as these are a gateway to actual cigarette use, this could impact the trend of decreasing the overall number of smokers we have in our country.

County health officials want to see the Clean Indoor Air Act apply to e-cigarettes.

First of all, e-cigarettes may lead to health problems, particularly due to the inhalation of toxic chemicals.

Nicotine itself represents health risks.

A 2009 FDA study found that some e-cigarette liquids contained toxins and carcinogens, including diethylene glycol. This chemical is found in antifreeze.

Such toxins make exposures to the vapor risky for both smokers and nonsmokers.

Secondly, the use of e-cigarettes makes it difficult for local health departments to enforce existing smoke-free-air laws. It can be tougher and forces to distinguish between the e-cigarettes and traditional cigarettes.

The industry promotes the use of e-cigarettes

where other tobacco products are prohibited.

We believe that by encouraging use of e-cigarettes in public places, the industry seeks to reestablish smoking as an acceptable, appealing behavior.

This can undercut years of successful efforts to reduce tobacco use. It can wipe out the progress we've made in reducing tobacco-related illnesses and all of their associated human and financial costs.

We cannot allow this to happen.

In closing, we should thank Senator Hannon, Senator Rivera, the Standing Senate Committee on Health, and the Assembly sponsors of legislation to control e-cigarettes.

NYSACHO loudly appreciates your ongoing efforts to reduce nicotine poisoning and tobacco use, and to ensure cleaner, safer air for all New Yorkers.

Thank you for allowing me to testify this morning.

HARLAN JUSTER, Ph.D.: Well, thank you, Dr. Eisenstein.

That -- you -- some, again, powerful facts that are there, and the correlations, especially as to where we may be going with this.

I should know the answer to this question.

Is it the health departments that do the age verification for the sale, or is that the Consumer Affairs Department?

DR. LAWRENCE EISENSTEIN: Yes.

SENATOR HANNON: You're "yes" --

DR. LAWRENCE EISENSTEIN: Yes -- sorry.

We have the tobacco-control program which does that.

SENATOR HANNON: So you would be -- because one of the bills that we have before us, is to have registration when any sale is done, because it's not necessarily a tobacco product.

So that -- it's really --

DR. LAWRENCE EISENSTEIN: Yes, and that's one of our challenges.

We currently do a great job with our tobacco stings for age verification, but, all of the vendors of tobacco are registered, so we know, and can plan how many visits we need to do, how many stings we need to do.

In our county, it's one of the most effective programs there is. We're up to, approximately, 97 percent compliance, which is much higher than when the program began.

And -- but as you said, we don't go into Pep Boys to see who they're -- and when you brought that up, I said, What a wonderful example.

SENATOR HANNON: It was right in Hempstead, and I didn't even go looking for it.

DR. LAWRENCE EISENSTEIN: That's right.

SENATOR HANNON: I just needed a windshield wiper.

DR. LAWRENCE EISENSTEIN: And my inspector might be there to collect the windshield wiper, but other than that, we're not checking who they're selling this product to.

SENATOR HANNON: And the other thing that really caught my eye was the presence of other things that are in the e-cigarettes.

I just wasn't really in the forefront of, propylene glycol?

DR. LAWRENCE EISENSTEIN: The diethylene glycol, yeah.

SENATOR HANNON: Diethylene glycol, is this something that's in each of the e-cigarettes?

DR. LAWRENCE EISENSTEIN: We don't know, and that's one of the challenges.

One of the challenges is, there's no standardization.

And one of the points that I wanted to make is, you know, before a therapy or a drug is approved, the standard by the FDA, in general, is that it has to be shown to be effective and do no harm.

And in the case of e-cigarettes, the data doesn't prove it to be effective, yet. In fact, the data's very mixed.

And, certainly, as a gateway, it may be causing more smokers.

And not only does it not meet that FDA standard, but the "do no harm" standard, we don't even know, fully, what's in the vapor.

The different vendors have different chemicals and toxins, carcinogens.

But, again, what's marketed as "water vapor," it doesn't smell the way water vapor should smell. We know something's in there.

And so that's an example of, we need to know exactly what's in there before we can even think of letting our children have access to it.

So we agree with the State Health Department's stance, that more work and more studies are being done, and need to be done, but, certainly, we wouldn't want a treatment for cigarettes that

does harm, especially to our youth who are using it in alarming numbers.

SENATOR HANNON: Thank you.

We have been joined by Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Good morning.

Thank you.

SENATOR HANNON: Do you have --

SENATOR HASSELL-THOMPSON: [Shakes head.]

SENATOR HANNON: Dr. Eisenstein, thank you very much.

DR. LAWRENCE EISENSTEIN: Thank you, Senator.

SENATOR HANNON: We really appreciate it, and I appreciate NYSACHO devoting time to this, and it's an important step.

DR. LAWRENCE EISENSTEIN: We've spent a lot of time discussing it, and you have great support on this.

And I think a lot of us, we're very excited to see this legislation.

Thank you.

SENATOR HANNON: Thank you.

I'd like to ask Julianne Hart from the American Heart Association, and Michael Burgess from the American Cancer Society, to join us, together.

And as we're doing that, Senator Hoylman has joined us.

Good morning, Senator.

MICHAEL BURGESS: Good morning, Senator Hannon, and thank you for holding this hearing, and members of the Committee.

I'm the director of state government relations for the American Cancer Society Cancer Action Network.

Other than in New York City which recently passed regulations on e-cigarettes in public places, the use and promotion of them is currently unregulated for New York -- in New York State for persons 18 and older, and poses a threat to the decades-long battle against smoking.

They are not subject to the Clean Indoor Air Act which permit -- permits -- prohibits smoking in all public places and workplaces, including schools, malls, playgrounds, hospitals, restaurants, and bars.

And as Dr. Juster noted, it's one of the three pillars of the antismoking policy that we have in this state which has been successful in bringing the smoking rate down.

E-cigarettes are not included in the

definition of "smoking," so people can use them, as I said, anywhere at any time.

Their continued use and growing popularity among middle and high school students, in particular, undermines the public-health campaign to prevent young people from starting with a deadly nicotine addiction.

And manufacturers, as you've heard here today, are also seeking to normalize smoking through television ads and other well-funded marketing strategies.

Let's be very clear about what you're talking about with your legislation to include the e-cigarette as products subject to the Clean Indoor Air Act.

We are not taking away someone's right or freedom to use e-cigarettes.

Those over 18 have that right, and your legislation does not take it away.

Instead, it maintains the right of the 84 percent of nonsmokers, who are the overwhelming majority in this country and state, to be in public places without having clouds of unknown vapors being emitted.

Let me say that again: Maintains the right

of the nonsmokers, the majority in this state and country, to be in public places and not have to worry about what these unknown vapors are.

According to the data from the Centers for Disease Control and Prevention, nearly twice as many middle and high school students experimented with e-cigarettes in 2012 as in 2011, as you heard before.

If e-cigarettes prove to be a gateway to other products, leading to an increase in underaged smoking, their usage would represent a serious setback in the fight against tobacco-related illnesses.

