

**INDUSTRY  
SHOUTS  
STOP**



# STATE ISSUES

**IN AN AGE OF  
INCREASING  
REGULATION AND  
LEGISLATION,  
GRASS-ROOTS  
PARTICIPATION  
IS BECOMING  
A POLITICAL  
NECESSITY.**

BY JAMES PETERS

The aging of the population, the health movement, and the influx of women into the workplace have all combined to shape the legislative agenda for 1988. The National Restaurant Association's "1988 State Issues of Concern" survey places smoking regulations at the top of the list, with sanitation, parental leave, health benefits, and tort reform rounding out the top five. Alcoholic beverage legislation, especially dram shop liability, was also a priority topic.

In *RB's* own survey of state hotel

and restaurant trade associations, waste management, alcoholic beverage warning posters, and the federal minimum wage bill were also key issues

deserving attention and posing potential problems. To a lesser extent, proposals regarding irradiation of food, working hours of teenagers, use of video display terminals, and sales tax were issues of concern in several states. Liability insurance, a hot topic several years ago, is less critical, with the market loosening up and rates coming down.

**OLD SCHOOL AND NEW.** One outcome of our survey was the recognition of a distinct change in attitudes and lobbying style. While the cry to oppose anything that is mandatory remains loud and clear, a new school of politics is emerging.

This new attitude was demonstrated in an address to the Free Enterprise Award Luncheon of the Insurance Federation of New York Inc. by James J. Meenaghan, president and CEO of the Home Insurance Co., who observed that, "One of the lessons that all of us must learn, one that is repeated over and over throughout history, is a paradoxical one: Free enterprise, if it becomes too free, runs the risk of not being free at all." Calling for "better" state regulation of insurance, Meen-

aghan is one of a growing number of industry leaders working for more business/government cooperation.

"The public/private partnership concept has been talked about during the past few years," states Jo-Linda Thompson, general counsel to the California Restaurant Association (CRA), "yet there is a resistance to join forces." Thompson believes that the foodservice industry is still too focused on short-term issues.

Activist groups have gained ground because they cooperate with government, define the real issues, and set goals for the future. "Our association is developing a five-year plan," says Thompson. "We cannot put our resources into fighting all the legislative battles. We need to know what is important to us, where we can cooperate, and where we have to fight.

**LOCAL LEVEL.** "We realize that we must begin to communicate more with the groups lobbying against our industry," adds Thompson. "Legislative battles affecting the hospitality and foodservice industry are moving to the local level, where new rules and regulations are being passed before state and national industry groups have a chance to respond. We must keep informed about the concerns of our customers, and develop ways to work together on solutions before we are forced to do something."

If California is the barometer of the country, then Santa Cruz may just be the barometer of California. Tom Brezsny, executive director of the Santa Cruz Area Restaurant Association, agrees with Thompson. "There is no room in the world for people who do not want to speak out. The power of the grass-roots activist organizations comes from the 1960s, when coalition-building strategies were developed. Businesses have to emulate the process; that is how they will be enfranchised into the 'new' system.

"The real political activity is happening at the local level," adds Brezsny. "This is where the issues are shaped. By the time it reaches the state level, you can't do much about it. Part of being in business is responding to your customers, your community, and their desires. This, not the black or white philosophy that has dominated the years, will give industry power."

The process of legislation is changing. The old school of politics, which

teaches that "business, government, and regulation" cannot be combined, is being replaced by the new school. The new school teaches the four Cs: communication, coalitions, cooperation, and compromise.

Thompson adds that for coalitions to work, there has to be a power base. She identifies three forms of power: the ability to influence public opinion, the ability to use legal arguments, and the ability to spend resources on getting politicians who represent industry interests elected.

But because of the high rate of failure in the foodservice industry, it is difficult to organize operators to separate and prioritize issues and plan for the long term. To be successful in responding to the activists, a process for long-range planning is needed.

