



industry spotlight

THE SMOKING BAN: Still a Heated Debate

By Brooke Gowen Smith

Smoking bans are sweeping across the country at a pace that is difficult to keep up with. Currently, twenty-two states in the U.S. ban smoking in all restaurants; sixteen states ban smoking in all bars; and seventeen states, including Puerto Rico, ban smoking in all workplaces. In addition to statewide bans, there is a countless number of cities and counties that have also enacted smoke-free laws. While some states and local municipalities have passed the ban, and others wait to see who's next, proponents on both sides of this polarized issue have a lot to say about it, and the evidence and anecdotes continue to clash.

According to Americans for Nonsmokers' Rights (ANR), this is the first time in history that more than half of Americans live in a city or state with laws mandating that workplaces, restaurants or bars be smoke-free. States where the ban has most recently been implemented include Arizona, Ohio, and the city of Washington DC. Smoking bans (some with exemptions) will become effective in New Hampshire in September 2007; in Tennessee and Minnesota in October 2007; in Maryland in February 2008; in Oregon and Utah in January 2009; and in Montana in October 2009.

According to Annie Tegen, senior program manager at ANR, the leading national lobbying organization dedicated to nonsmokers' rights, "Everyone deserves the right to breathe smoke-free air. It's hard to believe that workers in some parts of the country are still forced to inhale smoke on the job." She adds, "No one should have to decide between their health and their paycheck."

Tegen says that this issue is not about the smoker; it's about the smoke. "We're not saying smokers cannot smoke cigarettes at all. We just believe they should not smoke in ways that harm other people." Tegen com-

pares smoke-free laws to drunk driving laws. She explains, "People are allowed to drink alcohol but the minute they step behind the wheel while drinking, they put other people at risk, and that's where the law comes in." Tegen says that the claims of "doom and gloom from tobacco industry front groups to strike fear into the hearts of hardworking business owners that smoking bans harm revenue" are simply not true. "Every independent study ever done to show the economic effect of smoke-free ordinances has shown that there is no negative impact to businesses," shares Tegen.

Does Business Suffer?

While ANR is one of many organizations actively promoting smoke-free ordinances in the U.S., there are just as many groups who not only believe that banning smoking in public places violates the rights of smokers, but who also "believe the hype" that these bans negatively impact businesses. David W. Kuneman, director of research for The Smoker's Club, Inc., a national organization devoted to the rights of smokers in the U.S., became interested in the economic effects of smoke-free policies four years ago while reading an article that claimed

the "better quality" studies of post-smoking ban effects always found no loss in the hospitality sector. "But," Kuneman notes, "when these bans pass, we always hear complaints from the hospitality sector."

Regarding the claim that secondhand smoke is extremely harmful, if not fatal, Kuneman refutes it. He explains, "About 1/3rd of all studies find no harm, about 1/3rd find slight statistically insignificant harm and about 1/3rd find major harm. Of course, the anti-smoking groups trumpet the studies which show harm, and lawmakers don't bother to do their own research." Kuneman also says that the FDA has reported that 70% of all exposure to secondhand smoke has disappeared since 1988, "yet recent reports claim that after decades of being steady, nonsmokers' lung cancer rates are beginning to rise."

Kuneman explains that most of the members in The Smoker's Club, Inc. are smokers and/or owners of hospitality establishments. "We all believe that the issue of the smoking ban is a property rights issue. Since bans never include radon regulations, toxic mold regulations, indoor fireplaces or prohibiting sick people from entering work place, we believe we are being singled out and discriminated against," he declares.

Associations Take a Stance

While Kuneman, Tegen and countless others are busy either fighting or advocating smoke-free ordinances on a national level, associations that represent restaurant and bar owners in states across the country are just as involved in the battle. Patrick Carroll, president of the Cincinnati, Ohio based Buckeye Liquor Permit Holders Association, a group representing both bar and restaurant owners, has been in the business for over 30 years, having owned a total of five bars. He now focuses full-time on fighting the smoking ban. Carroll's group recently filed suit to try and stop the Ohio smoking ban regulations (that were implemented May 3, 2007) from going into effect. He says that "too many places are losing too much money and that some are even on the verge of closing their doors."

Carroll states, "Bar and restaurant owners are extremely upset because the ban is taking away their rights and sales are decreasing." He notes that since the May 3rd ban, "most Ohio bars' sales are down 50%, and some even 70%." He says that some people have invested their life savings to open their business and "he won't stop fighting until the ban is overturned."