Also, new research made public this month by the University of Colorado and Mississippi State shows, quote, Electronic cigarette use has risen quickly, with adult awareness doubling, from 16.4 percent in 2009, to 32.2 percent in 2010, and ever use for adults, rising from 6/10ths of 1 percent in 2009, to 2.7 percent in 2010.

They concluded in this study that young adults exclusively used flavored e-cigarettes. Many young-adult users are current and former smokers, suggesting e-cigarettes are used to maintain nicotine addiction, and may reexpose former smokers

to nicotine.

Additionally, young adults are not using e-cigarettes as a cessation alternative.

Continued research on patterns of use of these products is needed; particularly, to understand the age of initiation, flavoring, and influence of marketing to inform public policy and regulatory action.

That was a quote from that study.

While we have made great strides in the fight to reduce e-smoking -- or, smoking rates, rather, e-cigarettes are another gimmick to re-glamorize the dangerous practice and get more people smoking.

They're offering e-cigarettes with liquid-nicotine refills that come in the flavors that were mentioned before.

I won't go through them all.

So I say, if e-cigarettes are all about helping people to quit smoking, then why is the advertising being done to re-glamorize it?

We've heard before, and I guess we're going to hear from an expert on poison control, about exposure to the liquid in these cartridges, so I'm not going to go through that.

Let me just mention again, that they're being

proposed, and the idea is being sold, as a healthy alternative, but you're going to hear later, but we appreciate what Roswell Park has come up with in terms of their study about what's in these e-cigarettes. And you're going to hear directly from them, so -- I assume, so I won't go through all of that.

But it's very concerning to us what they've come up with, that I think is, obviously, a threat.

I would also like to just stress that, you know, we have other cessation methods, including medications, and also counseling through the tobacco-control program, which are recommended for smokers, and which have been proven.

You know, the quit line, as I've said many times in my work here, when we have the money for that, and when those ads are on television, they're very successful in driving up the number of calls to the quit line.

Let me note again, that New York City just passed a law that includes e-cigarettes. It just went into effect under the Clean Indoor Air Act provisions.

It's desirable, therefore, to have a uniform statewide policy in all of the counties of the state

of New York.

That's important, not just because of what we've said before about the usage in public places, but, also, there's confusion about what is allowed.

Somebody goes into a restaurant or a bar and they're wondering, you know, Why is that person smoking, vaping, whatever it is? Are there two sets of rules in public places now; one for cigarettes, and one for e-cigarettes?

But, again, it comes down to the right of persons who do not smoke to have the protection in a public place, as I mentioned before.

That remains the standard on which regulations and laws must be considered, and the failure to protect the nonsmoking and non-vaping public is not acceptable, and represents a very clear erosion of the Clean Indoor Air Act.

Our organization is not taking a particular position on your legislation regarding liquid nicotine and the registration of e-cigarette vendors, but we do think it's a good idea to consider how to deal with a changing marketplace, and what regulations are needed to protect health and safety in light of the comments about poison control.

Let me conclude by saying that tobacco usage, as we have heard today, has caused millions of deaths in this country and around the world.

And let me say personally, that my father was a smoker, like most of the men of his generation, over 50 percent of them, and he died of lung cancer.

He was almost 40 years old before the surgeon general came out with his report in 1964.

And I'll speak, as having been involved, obviously, in the Aging Services, and one of the great statistics that I have worked with, is that men are living longer.

It used to be we'd go out to places, senior centers, and 1 out of every 3 people over 65 was a man.

Today, because of reducing the rate of smoking and improvements in heart-disease control, that number is 42 percent.

So, we should not weaken the half-century effort that's been successful in reducing smoking rates and lung-cancer rates.

For those who wish to use e-cigarettes and quit smoking, they will continue to have that right in other places than those that are defined in this law.

But for those who wish to open up a new market and a new generation to addiction, I would say that every legislator should be against that.

SENATOR HANNON: Thank you.

Ms. Hart.

JULIANNE HART: Hi. I'm --

Is this on?

Can you hear me okay?

SENATOR HANNON: Yes.

JULIANNE HART: Hi, I'm Julianne Hart with the American Heart Association. We are the largest volunteer organization dedicated to building healthier lives free of heart disease and stroke.

On the first page of my written testimony, you will see a graph which shows the numbers, percentage, of heart-disease and stroke deaths.

Heart disease is the number one killer in New York, and stroke is the number four killer.

In 2010, nearly 45,000 people in New York State died of heart disease, and over 6,000 people passed of stroke in New York State in 2010.

As you know, smoking is a major risk factor for cardiovascular disease.

Fortunately, New York State has made great

progress, and approximately 16 percent of New York adults smoke, and about 12 percent of youth are still smoking.

So we've made progress, but there's more to be done.

Part of our -- the gains that we have made have been a result -- as a result of the state's Clean Indoor Air Act.

The Clean Indoor Air Act was enacted just over 10 years ago, and I'm sure you'll recall at the time that there was significant controversy over this.

Everyone made claims that, you know, bottom lines, that people weren't going to make ends meet.

But the bottom line is, as a result of your actions, New Yorkers are healthier, thanks to the Clean Indoor Air Act.

Specifically, there's been significant reductions in the rate of hospitalizations for heart attacks in the 3 1/2 years after the law passed compared to the period prior to the law.

Hospitalizations were 15 percent lower than expected had there been no change in the Clean Indoor Air Act.

And it's estimated that in the first year

alone, there was approximately 3800 fewer hospital admissions for heart attacks, with an estimated cost savings of 56 million.

However, we know now there's a significant loophole in the Clean Indoor Air Act, and that's electronic cigarettes.

So we've seen in recent years the proliferation of these products.

E-cigarettes were not available when the act was implemented.

They are mostly unregulated, and their health effects are not fully known, especially when considering long-term use.

And while additional research is needed, we are concerned that e-cigarette use and acceptance has the potential to renormalize smoking behavior, sustain dual use alongside cigarettes, and initiate or maintain nicotine addiction.

As many of the speakers before me have noted, e-cigarettes are not approved cessation devices.

The most effective way to help smokers quit are the seven approved FDA therapies, along with counseling.

So we would strongly encourage the State to promote those therapies, versus any type of

electronic cigarette, at this point.

We applaud the actions you've taken to date, particularly the law which bans the sale of e-cigarettes to minors.

And we would encourage the State to go further at this point.

We do believe that electronic cigarettes should be included within the definition of "tobacco products" in law, and that would include banning the use of e-cigarettes in public places as is currently done under the Clean Indoor Air Act.

We would also support prohibiting the sale and marketing of tobacco to minors, which some of that is done, and taxing at a tiered structure.

So, thank you.

SENATOR HANNON: Thank you very much. I appreciate it.

I don't have any questions.

Senator Thompson?

Senator Hoylman?

Senator Martin Golden?

SENATOR GOLDEN: No questions.

SENATOR HOYLMAN: I have a question --

SENATOR HANNON: Please.