## SMOKING/NONSMOKING

The nonsmokers' rights movement is a good example of the power of coalitions with a long-term goal. Setting their sights on a smoke-free society by the year 2000, nonsmokers have made tremendous strides during the past few years. Fanned by both the National Academy of Sciences and the U.S. Surgeon General's reports issued in late 1986, which address the health consequences of environmental tobacco smoke, there has been a wave of political activity restricting or prohibiting smoking in public places.

At the federal level, a variety of legislative initiatives were introduced in the past two years, including measures that would restrict smoking to designated areas in all U.S. Government buildings, increase the cigarette excise tax, and restrict the use of print media for tobacco advertisements.

Armed with the forceful evidence of the government reports, the nonsmokers' rights movement at the state and local levels has become increasingly successful in efforts to establish non-smoking as the norm in most public places. More than 200 cities and counties across the U.S. have acted to place limitations on smoking in public places.

The hospitality and foodservice industry has come in the path of this massive movement. Some industry groups have been able to defeat legislation at the state and local levels, or exempt restaurants from the restrictions. However, in most cases a com-

promise solution is worked out. For instance, in Massachusetts the act applies only to businesses with seating of 75 or more, and the restaurant is required only to post a notice or sign. There is no percentage or square footage requirement, the operator does not have to take any action against a customer who smokes in a no-smoking area, and there is no fine or penalty for violation of the law.

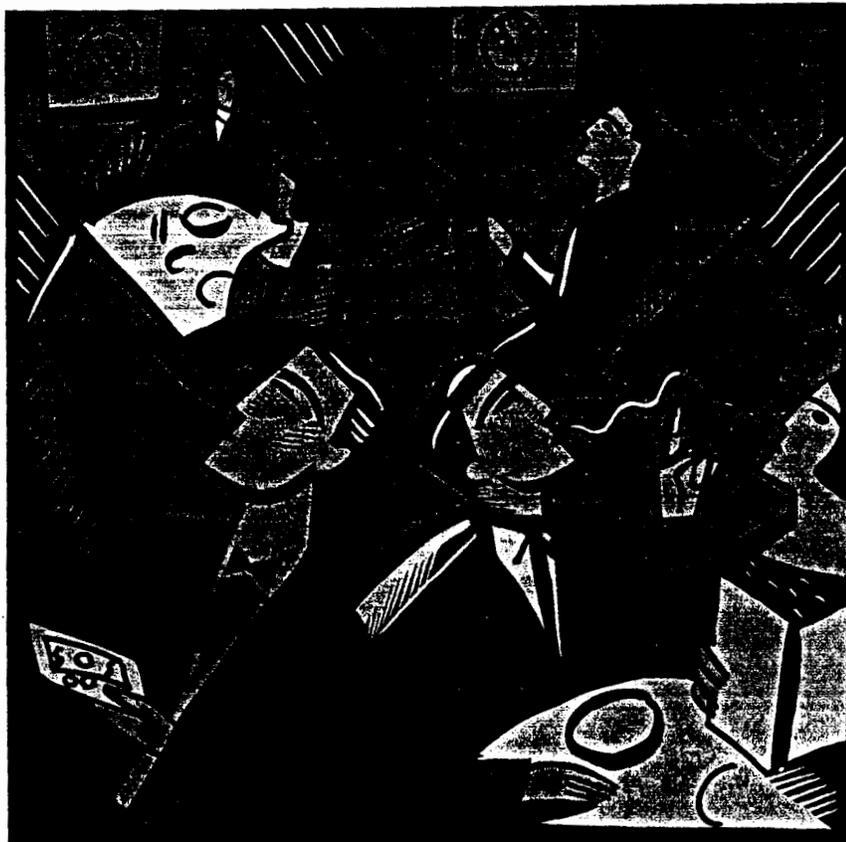
In states where restrictions have been imposed, there has been little, if

rental leave and mandatory health benefits, both with a potential to impact most small businesses, have not received the attention they deserve."

