

December 15, 1987

MEMORANDUM

TO: Samuel D. Chilcote, Jr.

FR: Peter G. Sparber

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Last month, we prepared an analysis of four strategies related to the public smoking issue and known as "Operation Downunder," prepared by Philip Morris staff.

In support of that analysis, attached are the two detailed analyses you requested:

I. Legislative

Philip Morris suggests that the industry agree to laws ensuring equal accommodation of smokers and non-smokers.

This paper compares "equal accommodation" legislation to what is now on the books, and to a sampling of bills defeated in 1987. It also takes a similar look at local legislation.

Our analysis supports the view that there are relatively few workplace smoking laws, that the existing law is far less restrictive than is generally imagined, and that we are even defeating bills that are not terribly restrictive. As a general proposition, legislation ensuring "equal accommodation" is more of a compromise than we need to make at this time.

II. Voluntary

This analysis is based on our direct contact with hundreds of businesses, unions, organizations and individuals in need of assistance.

It states that private interest in smoking restrictions seems to track the debate and/or passage of workplace smoking bills. Where the debate does not exist or when it is over, the issue is less pressing.

Attached to this summary are quarterly reports of our corporate contact program describing, in some detail, each organization or individual contacting us for help.

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SMOKING RESTRICTIONS LEGISLATION

## Private Workplace Smoking Restrictions: State laws

### Summary

Currently 38 states do not have private workplace smoking laws. Only 12 states have private workplace smoking restrictions on the books.

In 1985, 1986 and 1987, 142 bills in 35 states were proposed - - 125 (88%) were rejected. 8 laws in 4 states are pending.

It is difficult to single out one state law as a "model" smoking restriction because of the differences in the provisions, the variety of areas covered, not covered or covered in different combinations (i.e. restaurants, government buildings, public places), and the differences in definitions.

12 states have laws requiring accommodation of the smoker or nonsmoker or both - - none of the 12 require specific space designations. We compared these existing laws to the Philip Morris proposal, i.e., a smoking restriction bill for the private workplace that would require accommodation of smokers and nonsmokers, with space designations of between 30%/70% and 50%/50%.

<u>State</u>	<u>Existing Law</u>	<u>More or Less Restrictive Than Philip Morris Proposal</u>
Connecticut	Manager to establish rules which may designate smoking or nonsmoking - - no mention of accommodation or size. Waiver provision.	less
Florida	Manager designates smoking and nonsmoking taking into consideration the proportion of smokers and nonsmokers - - entire areas may be smoking if all employees agree.	less
Iowa	Manager designates smoking areas; no mention of accommodation or size.	less

Maine	Employer/manager to establish or negotiate through the collective bargaining process, a policy designating smoking areas - - no mention of accommodation or size. Does not apply where voluntary policies are already in place.	less
Minnesota	Proprietors shall designate areas where the size shall not be more than proportional to the preference of the users. Users are not defined as smokers or nonsmokers. Waiver provision.	less
Montana	Proprietor/manager shall designate areas - - no mention of accommodation or size - - entire areas may be smoking.	less
Nebraska	Proprietor shall designate areas - - no mention of accommodation - - no area may be entirely smoking - - size of area must be reasonably proportionate to the preference of the users.	less
New Hampshire	Employer shall establish rules. No mention of accommodation or size - - entire areas may be smoking if occupied entirely by smokers. Restrictions do not apply to visitors to the workplace.	less
New Jersey	Employer will establish rules through the collective bargaining process, designating areas. No mention of accommodation or size.	less
Rhode Island	Employer will implement a policy which provides reasonable accommodation, insofar as possible, between preferences of smoking and nonsmoking employees. Entire areas may smoking if occupied exclusively by smokers.	less

Utah	Proprietors/employers shall designate areas with the space to be proportionate to the preferences of the employees.	less
Vermont	Employer will establish or negotiate through the collective bargaining process a policy to designate areas - - no mention of accommodation or size.	less