SENATOR HOYLMAN: -- for Mr. Burgess.

And I apologize for coming late.

And thank you, Senator Hannon, for your leadership on this important issue.

Why hasn't the FDA, in your opinion, done any initial data release on health impacts of e-cigarettes?

I mean, they've been silent, because of, I guess, data is forthcoming?

Do you have any expectation when they will be sharing that information with the public?

MICHAEL BURGESS: Well, we just heard earlier from the Health Department, that -- well, in April, that Food and Drug Administration uttered its first comments on this, and opened up the regulation that now is in public comment period, as they were talking about.

So, they've started the process.

I mean, obviously, people have been waiting and waiting and waiting for them to take action, and I would expect that we'll be seeing more from them.

But, I think there's a concern that it's taken a long time, and it may continue to take a while.

But, as far as the data, I'm not sure exactly if they released any data that day when they came

out with this, or not.

But, we're all looking for them to lead and to give as much information as they possibly can, and to look at some of the areas that they didn't even want to talk about in the initial round of regulation, which is, like, the flavoring and other things.

SENATOR HOYLMAN: Have you seen any -- from your network of cancer-research advocates, any health impacts?

Or is there any suggestion that -- at this point, that there is a secondhand vapor concern, or anything to that effect?

MICHAEL BURGESS: Well, I think that that is exactly what's coming out now.

I think that, for quite a while, until the last few months, we have heard a lot about, you know, the marketing and the benefits, in terms of trying to stop smoking.

But now we're hearing, and you're going to hear today, I mean, I -- we -- I mentioned briefly that Roswell Park has a memo in support of this bill, and they're going to talk about that.

And, there was a major "New York Times" story last week, talking about what you heard earlier,

about, when these are heated at a high level, what the emissions are.

So there is concern about the emissions, and that they might become toxic, or even cancer-causing, at a high level of heat.

SENATOR HOYLMAN: Thank you.

SENATOR HANNON: Thank you very much. Appreciate it.

I would ask Dr. Andrew Hyland, who is with the Roswell Park Cancer Institute, and Dr. Michael Holland, who's with the Upstate New York Poison Control Center, to join us.

Now, obviously, there's only -- oh.

And you are...?

ANDREW HYLAND, Ph.d.: Dr. Hyland.

SENATOR HANNON: Dr. Hyland.

We've never met, so I don't know...

ANDREW HYLAND, Ph.d.: Let me get organized here.

SENATOR HANNON: And Dr. Holland.

DR. MICHAEL G. HOLLAND: Yes, sir.

SENATOR HANNON: Maybe we'll call Dr. Hyland first, and then -- unless you have another order that you decided on?

Okay.

Thank you for joining us.

Thank you for coming to Albany, and I appreciate both of you have a ways to go.

ANDREW HYLAND, Ph.d.: Lifelong New Yorkers.

This is an important issue, obviously. A lot of interest and discussion.

Thank you, Chairman Hannon, and other members of the Committee.

You know, I'm the chairman of the Department of Health Behavior at Roswell Park Cancer Institute in Buffalo, New York.

I have been doing tobacco control for 20 years. We've published over 200 papers, numerous grants, contracts.

I'm the deputy editor for the "Journal of Tobacco Control."

And, I'm the scientific principal investigator for a big cohort study of tobacco users, both -- that the FDA will be looking at as the evidence begins to come out.

I also am the director of the New York State smokers' quit line.

So that's a little bit of a background on me.

Thank you again for the invitation.

I'll start my remarks with a summary of some

of the problem that we face.

And some of what I've talked about, obviously, has been raised by other panel members previously.

I'm going to describe some facts about e-cigarettes, some of which I think you've not heard in previous testimony; describe some of our relevant research at Roswell Park that we've been doing on e-cigarettes; and conclude with some thoughts and implications about some of the marketing, as well as the Clean Indoor Air Act.

And, again, I'm not here to really advocate on a position on any bill that you might have before you, but, really, to help share some of our scientific expertise that we have, so that when you come to your decision-making, you'll have that at your disposal.

You know, the problem, tobacco use, it's the number one preventable cause of disease in our country.

You know, 23,000 New Yorkers die each year.

The Surgeon General has put out a new statistic, like, in New York State, of those that are under 18 years of age, if you track them over their lifetime, 270,000 of them will die from a

cigarette-attributable disease. You know, a quarter million people.

Really looking at a huge, huge problem that we still have, despite the advances that we've made decreasing smoking prevalence.

With regard to e-cigarettes, let me state up front what my position is on this, and let me finish the whole thing. I don't want to be taken out of context here.

It's my view that there's reason to be hopeful about the potential of e-cigarettes to reduce the disease-burden caused by tobacco.

The best thing that a smoker can do is to quit altogether. Without question, that's the best thing.

But short of that, if a smoker is able to switch completely from those combusted cigarettes to an e-cigarette, while the evidence is still emerging, it's my belief that that's probably going to be beneficial to that individual, without all the toxic byproducts.

However, a big "however" here, is that there's reason also to be very concerned about the potential unintended consequences of electronic cigarettes and their marketing, and this is where we

are, because this is an experiment that's happening in real time, and we don't have all of the evidence on which to make these decisions.

Some people may use cigarettes as a reason not to quit smoking, but as a reason to continue smoking, as sort of a psychological crutch to think, Oh, if I reduce the amount that I'm smoking by a few cigarettes per day, that that's okay. Or, I can go out and use an e-cigarette while I'm in a social venue, that that's -- that they're mitigating their risk.

Youth that have never smoked may take up e-cigarettes, and former smokers may come back into the tobacco-using marketplace.

All of these things would be bad outcomes for public health.

And how these products are marketed is a key driver of these behaviors.

Research is underway to understand these issues, but in the meantime, it's sensible to discuss policies that address some basic foundational issues.

And I understand that there are several bills that are under consideration at the moment.

Looking at some facts about e-cigarettes,

I think you heard some testimony about how they work.

There's a liquid, it's vaporized, the nicotine comes off, and the user breathes that in.

And that's the vaping process.

Sometimes you'll hear people, the term "vaper."

There's flavors, all kinds. You know, chocolate, sex on the beach, mint...you name it, it's out there.

And, nationally, e-cigarettes, gross sales are about $2 billion this year.

At least one stock analyst for Wells Fargo has put a bold prediction out there that, within 10 years, the sales of e-cigarettes will surpass that of conventional cigarettes.

So, in terms of fads or not, this looks like it's here for a while.

In terms of patterns of use, you've heard the Center for Disease Control's statistics, looking at the doubling in youth uptake from 2011 to 2012.

We also see a similar pattern, an increasing uptake in adults.

Most of the e-cigarette use that we do observe, both in youth and adults, are among

cigarette smokers. And I think it's safe to say that the evidence is not conclusive at all that e-cigarettes help people quit smoking.

Dr. Juster referred to the one clinical trial that's been done, which showed no difference in quit rates, and, different people will use for different reasons. And, again, the marketing will come into play here.