## PARENTAL LEAVE

At the federal level, the Parental Leave Bill, HR 925, is a compromise bill of a previous bill that is making its way through Congress. Under the Family and Medical Leave Act, firms with at least 50

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any, economic impact on business. In fact, many of the association executives interviewed report that they receive feedback from their members saying the percentage of no-smoking seating continues to expand.

Marcia Harris, executive vice president of the Restaurant Association of Maryland, says that proposals for non-smoking restrictions are "everywhere in the state." She reports that this is the hottest issue, but believes that more energy and resources should be directed to other issues. "The economic impact on our members will be minimal, while legislation dealing with pa-

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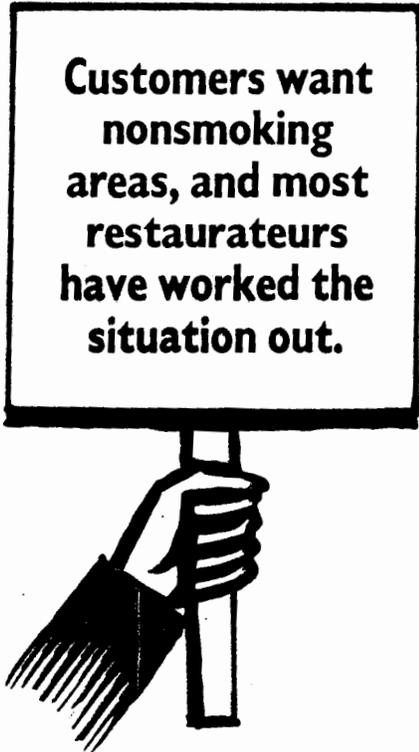
**SMOKING/NONSMOKING**

**Number of States with Restrictions:**

17

**Types of restrictions:**

- Designated smoking/no-smoking sections
- Posting of notices or signs
- Required percentage of seating
- Waiver if approved ventilation system is operational
- Fines against business
- Fines against smoker



employees would have to offer up to 10 weeks of unpaid leave over a two-year period to workers with a newborn, newly adopted, or seriously ill child, or a seriously ill parent. Employees with serious medical conditions of their own would be entitled to up to 15 weeks of unpaid leave over a year's time.

To be eligible for either type of leave, employees would have to have held permanent positions of at least 20 hours a week for a year or more before the leave. The General Accounting Office estimates the benefit would help 1.7 million employees and cost employers less than \$200 million a year. The most "costly" part of the bill is that employers would have to continue to pay health benefits for all workers on these types of leave.

Legislation is also being considered by several states. Most of these bills are modeled after the original federal Parental Leave Bill, and are less favorable to the employer. For instance, some of the state bills would apply to employers with 15 or more employees, would permit up to 18 weeks of leave, and would make eligible part-time employees working three months.

The Restaurant Association of Maryland is trying to refocus the issue. "Nobody wants to deny the right of parents to spend time with their children," comments Harris, "but in reality, lack of adequate child care is the real problem. By working on solving this problem, both industry and the public will benefit."

With more and more women entering the work force, child care is truly a major issue. Jean Cohen, general manager of the Sheraton Tara Hotel in Springfield, MA, says that for hospitality and foodservice workers "lack of night care is even more critical."

While not much is reported at the state level, an Act has been introduced in Congress that would provide \$2.5 billion in funding to make day care (as well as care for handicapped, night care, and other forms of care) more affordable and increase its availability and quality.

"Women are an important part of the work force, and in fact, hold nearly two-thirds of the foodservice jobs; something has to be done about child care," says Jo-Linda Thompson of the CRA. "This is one area where government and industry can work together. Our industry faces a serious labor

shortage, and other industries are offering day care as a benefit. Small businesses must band together to organize something in the community or be left unable to compete for labor."