A major problem Ohio business owners are facing is customers traveling across state lines to have a beer and a smoke – which is not exactly a new conflict. On the Michigan/Ohio border there's a sign that reads "Welcome, Smokers!" which, of course, infuriates Carroll. Even some servers from Ohio bars and restaurants, such as Tracy Smith, have left their jobs to work where they say the money is: in establishments sans a smoking ban. Smith left her place of employment in Ohio to work at Rivalry's in Temperance, Michigan.

Someone very familiar with the ins and outs of the smoking ban and the need to "level the playing field" is Chuck Hunt, executive vice president of the New York State Restaurant Association. The smoking ban has been in effect in New York State since 2003. Hunt says that the association has "learned to live with it." For years the NYSRA opposed it, believing that "it should be a decision left up to individual restaurants and their customers to decide," shares Hunt. However, the NYSRA ultimately agreed to support the ban after negotiating changes to it that eliminated most of the exceptions, allowing for certain types of establishments to continue to permit smoking.

Hunt says that "overall, after the first six months or so after the ban was passed, the

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-David W. Kuneman, director of research, The Smoker's Club Inc.

effects have proved to be relatively neutral." However, he did share that, in the beginning, "when hard-core smokers stayed away from the smoke-free establishments largely in protest of the ban, most places did see a decrease in revenues, which was somewhat offset by new customers who had recently avoided establishments due to smoking that took place there." Hunt shares that the most affected establishments have been smaller neighborhood bars where smoking had been a big part of the culture.

Pros And Cons

A popular New York City nightclub called Sol is inarguably an establishment where smoking is a part of the culture. Paul Seres, managing owner of Sol and New York Nightclub Association (NYNA) board member, says that the reaction among his club's patrons has been split between the smokers and non-smokers. According to Seres, "You still get the occasional patron who feels no matter what the law states, they are entitled to smoke where they want, and they end up subsequently ejected from the venue. From the club's perspective, however, it would be much easier and safer if we were able to keep the patrons inside."

On the issue of how the ban has affected club sales, Seres explains, "It hasn't affected our revenues so much as the ban is a safety issue in controlling our outside smoking section. Since it is outside, it allows patrons to interact with people who have not been admitted into the club. That would be our one biggest reservation to the ban." And, Seres' favorite thing about the ban? "We don't have burn marks in our furniture anymore, so that's good."

In Tennessee, the statewide smoking ban takes effect this October. All restaurants will

be required to be smoke-free indoors unless they limit access to people 21 and over at all times (including restaurants with bars, chain and hotel restaurants). However, Megan Schmitt, general manager at Tsunami, a family-owned, Pacific Rim-inspired neighborhood restaurant in Memphis, Tennessee, has already had some time to absorb the effects of the smoking ban. Tsunami's owners, Ben and Colleen Smith, voluntarily banned smoking on April 11, 2007. Asked why they implemented the ban before it was passed into law, Schmitt remarks, "The owners are not smokers themselves and they were aware that the trend was moving in that direction anyway." Schmitt explains that the main entrance to the restaurant is in the bar area, so the first thing all patrons encounter is smoke, "which was a point of contention," she notes.

And, it was not a decision the restaurant took lightly. "The owners deliberated about it for a long time because they didn't know how it would affect business." Additionally, a good percentage of Tsunami's business comes from regulars and, according to Schmitt, "no one wanted them to feel slighted." Since the ban, she says that she has not heard one negative comment about it: "If anything, I've gotten positive feedback. It's been very well-received." For the smokers, she says, they've put a bench outside the front door with an ashtray where they have a place to light up.

Regarding how business has fared since the ban went into effect, Schmitt shares, "It's been really good for us. May might have been the best month in sales that we've done yet, and our June sales have also been high." She also describes the bar business as being full since the ban, adding that customers who used to not want to dine at the bar, will now do so. Schmitt personally rides the fence about the smoking ban. "I'm for the basic rights of citizens, but at the same time, we're beginning to further realize the effects of cigarette smoking on health. I believe people should at least have the choice of whether to have to inhale someone else's smoke or not." She concludes, "Restaurant and bar owners having the freedom to make the decision for their own individual establishments seems the way to go."

The battle clearly rages on as advocates and protestors of the smoking ban at both the national and local levels firmly defend their views and positions. In the meantime, bar and restaurant owners must deal with the consequences in the best way possible, whether it's customers complaining because it's too smoky, or complaining because they have to go outside to have a cigarette; hopefully, neither. ●