

What power does law enforcement have to enforce the Governor’s Order to limit restaurants to delivery and takeout only, as well as the closure of gyms and indoor entertainment venues?

Arkansas law gives power to the Governor, via the Arkansas Department of Health (ADH), “to take such action as the public safety of the citizens demands to prevent the spread of the epidemic or contagious disease.” *Ark. Code Ann. § 20-7-110*. On March 19, 2020, the ADH issued the following rule: “due to the close contact that occurs between customers and staff at a bar, club, or retail food establishment, dine-in opportunities are closed until further notice but are allowed to remain open for carry-out, drive through and delivery.” In addition, “gyms (including fitness centers/clubs, fitness classes, and group fitness studios) and indoor entertainment venues, such as bowling alleys, trampoline parks, and indoor amusement centers, are closed to nonessential functions until further notice.” *See link below*:

<https://bit.ly/2Ucjox5>

Many cities have now asked what authority law enforcement has to enforce this rule. In other words, can a law enforcement officer charge a person with a crime for violating a rule issued by the ADH? We believe the answer is ‘yes,’ based on *Ark. Code Ann. § 20-7-101*, which concerns violations of ADH rules. That law states:

- (i) Every firm, person, or corporation violating any of the provisions of this act or any of the orders or rules made and promulgated in pursuance hereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both.
- (ii) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

As with any crime, we believe law enforcement has the authority to make a physical arrest for this misdemeanor. However, because of the need to limit social interaction to only what is necessary, we advise law enforcement to issue a citation rather than make an arrest. Furthermore, we would encourage law enforcement to gather information concerning those violating this rule and share that information with the ADH.

What’s the definition of a retail food establishment?

As defined by ADH rule 1-201.(B), a “retail food establishment” means an operation that:

- a. Stores, prepares, PACKAGEs, serves, vends, or otherwise provides FOOD for human consumption such as a restaurant; satellite or

catered feeding location: catering operation if the operation provides FOOD directly to a CONSUMER or to a conveyance used to transport people; market; vending location; institution; or FOOD bank; and

b. Relinquishes possession of FOOD to a CONSUMER directly or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

See link below:

<https://bit.ly/3a8DcqJ>

If you have any questions, please contact John Wilkerson at 501-978-6136.