

March 3, 1993

WRITTEN STATEMENT OF
PHILIP MORRIS, INC.
BEFORE THE
ASSEMBLY LABOR COMMITTEE
RE: AB13
MARCH 3, 1993

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Mr. Chairman and members of the committee, my name is Joe Lang and I am testifying on behalf of Philip Morris. Philip Morris employs more than 10,000 people in some 130 facilities in the State of California. These people live and work in 85 communities throughout the state. Some of them market cigarettes, but many produce Entenmenn's cookies, Breyer's ice cream, Maxwell House coffee, Oroweat breads and Miller beer, to name just a few.

We would actually like to commend the Chairman in taking a statewide approach to his measure. For a long time we have argued that the regulation of the marketing, sale and consumption of tobacco products is a matter of statewide concern, that the patchwork quilt of inconsistent local ordinances hurts businesses, and that measures which balance the interests of employers and employees, managers and customers, non-smokers and smokers should be applied uniformly.

Unfortunately, AB13 does not equitably balance the interests of these parties.

It is our belief that this bill worsens the climate for business in the state, aggravates the loss of jobs to competing states and obscures a larger and potentially more serious issue -- that of poor indoor air quality. We also believe that minimizing non-smokers exposure to smoke can be achieved in a manner which gives business owners more flexibility to tailor policies for their employees and customers.

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Just two weeks ago, the Chairman and members of this committee joined with other members of the Assembly and the Senate in Los Angeles at the Economic Summit. Two full days were spent in discussions about how to improve the climate for business in the state, stem the loss of jobs and reduce the burdensome over-regulation of business by a myriad of political divisions and subdivisions.

AB13 would aggravate every one of the problems the legislature and leadership spent so much time decrying.

- How is the job climate improved through a measure which, by preventing convention centers from designating areas for smoking, would drive the lucrative Pacific Rim convention trade to Nevada, Hawaii, Oregon and Washington?

California is already behind in the competition for tourists with these states: From 1985-1991 the number of visitors to California increased by 57%; but in Nevada that number was almost double, 106%; Oregon increased 66%; Washington 91.5% and Hawaii 96.2%. And California's increase was slightly more than half the national average for the period. Given the state of our economy, why would we want to do anything that could push more visitors away?

- What happens to the jobs in the hospitality industry which are associated with the convention business?

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- How is government regulation of business reduced through yet another government mandate on business practices? According to the Bureau of National Affairs, **85% of businesses already restrict or ban smoking in their workplaces.** Where is the need for more government intervention?
- And why should the government deprive business owners and managers of the flexibility they need to deal with the issue in a manner they determine is best for their business? It's interesting that businesses are now allowed flexibility in the way they reduce outside air emissions -- they can even trade pollution "credits" -- but this proposal denies businesses flexibility in their response to indoor air.

The public believes that there should be some flexibility and accommodation of smokers and non-smokers, as well:

- A public opinion poll conducted by Gallup for the American Lung Association released on June 10, 1992 found that **69% of the public supported a policy of designated smoking sections in the workplace instead of a smoking ban.** 66% favored separate sections in restaurants.

The committee has heard much testimony today about the decision by the U.S. Environmental Protection Agency to classify environmental tobacco smoke as a Group A carcinogen. We believe that this decision by the U.S. Environmental Protection Agency is not

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justified by the available science. I am not a scientist and cannot claim to provide expert testimony on the report, but would like to enter into the record an article entitled, "Is the EPA Blowing It's Own Smoke: How Much Science Is Behind Its Tobacco Finding?", in the 1/28/93 issue of Investor's Business Daily. The article summarizes how the EPA ignored its own procedural guidelines for conducting risk assessments to reach its result on ETS.

However, I would like to call attention to several facts:

- This is the same EPA which has a history of adjusting science to fit a preconceived policy, as revealed in an internal audit of the EPA's procedures. The report, *Safeguarding the Future: Credible Science, Credible Decisions*, found that --quote--"EPA science is of uneven quality and the Agency's policies and regulations are frequently perceived as lacking a strong foundation" and -- quote -- "EPA science is perceived by many people, both inside and outside the Agency, to be adjusted to fit policy." -- unquote.
- This is the same EPA which brought us the Times Beach, Missouri dioxin scare and the Alar apple scare, both of which have since been discredited.
- This is the same EPA which said all our schools needed to rip out asbestos ceiling tiles, then said it actually would have been

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safer had we left it all in place. This mistake cost our schools billions of dollars that could have been better invested in education.

