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## Smoking-ban foes play game of delay

Petitions could force vote, stall new law for 17 months

*Nestor Ramos*  
*nramos@argusleader.com*

Opponents of a statewide ban on smoking in bars and restaurants say they have collected enough signatures to put the law on hold for at least 17 months and send the issue to voters in November 2010.

If the petitions are certified by the South Dakota Secretary of State, the controversial ban will not take effect July 1. Instead, powerful lobbies on both sides of the issue will begin a 16-month campaign culminating when voters finally decide the issue.

"We're already substantially over the necessary number," said Larry Mann, coordinator of the petition drive to refer the ban. State law requires the signatures of 16,776 registered voters. Citizens for Individual Freedom, the group opposing the ban, on Monday will deliver the petitions to Secretary of State Chris Nelson to be certified.

Mann said most of the signatures collected in the months since Rounds signed the ban into law were collected by volunteers, and while some Deadwood casinos and area bars used employees to collect signatures, a few others were paid to carry clipboards.

Passed by legislators and signed by Gov. Mike Rounds earlier this year, the ban caused an uproar among some restaurateurs and bar owners, who argue that banning smoking will hurt their businesses and violates their rights as property owners. Smoking already is banned in most workplaces and public buildings.

## Supporters of ban cite harm of delay

Even if voters uphold the ban - and scientific polls have showed it has broad support - referring the ban to voters would give bar and restaurant owners a long reprieve.

"We're disappointed primarily because of the lives that will be unnecessarily lost and the tens of millions of dollars in health care savings that will not be realized because of a 17 or 18 month delay," said Darrin Smith, a senior director for the American Heart Association and a steering committee member for the South Dakota Tobacco Free Kids Network.

## Random sample to validate signatures

To send the issue to the ballot and put the ban on hold, the signatures must be filed with the state and validated as dictated by state law, Nelson said.

"The law requires we do a 5 percent random sample," Nelson said. The selected entries are checked against voter registrations and for completeness. From that sample data, state officials calculate whether the necessary number of valid signatures have been obtained.

Mann said he is confident the group has more than enough valid signatures.

The deadline for signatures to be submitted to Nelson is June 29, but Mann said he will submit the paperwork earlier.

"It only gave him two days, or the law would have gone into effect," Mann said of the deadline. "We didn't want anybody to get all trapped up in that. We wanted to succeed or fail before the absolute deadline."

Even if Nelson certifies the petitions, supporters of the ban could challenge their legitimacy two different ways.

## Anyone may challenge petitions

Within five days of Nelson approving the petitions, anyone can submit an affidavit describing errors that would lead to a number of signatures smaller than what's required.

The petitions also could be challenged in circuit court.

"I think all options will be on the table because of how strongly we feel," Smith said.

"Until they actually turn them into the secretary of states office, it's really nothing more than speculation."

Mann said any challenge to the signatures is fine with him and his organization.

"People are certainly allowed to avail themselves of the law. We got a lot of criticism when we filed the petition. People told us we were abusing the law. Well, we're not. ... We have no objection to people using the law as it was intended."

If the smoking ban proceeds to the ballot, an intense campaign for voters could begin immediately. Groups on both sides are expected to spend millions of dollars to get their messages out.

"We understand any potential campaign would be fairly expensive, which is unfortunate given the current state of the economy," Smith said.

Four prominent state organizations form Citizens for Individual Freedom. The Tobacco Free Kids Network is made up of 54 of the state's most powerful health groups.

## S.D. Medical Association objects

One such group, the South Dakota State Medical Association, issued a statement this week urging voters to uphold the ban.

"South Dakotans already have spoken on their desire for smoke-free workplaces," said Dr. Cynthia Weaver, South Dakota Medical Association president. "Our elected state legislators were inundated with requests and pleas from constituents who supported the smoke-free legislation, and our legislators listened to constituents and voted to protect public health."

Mann said it still is too early to talk about the campaign - his group has been focused on collecting signatures.

"Once we are notified by the Secretary of State that this is a valid ballot measure, we will begin to have those discussions," Mann said.

## Health concerns or ban gone too far

The issue can be divisive.

Told that opponents planned to move the ban onto the ballot, Leonard Berndt of Renner said he is disappointed.

"I was afraid that was going to happen, the way it was going," Berndt said.

"Anytime you go anywhere, you've got to put up with it. My father, he smoked all his life, and he had two sets of bypasses. That convinced me that it can't be too good for us."

He said he wasn't happy to wait more than a year for voters to have their say.

"That's the law, I guess."

But Rod Hoffman of Sioux Falls said the ban's reach gets him "turned up and heated and mad."

"I strongly believe the smoking ban goes too far when it crosses over into the private lives of businesses and individuals," Hoffman said. Banning smoking in state-owned facilities is within the government's rights, he said, but not intruding on private business.

"I'm a nonsmoker, but ... there's a point where laws cross over and start cutting into liberties," he said.

"I would hope that most of South Dakota agrees.

Reach Nestor Ramos at 331-2328.

## Additional Facts

### SUPPORTERS, FOES

Supporting the ban is the South Dakota Tobacco Free Kids Network, consisting of 54 health and other groups, including:

- American Cancer Society, Midwest Division
- American Heart Association, Greater Midwest Affiliate
- Avera Health
- DakotaCare
- Sanford Health
- South Dakota State Medical Association

Opposing the ban is Citizens For Individual Freedom, consists of:

- Deadwood Gaming Association
  - Licensed Beverage Dealers of South Dakota
  - Music and Vending Association of South Dakota
  - Video Lottery Establishments of South Dakota.
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