The remaining 38 states have no laws governing smoking in the private workplace. We compared the following 5 states, where private workplace restriction bills have been rejected, to the Philip Morris proposal:

<u>State</u>	<u>Proposed Law</u>	<u>More or Less Restrictive Than Philip Morris Proposal</u>
Colorado	Owner/manager to provide "smoke free" areas to accommodate nonsmokers - - no mention of size.	less
Illinois	Manager shall designate areas. Does not apply to private enclosed offices. no mention of accommodation - - "no-smoking area shall constitute a reasonable portion of the room or enclosure designated as a no-smoking area."	less
Missouri	Proprietors designate areas to accommodate nonsmokers. Smoking areas must have "buffer" zones - - no mention of size.	less
Texas	Proprietors shall designate areas that accommodate the preferences of both smokers and nonsmokers - - no mention of size.	less

West Virginia

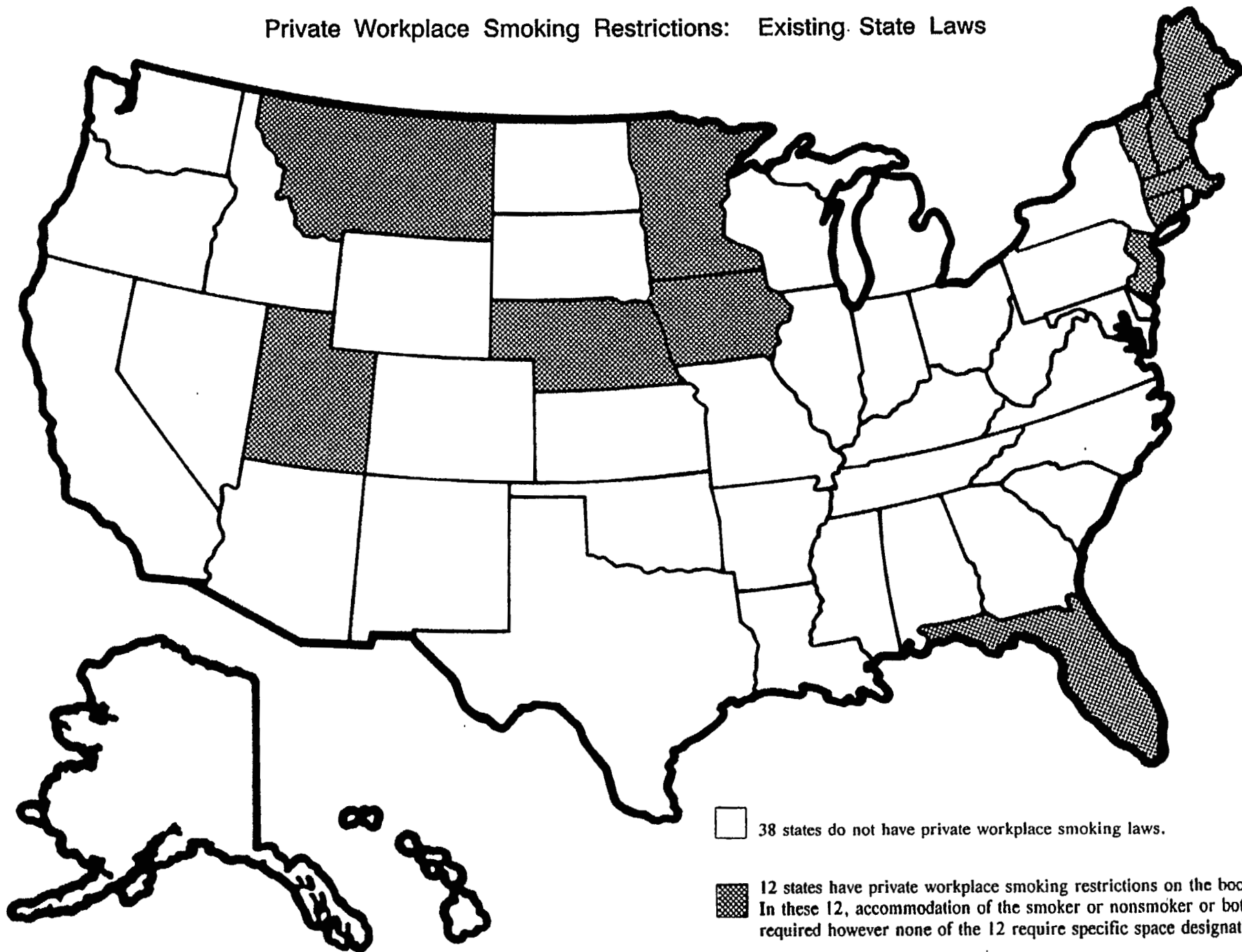
Proprietors shall designate  
areas - - no mention of size  
or accommodation. Does not  
apply to offices not occupied  
exclusively by smokers if non-  
smokers do not object.