**MANDATED HEALTH COVERAGE**

**M**ichael Dukakis, governor of Massachusetts and a leading contender for the Democratic presidential nomination, met strong opposition from the Massachusetts Restaurant Association (MRA) for his "universal health care" legislation. Touting that his would be the first state in the country to require employers to provide all employees with health care coverage, the MRA was able to organize and spearhead a coalition that ultimately killed this legislation in 1987.

On the federal level, Sen. Edward Kennedy (D-MA) introduced S1265, a bill that would do the same as the Massachusetts bill. Facing strong opposition from industry, the bill would provide coverage for hospital care, physician care, diagnostic tests, prenatal and well-baby care, and catastrophic illness protection.

"The real issue is that we do not want government telling us how to run our business," says Gerald Asselin, vice president of administration, Friendly Restaurant Corp., Wilbraham, MA. "We offer health care benefits to all of our employees working 30 hours or more. We do it because it is good business, and we are able to compete for workers."

In New Hampshire, Philip Kennedy, executive vice president of the New Hampshire Hospitality Association, has been working on compromise legislation. While all employers would have to make health insurance available to employees working 15 hours or more per week, the employer would not have to pay for it.

**ALCOHOLIC BEVERAGES**

**T**he major issue for 1988 will be warning labels and posters," predicts James Goldberg, a Washington attorney and general counsel to the National Alcoholic Beverage Control Association. "Labels, increases in excise taxes, and restrictions on advertising are all being used to discourage consumption of alcoholic beverages. The recent linkage between alcohol and drugs in public edu-

education campaigns will further place alcohol in a negative light."

Goldberg, also editor of the Annual Compilation of Dram Shop Statutes and Cases, does not see much activity in dram shop legislation, except in the area of social host and employer liability. "Any legislation that was passed in 1987 tended to limit liability. On the other hand, courts are becoming more liberal, and are awarding more significant damages against servers." Licensees have to be concerned in states where there is common law liability. Goldberg also expects a lot more enforcement activity by alcoholic beverage control commissions, especially for service to minors.

In the past two years, several states have moved to limit operator liability. Mississippi enacted legislation that protects retailers from liability except for service to visibly intoxicated people. Missouri passed a bill that provides for liability only if the licensee had been previously convicted of illegally selling alcohol to a minor or to an intoxicated person. Colorado enacted a statute that established liability for licensees who willfully and knowingly serve alcohol to minors and intoxicated persons. This higher legal standard, coupled with a damage limitation of \$150,000, makes Colorado's dram shop statute very restrictive.

Massachusetts repealed a regulation that prohibits sale of alcoholic beverages to a "known drunkard or to a person who had been intoxicated during the past six months preceeding," a statute that was used in a recent case holding a server liable even though the customer was not intoxicated when served.

**MODEL DRAM SHOP ACT.** A fresh approach to dram shop liability has now successfully entered the field. The Model Dram Shop Act, developed in 1985, has been widely disseminated. Three states to date have enacted major portions of the Model Act: Maine, Rhode Island, and New Hampshire. Two other states, Michigan and Vermont, have enacted provisions based on general concepts found in the Model Act. In 1988, at least one state, Pennsylvania, has introduced major sections of the Act. The legislation is strongly supported by the Pennsylvania Restaurant Association.

The key component of the Model Act is Section 10, the "responsible business

practices defense." This defense addresses recent efforts by the retail industry, educators, governmental organizations, and others to make risk reduction more constant and predictable through development of server and manager training programs. Once this defense is consistently and successfully used in litigation, licensees will be able to change their business practices accordingly as the concept of responsible hospitality becomes standardized.

Michael Newman of the Michigan Restaurant Association is very enthusiastic about the responsible business practices defense component of the state dram shop act. "It is reducing our insurance rates. This is especially important because as of April 1, all licensed businesses will be required to have liability insurance." David Balfour of the Rhode Island Hospitality Association concurs with Newman: "Insurance has become more affordable, and we were able to defeat a mandatory training bill last year because of the dram shop act."