So, I mean, a fundamental issue, when thinking about this, is do e-cigarettes pose a risk?

And I think the answer is an unequivocal yes.

While, overall, e-cigarettes appear to be less harmful in terms of the numbers and the amount of toxic chemicals, they're not safe.

So, somebody comes out and says e-cigarettes are a safe alternative, that's not correct.

And we know they make toxins that are harmful.

And our group at Roswell Park has been at the forefront of research, and here's just a couple -- a couple highlights of some of our work.

As mentioned previously, e-cigarettes may expose users to carcinogens.

And with these newer e-cigarette devices, there's a voltage, and that can be variable.

The higher-voltage devices tend to emit more toxins.

What are some of the toxins that are there?

In particular, formaldehyde was mentioned, and formaldehyde is an embalming agent. And they're emitted, and these things are -- and formaldehyde is also carcinogenic, and can be emitted into the air which can be breathed and can be harmful to non-users.

Secondhand vapor is also a concern.

Work in our lab shows that e-cigarettes are not emission-free.

They include nicotine; acrolein, which is a weed killer; formaldehyde; and other chemicals.

So while the concentrations of these toxins is less than what you see coming off of a burning conventional cigarette, it's still -- it's a matter of, you know, just a little bit of poison versus a lot of poison.

And so, when it comes to looking at smoke-free policies, again, the intent is really to try to provide smoke-free and healthy air for employees to breathe.

So there's health risks associated to the users. Secondhand vapor or smoke issues to

non-users.

We've also done studies about thirdhand exposure, which would be like the residue that you would see. And, again, we see that kind of residue coming off of e-cigarette vapors, again, sort of complementing what we see from cigarette smoke.

I understand the Committee's also looking at issues regarding e-liquid. And I think you've heard about some of the poison-control statistics. And there's the graphic over here from a previous speaker on the right -- on my right.

Scientific research is ongoing, and in the near future, we'll be used to more helply -- more clearly delineate the health risks and net public-health impact of these devices.

But while the content and emissions from e-cigarettes are being analyzed, the behavioral risks are also being assessed.

So it's not just the products themselves, but it's how they're used, which is what confers risk.

As I mentioned earlier, there's reason to be hopeful about e-cigarettes for improving public health if they serve as a transition for people to get off of conventional cigarettes completely, but that's a big "if" that's there.

And there's also significant reason to be concerned if we fall short of that goal.

And I mentioned the marketing for e-cigarettes plays a role.

You know, since 1971, you can't advertise tobacco products on television, but there's no current restrictions on e-cigarettes. And, unfortunately, the FDA deeming rule that was published last month is silent on the issue of e-cigarettes and marketing, perhaps to be taken up at a later time for a later rule.

A recent report estimates about 59 million was spent on e-cigarette advertising in 2013.

And I just wanted to show a couple of examples of what we see when it comes to some of the marketing here.

So, let me see if I can...

Many of you might recognize this character.

You know, the great Yankee catcher, Yogi Berra, the great philosopher, one of his, you know, sayings was, "Looks like deja vu all over again."

And that's exactly how I feel when it comes to this.

So, looking here on the panel, some examples

of both cigarette ads juxtaposed with cigarette ads. It's really the same message: Switch but don't quit.

And on the top middle, this is a True cigarette-brand ad. This is from, like, 1974, 1975.

Considering all I heard, it's about low tar. Low-tar products.

"Either quit or smoke True."

"I smoke True."

Again, that message to say, you don't have to quit. You know, we've got a safer alternative for you.

And blu e-cigarettes, on the top left; again, the same exact message.

We see rugged men and beautiful women.

Again, the e-cigarette ad, on the left.

The Marlboro cowboy on the right.

And, again, blu e-cigarette versus the Virginia Slim model.

It's, you know, virtually, the same ads and just scrubbed out the text.

Music festivals and sports sponsorships; again, blu e-cigarette festival, a cool jazz festival.

You know, and the two racing cars. Even the angle, that might even to be same car. I think

that's just layered.

So, again, replaying a successful marketing campaign.

Again, e-cigarette ad, FIN e-cigarette brand.

Pall Mall, this is an ad from, I think, the '40s, looking at here.

Virtually the same.

And the flavors, we've heard about the flavors.

Again, the blu e-cigarette ads versus the Camel cigarette ad, on the right.

Celebrity spokes people, again, really juxtaposed, using that same playbook.

And, of course, you know, sex always sells.

If you haven't checked out the Swimsuit Issue this year, the e-cigarette ad, I didn't know that the bikini bottom would be a billboard for blu e-cigarettes.

And, apparently, the online version, young teenage boys can go and zoom in, and just make sure things are spelled correctly, I guess, on that.

So that's an example of how some of the marketing.

Now, obviously, marketing is a difficult issue to deal with, but I think definitely shapes

who this target audience is.

If we're looking at a 50-year-old cigarette smoker, say, "Hey, use my product, my e-cigarettes, so you can get off of those cigarettes completely, and then maybe transition to get off of those completely," that's a good outcome.

But that's not what we're seeing here.

I've heard some say that, in fact, these companies are their own worst enemy on this because they might find sympathy in those that are looking for a public health -- a product that could benefit public health.

But when it's marketed like this, there's concern.

And just, briefly, to summarize here:

In 2003, New York State took a strong stand, a leading national stance, with their Clean Indoor Air Act, protecting health of both smokers and nonsmokers.

And public forums like this provide an opportunity to share information about the relevant science needed.

In 2003 e-cigarettes didn't exist, so it's very sensible to say, let's -- you know, we've got a new issue, new concerns, and let's see if it makes

sense to try to incorporate that.

And, again, the science that our group and other groups have performed; so, that there are toxins in e-cigarette vapor, and that they can provide exposure to non-users in public places.

So, a very complex issue, lots of layers involved.

I appreciate the opportunity to speak briefly before the group, and would be happy to answer any questions after, from this panel.

SENATOR HANNON: Dr. Holland.

DR. MICHAEL G. HOLLAND: Thank you, sir.

Appreciate the chance to come talk to you.

I'm a physician toxicologist at the Upstate New York Poison Control Center, and we're housed at the SUNY Upstate Medical University in Syracuse, New York.

I just wanted to echo some of the comments that others have made, and I'm just going to briefly make some comments, and I'm here to answer any questions, basically.

We have seen an increase in calls related to e-cigarette liquid nicotine.

In 2013, we had 27 total calls to the Upstate New York Poison Center.

In 2014, just in the first 4 months, we've already had 27.

So it's really, basically, a 300 percent increase in calls related to this.

About half or -- about a third of these calls have been for children under age 5 accidentally stumbling all upon these liquid products.

And the danger with these is that, that they're so concentrated. You know, the toxicity of nicotine, we've known about, because kids, as they -- toddlers especially, as they explore their environment, they tend to put things -- they look at something and then put it in their mouth.

Cigarettes don't taste very good so they often never get, you know, any toxicity.