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Although specific provisions vary greatly in detail and emphasis from state to state, this analysis indicates that state smoking restriction bills that have been passed, as well as defeated, are not as restrictive as generally perceived.

# Private Workplace Smoking Restrictions: Existing State Laws



 38 states do not have private workplace smoking laws.

 12 states have private workplace smoking restrictions on the books. In these 12, accommodation of the smoker or nonsmoker or both is required however none of the 12 require specific space designations.

## Private Workplace Smoking Restrictions: Local laws

### Summary

Of the approximately 22,500 local governments nationwide who have the potential to pass private workplace smoking restriction laws, approximately 333 (.015%) have done so. 237 (.01%) have rejected laws since the early 1970s.

In 1985, 1986 and 1987, 165 localities approved bills.

79% of these bills were in 3 states:

103 or 62% in California  
21 or 12% in Colorado  
9 or 5% in Texas

In 1985, 1986 and 1987, 47 localities rejected bills.

Over 40% of these bills were in 2 states:

13 or 27% in California  
7 or 14% in Colorado

As of November 12, 1987 (most recent update from SAD), 50 bills in 48 localities were pending.

22 or 44% in California

Overall, for the years 1985, 1986 and 1987, 260 localities have addressed smoking restrictions in the private workplace.

138 or 53% were in California  
30 or 12% were in Colorado  
13 or .05% were in Texas

It was difficult to single out one locality as a "model" because of the differences in the provisions, the variety of areas covered, not covered or covered in different combination (i.e. restaurants, government buildings, public places), and the differences in definitions.



**Private Workplace Smoking Restrictions: Existing Laws in 9  
Localities**

Approximately 333 localities have laws requiring accommodation of the smoker or nonsmoker or both - - most do not require specific space designations. We compared 9 of these existing laws to the Philip Morris proposal, i.e., a smoking restriction bill for the private workplace that would require accommodation of smokers and nonsmokers, with space designations of between 30%/70% and 50%/50%.

<u>Locality</u>	<u>Existing Law</u>	<u>More or Less Restrictive Than Philip Morris Proposal</u>
Oakland, CA	Employers to provide "smoke free" areas to the maximum extent possible - - no mention of size or accommodation.	less
Rancho Mirage, CA	Employer may designate 1 room no larger than 10% or 200 sq.ft. as a smoking lounge. If there is only one lounge, it must be nonsmoking. Lounge must be enclosed and have a filtration system.	more
Sacramento, CA	The preferences of both smokers and nonsmokers must be accommodated - - areas occupied exclusively by smokers may be all smoking - - no mention of size.	less
Santa Monica, CA	Employers must provide smoke free areas for nonsmokers to the maximum extent possible - - no mention of accommodation or size. An entire work area may not be a smoking area.	less
Denver, CO	If employer receives a petition signed by more than 50% of the employees, no-smoking areas must be provided - - no mention of size or accommodation.	less