- And this is the same EPA which is being sued for \$35 million by 8 of its employees for sick building related illness -- in a building where smoking is prohibited.

The committee has also heard a lot of testimony about the alleged threat of workers compensation liability if smoking is not banned from all places of employment. But tobacco smoke has been listed since 1989 on California's Prop 65 list of substances considered to be carcinogenic. Viewed in this light, the EPA report, however wrong-headed, is not even news. Given the fact that this listing is 4 years old, it is curious indeed that the flood of ETS workers comp cases which the sponsors predict has not already occurred.

Moreover, 300 other substances appear on this list along with tobacco smoke. Exposure to many of these, such as formaldehyde, arsenic, chloroform, benzene, chromium and glasswool fibers, can and does occur in workplace settings.

Why are the sponsors not equally concerned with banning these substances?

Why are businesses not equally worried about their liability concerning employee exposure to these substances?

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Perhaps they should be: the first "sick building" case ever to reach a jury occurred in El Segundo, California -- Call v. Prudential. It was settled in October 1990, and plaintiff's attorney Helen Eisenstein said, "This issue's not going to go away."

Many of you will remember about a year ago there was a spate of local news stories concerning people being made ill from their building or workplace environment. In fact, in one case a worker died from Legionnaires' disease contracted at a Social Security Administration building in Richmond and a dozen other workers there fell ill. Now two multi-million dollar claims are pending against the Administration. In not a single instance was tobacco smoke alleged to be the culprit. In fact, in many of these buildings, smoking was already banned.

This does not come as a surprise to anyone who knows anything about indoor air quality and ventilation. The National Institute of Occupational Safety and Health inspected 356 buildings for indoor air complaints and reported that 50% were caused by inadequate ventilation. Of these complaints, only 2% were related to tobacco.

Experts understand that ETS is a symptom -- not a cause -- of indoor air quality problems. Sick Building Syndrome (SBS) arises as a result of buildings that are too tightly sealed, due to energy efficiency requirements, that have little ventilation and also emit low

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levels of toxic chemicals. The inhalation of polluted air in these buildings results in a variety of symptoms including respiratory problems, dizziness, nausea, skin rashes, eye irritation and headaches. Long term exposure can result in serious and chronic health risks.

But response to the indoor air pollution problem has been limited and narrowly focused. Health organizations, both public and not-for-profit, have primarily focused their attention on environmental tobacco smoke as the root cause of indoor air pollution. These groups recommend the institution of smoking bans as the remedy to SBS. Businesses that follow the advice of these groups are led into a false sense of security concerning the resolution of indoor air pollution and the related health consequences to their employees.

Even Robert Axelrad, the Director of EPA's Indoor Air Division and certainly no friend of tobacco has said: quote --"People should not be allowed to believe that addressing smoking will solve [all indoor air quality problems]. There are hundreds of other contaminants that need to be addressed." -- unquote

Improved ventilation is the solution.

Helen Eisenstein, the attorney in the Call-Prudential case, apparently agrees. She told the International Facilities Managers Association that 90% of litigation could be avoided by responding

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immediately to IAQ complaints and using the standards of the American Society of Heating, Air Conditioning and Refrigerating Engineers (ASHRAE). If ASHRAE standards are not met, she warned, quote -- "it will be impossible to fight." -- unquote

In short, not only is AB13 based on inaccurate and flawed science, it doesn't even solve the problem and might actually mislead employers and employees into believing that their indoor air quality problems have been solved.

Philip Morris believes that non-smokers are entitled to smoke free areas. We also believe that smokers should have a designated area to smoke, and we believe that business owners and managers should be given the flexibility to determine, within guidelines, how best to satisfy their employees and their customers. We believe that a statewide approach which combines accommodation with accepted ventilation standards better balances the interests of all parties, smoker, non-smoker and business owner. We would welcome the opportunity to work with the Chairman and the committee to craft such an approach.

Thank you for this opportunity to testify.