If they do, the toxicity involves, first of all, vomiting. And they'll often self-decontaminate because they vomit up many -- much of the stuff they've ingested.

So the problem with the liquid nicotine is they're so much more concentrated than a cigarette, that just small amounts can be lethal.

The LD50, which is the lethal dose that will kill 50 percent of a population, it's -- you know, it's extrapolated from animal studies. But we also

know, in humans, that about 1 milligram per kilogram of nicotine can kill you. So, 1 milligram ingested per kilogram of body weight.

So a child that weighs, you know, 5, 10 kilograms, there's the small amounts that can kill them.

And many of these products that are not in child-proof packaging are liquids that contain 19 milligrams per ml.

So just a teaspoon would have over 100 milligrams, so it could easily be lethal.

And even -- and even the concentrated formulas like that, could even be -- small amounts could even be lethal to adults.

Nicotine is so toxic that it previously was one of the best available pesticides.

People sprayed it on crops before there were other more readily available chemical manufactured pesticides. But it's still an effective pesticide, so it's used to kill things, so it can be lethal in high amounts.

We at the Upstate New York Poison Center serve 7.4 million New Yorkers.

We cover all the counties north of Orange and Westchester county.

And then the other poison-control center in the New York poison system is the New York City Poison Center that covers the rest of the counties and Long Island and New York City.

And the other danger that you don't see with other nicotine-replacement products, such as the gum and the lozengers [sic], is that the nicotine is well-absorbed through the skin. It's one of the unique toxins. It doesn't just have to be ingested.

So you can absorb it by vaporizing it in the e-cigarettes, but you can also absorb it by accidental swallowing it.

But you can also get toxic from absorption through to be skin.

There's a well-known occupational illness called "green-tobacco illness," or "green-tobacco sickness," where people that are picking tobacco, if it's moist tobacco, or if they get sweaty and the tobacco leaves get wet, and get on their skin, they can actually absorb nicotine very readily and get sick.

It's a known occupational illness.

So we know that nicotine is well-absorbed through the skin.

And there have been -- of these calls that

we've received, there have been three calls already this year of skin toxicity from exposure to these concentrated nicotine liquids.

SENATOR HANNON: What would people -- people arguing against this bill have said to me --

It would help, I guess, if I turned the mic on.

People arguing against the bill have said, Well, there's other dangerous substances in the home. You know, Drano, or something like that.

What would you -- are you getting, you know, similar types of calls about other poisons at the home; just cleaning agents, or something like that?

DR. MICHAEL G. HOLLAND: Sure.

And many of those are -- have some protective packaging on them. And they're also -- consumers know that those are toxic products, and they're kept -- through poison education, we try to make sure people keep them, you know, in locked cabinets where toddlers can't get at them.

Drano and those kind of things are very toxic, understandably.

But, the consumers don't understand how toxic these can be. And they're not sold in any kind of protective packaging.

Many of them are just in colorful bottles that have a lid you unscrew and you have dropper-type things.

You can even buy them online. You can buy these things in huge quantities. They even sell it in a 55-gallon drum.

So, they can sell it by the liter, you know, because it's very cheap to buy it in bulk, and then use it in your refillable e-cigarette things.

So these are not in child-proof packaging, and the consumers don't really realize how that there's lethal doses in just small amounts of these that's in their home.

SENATOR HANNON: What about the cartridges; do you get any calls about use or misuse of that?

DR. MICHAEL G. HOLLAND: The ones that are not -- that are like the blu, or the type that are not, you know, refillable, that are just single-use-type things, there haven't been very many bad outcomes or calls regarding those.

Most of the calls, and the major increase, is in the these liquids that are the refillable types, the concentrated liquids.

SENATOR HANNON: Okay.

Does anybody have any question?

Senator Hoylman.

SENATOR HOYLMAN: I just wanted to point out to Dr. Harlan, I think the reason why we're seeing a repeat of marketing with e-cigarettes, harkening back to the glory days of traditional cigarette advertising, is that a lot of the major brands are now owned by big tobacco, so they're just rolling out, you know, old campaigns with new devices.

Altria, R.J. Reynolds, Lorillard, they own the brands at this point, or major portions of the big brands.

Also, I would want to point out, are e-cigarette devices themselves, which I think have an allure to young people.

Some of them are, you know, festooned with, you know, fake gems. And I've seen one device that is a Hello Kitty vapor device.

I would think those would be extremely attractive to young people, as well as pose a danger to children should they fall, you know, into their hands.

I have a 3-year-old, and anything that has Hello Kitty on it is fair game.

DR. MICHAEL G. HOLLAND: And I think it's important to understand that nicotine is not -- most

of the source of the nicotine in these products is from tobacco. That's where they get it.

So, it's a place to market the crops.

When you grow tobacco, you can produce nicotine and put in it these products.

ANDREW HYLAND, Ph.d.: That's a very perceptive comment.

SENATOR HANNON: Well, I thank you for coming here and laying into the record exactly all of the important knowledge and findings that you have, and I appreciate it very much.

ANDREW HYLAND, Ph.d.: Thank you.

DR. MICHAEL G. HOLLAND: Thank you.

SENATOR HANNON: Thank you.

Next we want to ask Scott Wexler, who is executive director of the Empire State Restaurant and Tavern Association, and James Calvin, who's president of the New York State Association of Convenience Stores.

Mr. Wexler.

SCOTT WEXLER: Good afternoon, Chairman Hannon, and members of the Senate Committee on Health.

As you know, I'm Scott Wexler, and I'm here today in my capacity as the executive director of

the Empire State Restaurant and Tavern Association.

I've been privileged to serve as the executive director of the association since 1985.

The association represents thousands of small, independent, on-premise alcohol-beverage licensees who are located throughout the state, and this includes restaurants, bars, taverns, hotels, bowling centers, and other businesses that sell alcohol for on-site consumption.

Thank you for the invitation to provide testimony on behalf of our members to your hearing today.

As the public discussion over the use of e-cigarettes has been engaged, I've been struck by how much the public-placed vaping bans are supported by folks who base their position on the simple argument that e-cigarettes are just like cigarettes and, so, they should be treated the same.

According to the sponsors' memo, the bill is advanced to further protect New Yorkers from these dangers of these unregulated devices, particularly given they have not been proven to be safe for use at any age.

But our association doesn't see it this way.

Our fight over smoking in bars and

restaurants was principally over economic concerns. Our members feared the business losses they would suffer if smoking was banned.

Those fears were, for the most part, unrealized.

There was a short-term dip in overall restaurant and bar sales following the ban that was disproportionately felt by a small segment of the industry.

Unfortunately, they were our members, the small bars and taverns, with the overwhelming majority of businesses having no impact, or even seeing an increase in sales after the smoking ban.

But even our members saw their businesses stabilize and grow after a transition period.

So this history informs us not to be concerned about any impact on business from a public-placed vaping ban.

We object to this bill because of its assault on our members' ability to run their businesses as they please.

This is not about our concern about the loss of business.