**MANDATORY SERVER TRAINING.** Legislation dealing with server training is becoming more common on legislative dockets. In 1987, Texas and Vermont passed bills that either mandate or strongly encourage server training. In 1986, Arizona, Maine, Oregon, and Utah had similar bills passed. The 1988 legislatures in Maryland, Hawaii, New York, Connecticut, and Pennsylvania, among others, will be considering server training bills.

Ron Morgan, executive vice president of the Utah Restaurant Association (URA), said his association was an advocate for the mandatory training bill and was able to get 100% of the Senate to cosponsor it. Morgan and the URA realized that repeal of the state's dram shop act was next to impossible, so they worked to reduce the risk of liability and increase control by the servers. "This year we want to repeal the 'brown bag' law that allows customers to bring in their own," says Morgan, "as well as to allow liquor by the drink rather than using mini-bottles."

Mandatory training seems to be a bargaining chip for reducing liability. States that have passed or considered the legislation have all had strict liability against the server. It is one way to reduce the risk of liability.

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## ALCOHOLIC BEVERAGES

### Dram Shop Proposals (State Level):

- Eliminate liability
- Limit liability to third party only
- Limit liability to service to minors
- Limit liability to sale to visibly intoxicated persons
- Limit liability if all service personnel trained in approved program
- Allow responsible business practices defense
- Place a dollar cap on liability

**The industry has avoided many problems through server training programs.**

**WASTE MANAGEMENT**

**State Proposals:**

- Increase fees for waste removal and sewerage
- Prohibit use of certain types of disposable containers
- Require deposit on all beverage containers
- Require recycling using separate containers for waste removal



In addition, many insurance companies are beginning to require training or offer discounts. The Monroe Insurance Company of Monterey, CA, not only reduces premiums for server training, but also has rate increases of 25% if a business has happy hours. "We try to encourage businesses to reduce their risks," says Richard Monroe, a spokesperson for the company. "Happy hours encourage excessive drinking, while training servers, having breathalyzers, or limiting late night hours reduces risks. We save money because we have fewer claims when operators are responsible; since we are underwriters, we can pass the savings on to the customer."

**HAPPY HOUR BANS.** Happy hour regulations are becoming more common throughout the U.S. Only five states, Massachusetts, New Mexico, North Carolina, Oklahoma, and Washington, have total bans. Other states place restrictions on advertising, drink specials, two-for-ones, and time limits.

Last year, attempts to ban happy hours failed in Connecticut, Iowa, Minnesota, and Wisconsin. California expects some form of ban to be put into place this year, modeled after the Massachusetts bill. Delaware, South Carolina, and Tennessee also expect to see greater restrictions this year.

**BEVERAGE LABELS AND POSTERS.** In November 1986, California voters passed Proposition 65, formally known as "The Safe Water and Toxic Enforcement Act of 1986." The Act requires that consumers receive "clear and reasonable" warning when exposed to chemicals that can cause cancer or reproductive harm. A state-appointed panel of scientific experts identified ethyl alcohol as a reproductive toxin. On October 1, 1988, all alcoholic beverages sold in California will become subject to the Act.

If this rule is upheld, it is expected that California will expand regulations that exist at the local level requiring licensees to post warning signs that alcoholic beverages are known to cause birth defects. The 68,000 licensed businesses in the state would be required to post these signs.

As of January 1, 1988, Georgia, South Dakota, and Maine (by executive order) have had Fetal Alcohol Syndrome (FAS) warning sign laws. In addition, cities or counties in California, Florida, Louisiana, New York, Ohio, and Pennsylvania

require the posting of signs.