Nassau County, NY	Owner/operator <u>may</u> designate areas - - no mention of size or accommodation.	less
Cleveland, OH	<u>Employee</u> may designate immediate area as nonsmoking - - if not satisfactory, employer may move employee to another area or expand no-smoking area.	less
Houston, TX	Employer shall accommodate desires of smokers and non-smokers - - no mention of size.	less
Corpus Christi, TX	Employer may designate separate portion or portions of the work area for smoking - - no mention of size or accommodation.	less

**The following are 2 examples of local bills that were defeated:**

North Glen, CO	Employer must accommodate non-smokers - - no more than 50% of the work area may be designated as smoking.	more
Aurora, CO	Employer must accommodate non-smokers - - no more than 50% of the work area may be designated as smoking - - no more that 25% or the common areas may be smoking areas.	more

**The following are 4 examples of local bills that are pending:**

San Bernardino, CA	Employers to provide smoke free areas for nonsmokers to the maximum extent possible - - no mention of size or accommodation.	less
Akron, OH	No more than 50% of the sq. footage of a work area may be smoking - - rooms with sq. footage of 5000 ft. or less - - smoking not permitted.	more
Albany, NY	Employer will designate areas. No mention of accommodation or size.	less

Philadelphia, PA

Employer will designate areas less  
to accommodate the preferences  
of smokers and nonsmokers - -  
no mention of size or  
accommodation.

\* \* \* \*

Although specific provisions vary greatly in detail and emphasis from locality to locality, the analysis indicates that local smoking restrictions bills that have been passed or pending are for the most part not as restrictive as generally perceived.

VOLUNTARY SMOKING RESTRICTIONS

## Voluntary Smoking Restrictions

Recent reports notwithstanding, we continue to see little evidence of a corporate trend toward restrictive workplace smoking policies.

Based on our two years' experience responding to requests for assistance from the corporate world, we draw the following conclusions:

\* The number of inquiries we receive has increased steadily over the last two years, with an average of 230 per quarter and a peak of 400 in the first quarter of 1987.

\* Interest in and response to the program can be attributed to state and local legislation, and to publicity surrounding the program. For example, in the first quarter of 1987 -- when interest peaked -- we were overwhelmed with requests for assistance from New York employers preparing to comply with Public Health Council regulations, and from employers who became aware of our program through an article in Employee Benefits News.

\* As the New York Public Health Council regulations were fought out in court, we continued to receive queries from employers. Throughout the year, New York topped the 50 states in number of inquiries, with 20 percent of all requests for information and assistance. In Illinois, where we successfully defeated state workplace smoking legislation with employers' commitments to seek voluntary policies, inquiries represented 8 percent of the total.

\* California (8 percent), Virginia (6 percent), Ohio and New Jersey (5 percent), Michigan (4), Minnesota, Texas and North Carolina (3) also registered substantial numbers of inquiries from employers. By contrast, we received no inquiries from Arkansas, Hawaii, Mississippi, North and South Dakota, and Utah.

\* 47 percent of the inquiries are from employers or workplace committees considering establishing a policy; eight percent are from employers preparing policies in response to state or local ordinances. Despite publicity concerning workplace bans, most are interested in developing a policy to accommodate smokers and nonsmokers.

\* 11 percent of our inquiries are from employers or the public seeking information; nine percent are from employees seeking assistance in fighting restrictive policies.

\* About 20 percent of our inquiries are the result of Institute or member company generated mailings and follow up phone calls. For example, Philip Morris recently mailed 25,000 of our "resource guide" brochures to its business contact mailing list. To date, we've received 115 requests for information. And just prior to Thanksgiving, we mailed 20,000 resource guides to employers in Illinois. In the two weeks since the mailing, we've received 90 return cards from employers seeking additional information.

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Attached for reference purposes are our quarterly reports describing each contact we have had with organizations and individuals seeking help.

Attachments