The association sees this as another attempt by government to dictate how New Yorkers run their

businesses and live their lives, adding cost to the bottom line and eroding their freedom to operate the businesses as they desire, and we don't see any evidence that justifies such an intrusive imposition.

The Food and Drug Administration recently proposed a federal regulatory framework for e-cigarettes, and they issued a call for the submission of scientific information on e-cigarettes so they can assess the product more fully.

Some public-health advocates have taken note of smokers using e-cigarettes to reduce or eliminate their tobacco smoking.

They note that e-cigarettes have been demonstrated to be as effective a smoke-cessation devices as nicotine gum or the nicotine patch, but, they may be more helpful for smokers, given the similarities with smoking tobacco cigarettes, and that any use of e-cigarettes, rather than tobacco cigarettes, is positive, even if the smoker doesn't quit smoking.

We believe the FDA is the appropriate agency to review the science and make any determinations about the safety or health risks associated with using e-cigarettes, and to then let those findings

guide the regulation.

Once the FDA makes these findings, New York State can consider a public-placed vaping ban in the context of these expert findings.

If the FDA determines there is significant harm to those who use e-cigarettes and/or those around them, there will be a consensus to advance a public-placed vaping ban, or something similar.

But there's no reason to prejudge the outcome of the research and to jump to the conclusion that e-cigarettes are an equivalent public-health risk as tobacco smoke and enact this public-placed vaping ban.

Don't take it from me.

The FDA's regulatory notice acknowledges that emerging technologies, such as e-cigarettes, may have the potential to reduce the death and disease toll from overall tobacco-product use, depending on who uses the products and how they are used.

According to the notice, if such products result in minimal initiation by children and adolescents while significant numbers of smokers quit, then there is a potential for the net impact at the population level to be positive.

We hope the New York State Senate has a high

bar for infringing on the rights of its citizens, and that this imposition on the right to manage your business with little evidence of public need falls short.

Thank you again for permitting to us share our association's comments.

I look forward to continuing to work with you on this, and other subjects.

SENATOR HANNON: Senator Thompson wanted to ask Mr. Wexler a question.

Senator Thompson.

SENATOR HASSELL-THOMPSON: Thank you.

Thank you, Mr. Wexler.

I had a meeting, but I stayed specifically because I had read your testimony very quickly, and I just wanted to direct a couple of questions and concerns.

I notice that you first said that your concern, initially, about smoking in public was an economic one.

But now you've gone on beyond the economics when you've seen that there are no negative economic impacts to your businesses, to make a statement that really is not in your purview.

And I say that because, one of the big

concerns, I remember having lunch in a restaurant in New York City, and I was introduced to the manager. And he recognized that I was one of the Senators who had voted very positively yes to ban public smoking. And he began to tell me, for close to an hour, about the impact on his business.

And part of what I shared with him was, that there might be some fall-off in the beginning, but you will see an increase because many people don't come to your restaurant because you do allow smoking. And, very shortly, you will see an increase.

As you have rightly said, that did happen.

That doesn't make me a prophet. It just makes me understand a little bit about human nature.

And as someone is in the health field, my concern, when we passed this bill, was not necessarily to regulate what smokers do or don't do.

It is what your workers in your restaurants, the impact on them.

One of the things that we're all aware of is how long it takes the FDA to come up with a determination and a decision and a finding.

And in many of the cases, we have found, that in the process of waiting for the FDA's

deliberations, which is appropriate, perhaps, more and more people are being impacted, and particularly the public.

We have to be concerned about the public.

We have to be concerned about every aspect of the public; the smokers and the nonsmokers.

As somebody who smoked for 25 years, I believed all those ads.

I believed, when I moved from smoking -- I never smoked Marlboros, but I did smoke one of the strongest cigarettes on the market. And when they put a filter on it, I thought that I was being safe.

Well, we found that, I was not only being safe, it was more deleterious to my health than smoking without the filter.

I mean, these are things that take all of us a long time to get to.

I appreciate the fact that Senator Hannon has been very proactive in saying we can't afford, with the numbers of children and young people who are being initiated into smoking, because it's now sexy and presumably safe, while we wait for the FDA.

So I'm here to ask you: How do you see us as interfering with the ability of businesses to run

their business as they do, without our concern being, foremost, about your employers -- employees, as we wait for the FDA?

SCOTT WEXLER: Senator, thank you.

I don't disagree with you that the concern about the safety of any product that would be used or people would be exposed to in a restaurant goes well beyond the smokers and the nonsmokers.

And I certainly accept your premise that we have to be concerned about the impact on our employees, as well as others who might be in the public place.

But the difference between the conversation back then about secondhand smoke was, the evidence was clear, and, in fact it had been clear for years, that exposure to secondhand tobacco smoke was dangerous.

We may disagree, but --

And Senator Hannon and I clearly disagree, and we've had this disagreement politely and professionally.

-- our association does not believe that there's a similar predicate of information about exposure to e-cigarettes being dangerous for our employees or others who might be in our restaurants.

If the evidence were clear, then we would agree with you that you shouldn't wait for the FDA.

But the FDA themselves have said they have to -- the evidence isn't clear, and they want to receive the information.

And we think that's a good position to take.

SENATOR HASSELL-THOMPSON: We don't disagree with you in that aspect.

I think problematic for me, however, is that, are you prepared for a lawsuit when the vapes perhaps are -- if the FDA approves the fact that these vapes have the same impact as secondhand smoke?

SCOTT WEXLER: Senator, I'm not an attorney, and I didn't come here this afternoon to theorize of what the litigation strategies might be.

But I suppose that our members, like everything else in their business, litigation is one of those things that they might be exposed to.

If they thought about all the things that could go wrong in their business, they probably wouldn't put the key in the door every morning.

I do take your point. I think you make an important point.

I believe our members disagree with your

position.

SENATOR HASSELL-THOMPSON: Okay.

Thank you, Mr. Wexler.

SCOTT WEXLER: Certainly.

SENATOR HANNON: Now, Mr. Calvin, we have some questions of both of you afterwards, but I thought I'd let you say that.

We're -- all Senators are trying to be two places at once this morning.

JAMES CALVIN: I appreciate that.

SENATOR HANNON: Jim.

JAMES CALVIN: Mr. Chairman and honorable members of the Committee --

SENATOR HANNON: By the way, your submitted testimony says "Continued"?

[Laughter.]

JAMES CALVIN: Yes, I'm coming back tomorrow with the other half.

[Laughter.]

SENATOR HANNON: As long as you have it.

JAMES CALVIN: Well, let me at least present the first half.

Thank you, Mr. Chairman.

The New York Association of Convenience Stores is a statewide trade organization

representing 8,000 neighborhood mini marts, bodegas, and convenience stores, the majority of which are licensed by the State of New York to responsibly sell tobacco products to adult customers.

Many of them also sell electronic cigarettes. A smaller number sell e-liquids.

NYACS was one of the first entities to be approved by the New York State Department of Health as a provider of certified tobacco-sales training under legislation authored by Senator Hannon.

