

Restaurant Smoking Ban on Track for Adoption

BY MARK FRIEDMAN

SMOKING WILL BE BANNED in restaurants by the end of the year if a new state regulation remains on track.

On April 26, the Arkansas Board of Health ruled that the proposed regulation needed no changes based on the public comments received. The regulation was then sent to the Legislative Council's subcommittee on Administrative Rules and Regulations, said Dr. Glenn Davis, president of the state Board of Health.

The regulation also will go to the state House and Senate committees on Public Health and Welfare.

After the legislation is reviewed, it will return to the Health Board with any recommendations. If there aren't any, the next stop will be the Governor's office for his signature, possibly in August. The regulation would become effective 90 days after it's filed with the Secretary of State's office.

The Arkansas Department of Health would then enforce the regulation.

Although smokers would still be allowed to light up in bars, the restaurant industry is trying to stomp out the regulation.

"We are not for or against smok-

ing," said Montine McNulty, executive director of Arkansas Restaurant Association. "But [we are] for the business owner's right to determine policy."

She said she didn't know what the financial impact would be on restaurants, but some would lose business because they cater to smokers.

However, Davis said in other states where the ban took place, restaurant owners "saw everything do just as well or better."

Some restaurant owners already have invested in high-price ventilation systems to clear the smoky air, McNulty said.

McNulty said if people don't want to eat in smoky restaurants, they will complain to the owner, who will make the change to satisfy customers.

"We think people are taking care of this themselves," McNulty said.

The Board didn't look at banning smoking until about a year ago when one citizen asked if something could be done to eliminate smoking in restaurants, Davis said.

The board's subcommittee looked at the situation and came up with two solutions.

The first involved requiring restaurant owners to create separate smoking and non-smoking sections and in-

stall a ventilation system. Davis said it would be costly for restaurant owners to install new ventilation systems, and an inspector would have to be hired to ensure restaurants were meeting separation requirements.

The other solution was to ban smoking entirely.

"A smoking ban would have minimal impact economically," Davis said.

In addition, the ban would create healthier work environments for employees who currently breathe second-hand smoke eight hours a day, Davis said.

So the department opted for the total ban. Then the public had its chance to be heard.

The Department of Health said 590 citizens wrote in support of the ban while 192 were against it. At a public forum, 25 people supported the ban and seven opposed it.

Before the regulation was close to going into effect, it was being targeted.

In this year's legislative session, State Rep. Dean Elliott, R-Maumelle, introduced House Bill 1250, which would have prevented the ban from

taking effect in restaurants with fewer than 25 seats.

The bill, however, died in committee.

McNulty said she doesn't think the board has the authority to change state law with its regulation, anyway. Currently state law permits smoking in restaurants and hotels, she said.

But the Board of Health asked the Attorney General's office if it had the authority to regulate smoking in restaurants on Oct. 26, and Assistant Attorney

General Suzanne Antley said in her response that the Board of Health did have the authority to promulgate rules and regulations concerning the use of tobacco products in restaurants.

Antley said the section in state law that permits smoking in restaurants simply provides that it is not a criminal offense.

"Even though the legislature has determined that smoking in food establishments is not a crime, the Board of Health may nevertheless regulate smoking in such establishments," she said. ■

**"We are not for
or against smoking."
—Montine McNulty,
Arkansas Restaurant
Association**