

Video: South Dakota smoking ban sidesteps hookah lounges

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Three years into the statewide ban on smoking in enclosed public places, South Dakota still hasn't figured out what smoking looks like.

A Rapid City dispute about the legality of hookah lounges, where patrons ingest vapors from flavored tobacco, has given rise to an unsettled lawsuit and failed legislation.

The issue soon could hit Sioux Falls, where the operator of a new hookah lounge said he might open a new lounge that offers both hookah and alcohol, if a judge rules in the businesses' favor.

Francisco "Jun" Bug opened Bugs Hookah Lounge at 301 S. Garfield Ave. a month and a half ago. It's the first business of its kind in Sioux Falls, where patrons 18 and older use water pipes with burning charcoal to ingest flavored tobacco.

"A lot of Augustana college kids are coming in, and really a variety of diverse people — Africans, whites, Latinos, Natives — anybody," Bug said.

State law generally prohibits smoking in public buildings and places of employment. But operators of hookah establishments are treated like tobacco shops; they're exempt from the ban as long as they generate 65 percent of their income from tobacco sales, do business in an enclosed space and do not allow alcohol consumption, said Mike Houdyshell, director of the property and special taxes division with the Department of Revenue.

Bug has no liquor license and does not serve alcohol, so there is no dispute about the legality of his Sioux Falls hookah lounge.

However, two Rapid City lounges want to offer both, and Bug said that if a judge rules in favor of the businesses, he would think about opening a second Sioux Falls hookah lounge that also serves alcohol, restricting entry to people 21 and older.

"I'd have to be responsible about it, you know," Bug said. "I'd still want 18-year-olds to have a place to go."

A court trial is scheduled for October between Ifrit's Hookah Lounge and the city of Rapid City. The business operator has asked a judge to determine whether hookah falls under the state's definition of smoking, said Stephen Wesolick, a lawyer representing Ifrit's.

Wesolick will argue that the vapors associated with hookah activity are substantially different from the smoke produced by cigars, cigarettes and pipes.

"I am fairly confident that the court will conclude that my client's business should be exempt from the ban," he said.

Pennington County deputy state's attorney Patrick Grode thinks there is no question Ifrit's is violating the smoking ban by burning shisha, which includes tobacco.

If the judge finds in favor of Ifrit's, it would open the door for hookah bars around the state to obtain a liquor license and sell alcohol to customers, Wesolick said.

Last legislative session, Sen. Craig Tieszen, R-Rapid City, sponsored a bill on behalf of his city's police chief and mayor, which would have expanded the definition of smoking to include hookah in the ban.

It easily passed the Senate, but then a House panel amended the bill in an attempt at making hookah legal; the full House later reverted to the proposal's original language, but the bill failed on a close vote.

The Legislature's failure to clarify hookah within the smoking ban means the Rapid City dispute probably will have to be settled in court. Houdyshell expects that a favorable decision for the hookah lounge would spark more legislation next year.

Sioux Falls city councilor Greg Jamison is convinced exempting hookah lounges from the state smoking ban is a major step back in encouraging a smoke-free South Dakota.

"I think (a judgment favoring alcohol in hookah lounges) is absolutely going backward with the target of a healthy community," he said.

But Rep. Manny Steele, R-Sioux Falls, said that given the opportunity to invoke further restrictions to the statewide ban, he would vote against it.

"I voted for the smoking ban, and I took a lot of flack for it, but I did it because the people I represent wanted a statewide ban," Steele said. "But right off hand, I would lean away from any initiative that would restrict individual rights."

The secretary of state monitors Bugs as a tobacco retailer, Houdyshell said.

Bug said he dealt with the state more than once when he first moved from California to Sioux Falls with his family and decided to open the lounge. After several residents told him he could not operate a hookah business in the city, Bug said he consulted with officials in Pierre to make sure he met requirements, from proper ventilation to building location.

"People I talk to are more excited about the fact that the city has a place for it now. They think it is a good addition, especially for young people," Bug said.

Christian Holman, a 19-year-old regular at Bugs Hookah Lounge, said the lounge offers a controlled environment for people who are too young to drink but want a place to hang out on a Friday night.

"It's a tough age group to be in, 18 to 21," Holman said. "At least the lounge is a safe alternative to keep people from drinking underage, or doing anything else illegal."

The court decision wouldn't affect cigar bars such as Stogeez Cigar Lounge in Sioux Falls. Lawmakers created a separate exemption to allow them to permit smoking indoors if 10 percent of their income comes from selling cigars and they have a humidor on site.