I have personally trained over 7,000 retail clerks and cashiers in the proper procedures for preventing underaged sales in accordance with that state law.

I'm proud to say that this type of training, along with effective compliance enforcement by the state and county health departments, and voluntary good-faith efforts by responsible retailers, has helped drive up New York's compliance rate, from 80 percent 15 years ago, to 95 percent today.

And every day, all of us, of course, are striving to further improve that number.

We'd like to commend you, Senator Hannon, for your principal leadership in the arena of public-health policy, in general; and tobacco

policy, in particular.

We occasionally agree, obviously; we occasionally disagree, obviously; but you've always been thoughtful and forthcoming and respectful of the retail industry's point of view.

New York State and New York City were among the first jurisdictions in the nation to forbid smoking in bars, restaurants, places of employment, and other indoor areas.

They did so because the public-health advocates insisted that exposure to secondhand cigarette smoke could kill nonsmokers.

Well, private industry responded by inventing a battery-operated nicotine-delivery system that smokers could use in such places without exposing others to secondhand smoke; the electronic cigarette.

Now, some New Yorkers have responded to the advent of e-cigarettes the way they might react to seeing a spider on their kitchen floor, "quick, stomp on it," without knowing whether it's really a threat to their safety, and without regard for any beneficial impact it may have.

Truth be told, the jury is still out on the degree to which e-cigarettes are a smoking-cessation

tool, a public-health threat, or some combination of the two.

The FDA has officially begun sorting that out in an orderly fashion, undertaking the scientific analysis necessary to objectively define benefits and risks, and then properly balance them through regulation.

Consistent with our commitment to preventing youth access to tobacco-related products, NYACS is on record supporting Senator Hannon's bill, S-7027A, prohibiting sale liquid nicotine to minors, and requiring such products to display ingredients and a warning label, and requiring the containers to be child-proof.

We have also endorsed another Hannon bill, 7139, to require standalone vaping shops to register with the State, and undergo periodic undercover compliance inspections just like retail tobacco dealers do.

But in our view, outlawing the sale of liquid nicotine to adult customers under any circumstances, as proposed in S-6939A, and, completely banning e-cigarette use wherever smoking is banned, as proposed in S-6562, would be premature at best.

Why squish a product category that, for many

smokers, has already become the long-awaited viable solution to quitting combustible cigarettes?

Why leapfrog the FDA by enacting an e-cigarette-use ban based on conjecture that may or may not conform to what the FDA ultimately deems appropriate based on science.

If there are suddenly fewer places that you can use an e-cigarette, will the transition from combustibles to vaping be retarded, or even reversed?

And is that in the long-term interest of public health?

Before you stomp on that spider, we respectfully implore you to first let the FDA determine whether that's a black widow scurrying across the floor, or a species that can help achieve the public-health objective of further reducing tobacco-related illness and death.

I also add that there are many others in the e-cigarette industry that -- who would have liked to have testified today.

One of them is Dr. Richard Carmona, a former surgeon general of the United States, and native New Yorker, who has joined the board of an e-cigarette company called "NJOY."

He authored the 2006 Surgeon General's Report declaring secondhand smoke a serious public-health hazard.

He is far more knowledgable and articulate and credible on this subject than I, and I urge you in strongest forms to read the written comments he prepared for this hearing, which I have submitted to the staff.

Thank you.

SENATOR HANNON: Thank you.

Questions?

Senator Savino.

SENATOR SAVINO: Thank you, Senator Hannon.

Thank you, gentlemen, for your testimony.

Unfortunately, I had to leave before, and I didn't get to hear some of the other testifiers.

I find myself in an odd position, because I am probably one of the most obnoxious ex-smokers you've ever met.

I also understand the lure of cigarettes, though, and how dangerous they can be.

When I started smoking, I was 12. I could walk into any convenience store that were a member of your organization, and I would could buy cigarettes for myself and my mother and my father.

You know, you could smoke anywhere.

You could smoke in a hospital. You could smoke in a doctor's office.

You could smoke in the -- you could smoke any -- it's the culture of where we were.

Restaurants and bars.

And when I quit smoking the first time, at the age of 30 -- everyone can go figure out how old I was -- how long ago that was -- they were just beginning to crack down on indoor smoking in offices.

And, again, for 12 years, I was -- no, 13, I was an obnoxious ex-smoker.

And then when I went back to smoking, I was a very avid smoker for a short period of time.

So I know how dangerous cigarettes are.

I used the e-cigarette once or twice, but I quit the old-fashioned way, the second time.

What I'm concerned about, though, because I -- again, I find myself in an odd spot.

I think we should do everything possible to prevent people from getting access to nicotine products that will allow them to become addicted to something that I will be addicted to for the rest of my life.

So I support the idea of preventing people from buying e-cigarettes before the age of, I think, 21. I think 18 is still too young. I think we should move cigarettes to 21.

And we should be consistent across the state on that.

I don't think we should allow people to buy the liquid stuff and recharge it.

But I look at the e-cigarette, and I see that we don't have the evidence that the surgeon general has produced for secondhand smoke; that evidence that took decades to really produce, to show the effects of secondhand smoke.

And that's what led to the indoor smoking ban.

I look at restaurants and bars now.

They're certainly much nicer. You know, you don't walk out of there stinking.

But then I look at what's outside the door, and that's where smokers go, and they stand in front and they smoke.

Go outside any major, you know, office building in Manhattan.

And, we're concerned about the effects of secondhand smoke; and, yet, every one of us walks

through a cloud of it to get in and out of buildings or out of bars and restaurants.

And so I wonder, if we do this, if we restrict them, or cover them by the indoor smoking ban, will they be standing outside your restaurants and bars smoking their e-cigarette, and how long before they go back to smoking real cigarettes?

SENATOR HANNON: That is a question?

SENATOR SAVINO: No.

I'm just -- how -- so you look at -- you look at -- we have the science, scientists, but then we have the people who are going to have to enforce it; and that's our bars and restaurants, that's our convenience stores, that's our other retailers, who are going to have to be responsible for enforcing this.

And I'm curious as to whether or not you feel that this would be an additional burden on you, and how you're going to enforce it consistent with what we do with regular cigarettes now.

I know it was a long question, but I got there to the end.

SCOTT WEXLER: It was a good question, Senator Hannon.

Thank you, Senator Savino.

I think that managing the use of an e-cigarette in a restaurant or a bar is no different than any of the other challenges that you have.

By the way, we support the owner of a restaurant or a bar deciding the best way to solve the problem is to ban it completely. That's their privilege.

But we see exactly the scene in front of our establishments, people leaving their drinks, going outside.

In some urban locations, we have issues with noise, from the neighbors, from people gathering outside.

And while there's a lot of concern about our employees who might be exposed to secondhand smoke, e-cigarettes is a product that we are now seeing some of our employees starting to use.

Instead of going out for a 15-minute cigarette break when you're working behind the bar or on the dining room floor, you can step into a side space, have a puff or two, as you've experienced with the e-cigarette, and go on.