On the federal level, Sen. Strom Thurmond (R-SC) introduced a bill that calls for the labeling of all beer, wine, liquor, and cooler beverage containers. Alcohol labels would bear one of the following statements, which would be displayed in as equal frequency as possible on all brands of beverage throughout the products' marketplace:

- 1) "Warning: The Surgeon General has determined that the consumption of this product, which contains alcohol, during pregnancy can cause mental retardation and other birth defects."
- 2) "Warning: Drinking this product, which contains alcohol, impairs your ability to drive a car or operate machinery."
- 3) "Warning: Alcohol is a drug and may be addictive."
- 4) "Warning: The consumption of this product, which contains alcohol, can increase the risk of developing hypertension, liver disease, and cancer."
- 5) "Warning: This product contains alcohol and is particularly hazardous in combination with other drugs."

It is difficult to predict the impact on the retail alcoholic beverage industry, but the manufacturers are gearing up for battle. Caught between a rock and a hard place, their fighting the legislation may be perceived by the public as irresponsible. At the same time, there are more lawsuits being filed against producers of alcoholic beverages. In late December, four parents, claiming their children's birth defects stem from the mothers' drinking while pregnant, filed suit against seven alcoholic beverage companies. The lawsuits maintain that alcoholic beverages should have carried warning labels to pregnant women.

The retail industry will be caught in the middle of this debate. While public health advocates press for warning labels on bottles, this type of legislation must be passed at the federal and state levels. Local governments do not have the authority to require product labeling.

To circumvent these rules, activists lobby for local legislation requiring the posting of signs in restaurants, bars, and other retail establishments. These proposals are more readily accepted, and the alcoholic beverage industry does not have the resources to respond at the local level.

Just like the nonsmoking rights groups, alcohol control advocates have

learned to build coalitions, plan for the future, and direct limited resources at the local level. With the recent successes of these groups, warning labels and posters will continue to be a major legislative issue over the next few years.

## WASTE MANAGEMENT

**W**hile not a top legislative issue in most states, many industry analysts predict that waste management will become a serious legislative problem over the next few years. The Islip, NY, garbage barge demonstrated the growing crisis of inadequate waste disposal sites in this country.

The foodservice industry has already begun to feel the impact of the public's concern about waste. Increases in waste removal and sewerage treatment fees, bottle bill laws, recycling bills, and proposals to eliminate the use of certain disposable cups and containers are just some of the burdens the industry will bear in the future.

California again leads the nation in the number and type of bills regarding waste disposal. According to Jo-Linda Thompson, there are a diminishing number of sites that take grease-trap waste, and sewerage incapacity has led to a proposal in Los Angeles to require all buildings with 80,000 sq. ft. or more to have their own sewerage treatment plants.

Pennsylvania and New Hampshire have proposed legislation that would require the separation of garbage before pickup. Individual containers would have to be set up for different types of waste. A representative from the Pennsylvania Restaurant Association stated that his association is not opposed to the legislation, commenting that it is needed, and it will not discriminate. Individuals will have to separate their own garbage just as businesses do.

**PREPARING FOR THE FUTURE.** The list of legislative issues affecting the hospitality and foodservice industry goes on and on. But it is clear that if the industry wants to protect itself from impractical or costly legislation, each member must become involved. The national and state trade associations are able to monitor legislation at their respective levels, but the issues develop locally.

Getting active means more than paying your membership dues and going to trade shows. It is important to become involved in community activities, and join community task forces, especially

those that are working on issues relating to your industry.

Because restaurants and other hospitality businesses enjoy a high profile in their communities, participation of owners and managers in the legislative process is invaluable for influencing public policy. Understanding the issues, knowing the key players, and defining alternative solutions are essential.

working on legislation that would impact the industry, and by compromising. Maintains Thompson of the CRA: "An unfair solution for either side does not remain a solution for long." ■

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The industry is adapting its marketing and concept development to the changing attitudes, lifestyles, and demographics of the American public. Legislation is a process that is influenced by these same forces.

Industry can prevent unnecessary legislation by maintaining open lines of communication with the public it serves, by forming coalitions of industry groups, by cooperating with groups

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**INDUSTRY LEADERS  
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