So unless and until we see that information that's out there that would support something more --a broader ban, we really do believe that you

ought to let us try to sort it out.

We'll probably sort it out reasonably well, because having our customers happy is what we do. We're in the hospitality business.

SENATOR SAVINO: The City of New York recently adopted adding e-cigarettes to the indoor smoking ban.

Has -- how has that worked out so far in terms of enforcement?

SCOTT WEXLER: It's really pretty new.

And from talking to our folks down there, they're just beginning to have the experience. And I think we really need to take some time.

I will say that, when we look at the cigarettes, one of the reasons that we don't see it as an economic loss, is that it's not like -- as Mr. Calvin was saying, it's not like a large portion of the community is engaged in this behavior, or a large portion of our patrons were.

You know, when the City and State and localities were regulating smoking in bars and restaurants, there were a lot of our customers who were smoking, and we had to referee that.

I actually think we are aware of very few of our customers who are engaging in e-smoking because

it's not an obtrusive behavior. It's not something that you have to do and be very demonstrative about it. It's something you do fairly quietly, and to yourself.

SENATOR HANNON: Senator Golden.

SENATOR GOLDEN: Thank you, Mr. Chairman.

And thank you, gentlemen, for being here today.

I'm one that would like to err on the side of caution and make sure that we have all the information that is needed and required.

But I do believe Senator Hannon has some good bills that we should probably move forward.

There's a difference, obviously, between a liquid and cartridge, that's still to be determined as to health risk.

But we've noticed that, on the liquid form, they're [unintelligible] using nicotine, but they use liquid hashish, they will use different types of narcotics. It's becoming the new fad for their new hashish pipe, in certain areas.

As far as enforcement, enforcement in the restaurants is -- it's very good. Now there's plenty of enforcement in the restaurants.

The enforcement that's lacking is in the

actual sale of the cigarettes and the actual sale of the products, and, there is no enforcement.

The enforcement across the state of New York is to about 17 people.

And I think we have two or three agents in all of the city of New York.

Everybody knows that nothing happens between or after, before 9:00 in the morning and after 5:00 at night on Monday to Friday, so there is no enforcement whatsoever.

And the estimates out there are, 6 in 10 on the cartons of cigarettes being sold in the city of New York and across the state of New York are from outside the state of New York, and are with bad stamps, and that it's costing the state of New York somewhere in the category of about $2 billion a year in untaxed cigarettes that are being sold in these locations across the city and the state.

So that's one of our biggest problems, is going to be enforcement. Being able to get that $2 billion back that's being lost in the state, but making sure the regulations work across the state of New York, and that there are enough people going in and throughout the delicatessens, bodegas. These are even being sold in supermarkets and in

drugstores and our chain stores, are illegal cigarettes being sold.

I mean, it's really something that the State of New York has to get more serious about.

And I think we got to be very, very cautious about placing this type of product in the store where there is no regulations or limited regulation.

So mine is more of a statement.

You can respond to it, but that's a -- I'm a pro-business guy, but there has to be some form of regulation. And I don't see any regulation in this city, in this state.

JAMES CALVIN: Thank you, Senator Golden.

One of our concerns about the proposed prohibition of the sale of e-liquids, is that experience has proven, time and again, that in New York, when you attempt to ban or overtax a tobacco-related product, the customers stop coming to our stores to buy it, but they find a way to get it, from neighboring states, from the Internet, from Native American tribal stores, all of which are free from the encumbrances of New York State regulation and taxation.

So, we lose the sale, but there's still consumption going on.

And that's one of our biggest concerns about on outright ban on the e-liquid product.

We think it would be far better to impose the child-proofing provision, make sure that all retail outlets are registered, make sure there's proper labeling on the e-liquids, and so forth.

We hope you'll decide to stop short of an outright ban, because what that will do is create a black market for the product.

SENATOR GOLDEN: I believe you have good actors and bad actors out there in all fields, in all industries, but there are definitely many more bad actors in your field when it comes to cigarettes.

And I'm being, not facetious, but I'm being totally honest.

There's a tremendous amount of untaxed cigarettes being sold by members of your organization. And it's sad that the State has allowed this to get as far as it has.

I notice when a task force has been created that has yet to meet, and I believe that we need to deal with that issue before we put any type of these e-cigarettes into sale into these locations.

JAMES CALVIN: Senator, I'm going to

respectfully object to the comment that members of my association selling are illegal cigarettes or illegally trafficking in cigarettes.

That is not the case.

And I defy you to show me a single one of our members of the New York Association of Convenience Stores that are selling cigarettes illegally.

SENATOR GOLDEN: You do not want to challenge me today.

JAMES CALVIN: I just did.

SENATOR HANNON: Well, we'll let that be settled.

I'm going to call this to an end.

I would suggest you gentlemen, and anybody else who's raised this, about the questions about the efficacy of e-cigarettes for withdrawal, and the effect of e-cigarettes on secondhand smoke, that they go back and read carefully the testimony presented this morning, especially the testimony by Dr. Hyland from Roswell, Dr. Eisenstein from NYSACHO, and the very well-documented testimony from the Department of Health.

It does not support the conclusions that you have said.

Let me also, just one more comment about the

FDA.

Probably, in the last few years, I've had more experience with the FDA than anybody else in the Legislature because of different proposals in regard to different ingredients, but also because of something that I got into sponsoring, which was calories on menu labeling.

And I had the statewide bill.

And I had the statewide bill because localities started to enact their own statutes, which then led people to say we have to have some uniformity, which was very difficult to write a statewide bill, because there were such disparate elements of each of the laws.

And now we find the same thing happening with e-cigarettes, New York, [unintelligible], people are doing that.

So you're going to at some point say, Well, wait a minute. We need a statewide bill.

But here's what happened to me on the menu calories:

The industry -- the food industry said, Oh, well, it's going to happen in the Affordable Care Act. It's going to be a separate title. It will be passed.

And it was passed.

That was four years ago.

To date, the FDA has been unable to issue the regulations.

It was very clear what was being done.

It was very clear what they had to do.

They've been unable to do it.

I'm afraid waiting for the FDA is like waiting for [unintelligible]. Maybe it never comes.

So, by the way, a piece of -- some details I really need to say is, for the people who have submitted written testimony, and I just want that to be noted to go on the record:

NJOY, with the testimony of Richard Carmona, the former associated surgeon general, you had mentioned, Mr. Calvin;

Lorillard Tobacco; Altria Tobacco; American Council on Science and Health; "NATO," which is National Association of Tobacco Outlets;

And, an extensive memo that my staff did when they met with Ms. Spike Babaian, in regard to what she felt the rights of vapor sellers were.

So, all of those are going to be part of the record, and we will be doing a report in due course, but, we'll also see how this affects the legislation

that's pending.

I thank you very much.

The hearing is now over.

(Whereupon, at approximately 12:45 p.m., the public hearing held before the New York State Senate Standing Committee on Health concluded, and adjourned.)

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