

NEW YORK STATE'S REDUCED CIGARETTE IGNITION PROPENSITY LEGISLATION

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I. INTRODUCTION

For decades, state and federal legislators have sought to change the manufacture of cigarettes in order to reduce the risk of fire,¹ and the tobacco industry has sought to delay and/or prevent state and federal regulators from regulating cigarette ignition propensity. In 2000, New York State became the first jurisdiction to enact legislation that regulates the fire safety of cigarettes. This case study examines the process of enacting New York's fire-safe cigarette statute and the regulations promulgated to implement the historic law, which took effect in 2004.

II. CIGARETTES AND FIRE DEATHS

A. Cigarette-Related Fire Deaths

Cigarettes are the leading cause of fire deaths in the United States. In 1998, New York's OFPC reported that forty-five percent of all residential fires in the State of New York were caused by smoking.² According to a memorandum of New York State Senator Frank Padavan:

ABOUT THE DEFENSIVE LITIGATION PROJECT

Funded by the Robert Wood Johnson Foundation's Public Health Practice & Policy Solutions, the Project uses case study research methodology to investigate threats of litigation made during the proposal and passage of public health laws. The case studies examine this experience across a range of public health issues. Public health officials, attorneys and advocates provide insight into their decision-making and planning process in anticipation of and in response to legal challenges.

Cigarette ignition of upholstered furniture or mattresses is the leading cause of residential fire deaths in the state, causing one-third of all such deaths. Many more New Yorkers, including children, are seriously injured in fires caused by cigarettes left burning. These innocent victims die or suffer injury because most American cigarettes are engineered to keep burning long after they are puffed on. This artificially induced burning time is the reason why smoldering cigarettes ignite furnishings so easily.³

Nationwide, in 2006 there were an estimated 142,900 “smoking-material” fires in the U.S. (the term “smoking materials” refers only to lighted tobacco products, not matches or lighters), up from 135,100 in 2005.⁴ “These fires resulted in an estimated 780 civilian deaths, 1,600 civilian injuries and \$606 million in direct property damage, all up from the year before.”⁵

B. Fire-Safe Cigarette Legislation

Attempts to regulate the ignition propensity of cigarettes date back to 1979 when U.S. Representative Joe Moakley (D-MA) filed legislation to give the federal Consumer Product Safety Commission the authority to regulate cigarettes as a fire hazard. The legislation was strongly opposed by the tobacco industry. Similar legislation was filed in eleven state legislatures.⁶

Five years later, President Ronald Reagan signed into law the Cigarette Safety Act of 1984, providing for \$3 million in research, a fifteen-member technical study group and no preemption language to limit state action on the issue.⁷ In October 1989, President George H.W. Bush signed into law the Fire Safe Cigarette Act, specifying that the same fifteen-member technical advisory group would oversee the development of a fire safety test method to be used in the creation of fire safety performance standards for

cigarettes.⁸ The four cigarette company members of the technical advisory group would not agree with the other eleven members that a valid test method had been developed.⁹

When there were no legislative results in Congress, many states again filed legislation requiring fire safety standards for cigarettes. The first of these pieces of legislation to become law was the New York bill enacted in 2000. New York's fire-safe cigarette statute requires that cigarettes meet fire safety standards to be promulgated by the Office of Fire Prevention and Control ("OFPC").¹⁰ The statute requires the creation of standards that would ensure:

either: (1) That such cigarettes, if ignited, will stop burning within a time period specified by the standards if the cigarettes are not smoked during that period; or (2) That such cigarettes meet performance standards prescribed by the office of fire prevention and control to limit the risk that such cigarettes will ignite upholstered furniture, mattresses or other household furnishings.¹¹

The OFPC regulations required that testing be done in accordance with the American Society of Testing and Materials ("ASTM") standard E2187-02b,¹² and no more than twenty-five percent of the cigarettes in a test group could exhibit full-length burns.¹³ (A "full-length burn" is when a cigarette is lighted under controlled circumstances in a laboratory setting when left unattended, burns from the entire length of the cigarette, virtually right up to the filter or, in the case of an unfiltered cigarette, to the opposite tip of the cigarette.) The regulations also required tobacco manufacturers to certify and indicate on cigarette packaging that the cigarettes comply with fire safety standards.¹⁴ The law exempts cigarettes to be sold outside the state¹⁵ and calls for civil penalties¹⁶ and license suspensions.¹⁷ Penalties go to a newly created fund.¹⁸

III. PROCESS OF ENACTING AND IMPLEMENTING NEW YORK'S FIRE-SAFE CIGARETTE LAW

The tobacco industry has opposed state and federal fire-safe cigarette legislation for more than twenty-five years. Gunja summarized the tobacco industry's arguments against such legislation: (1) that the technology does not exist to create a fire-safe cigarette; (2) the design changes necessary to make fire-safe cigarettes would give them such a terrible taste that they would be unsmokable and, therefore, commercially unacceptable; (3) the design changes would also cause the toxicity of the cigarettes to increase and (4) that no testing method could accurately predict whether a cigarette would ignite substrates in real-world situations.¹⁹ These arguments have been contradicted by internal documents.²⁰

The tobacco industry used its trade association the Tobacco Institute to lobby against fire-safe cigarette regulation. Peter Sparber, a Tobacco Institute Vice President during the 1980's:

built a national network of tobacco-friendly fire marshals to call on in the fight against fire-safe cigarettes. To win their loyalty, the industry gave out hundreds of thousands of dollars in grants to fire departments across the country, according to internal documents released under the 1998 multi-state tobacco settlement.²¹

By the late 1980s, Mr. Sparber set up his own firm and was a volunteer lobbyist for the National Association of State Fire Marshals.²² During the mid-1990s, many paid firefighter associations opposed cigarette fire safety bills.²³ Before a key New York legislative committee vote in 1997, a Philip Morris lobbyist distributed to legislators a

memorandum from one of the state’s largest firefighter unions opposing the cigarette fire safety legislation.²⁴

R.J. Reynolds Tobacco Co.’s *Strategic Plan 1996* examined the “problem” of fire safety and cigarettes at the national level.²⁵ The plan’s author expressed concern that chairman of the federal Consumer Product Safety Commission Ann Brown “will eventually use the Commission’s upholstered furniture flammability rule-making as a platform to argue in favor of controls on cigarettes.”²⁶ Reynolds’ *Strategic Plan* also included the directive to “[m]onitor and oppose federal and state legislation” to require fire-safe cigarettes and warned that “the two states most worth watching are New York and Massachusetts.”²⁷

At the state level, by September of 1999, R.J. Reynolds Tobacco Co. had prepared the document *Fire Safe Message Points, New York State* regarding fire-safe cigarette legislation.²⁸ Without substantiation or citation, the memo’s author claimed that “[t]est after test” has shown that “[c]onsumers do not accept cigarettes with low-ignition propensity (fire safe.)”²⁹ The memo’s author also predicted that New York’s passage of a fire-safe cigarette law “could result in the virtual elimination of retail tobacco sales in New York.”³⁰ The solution to the problem of fires started by cigarettes was, according to the author, not to come from Lorillard or any other tobacco company. Rather, “[g]reater fire safety awareness is the key to preventing deaths.”³¹

In the spring of 2000, the New York Assembly and New York Senate unanimously passed legislation to required cigarettes sold in the state to be fire-safe by 2002. However, Governor George Pataki publicly objected to the bill, and just two days

later, on May 24, 2000, he vetoed the bill demanding new penalties for bootlegging and a ban on Internet sales of cigarettes for shipment to customers in New York.³²

A few weeks later, on June 14, 2000, the Legislature and Governor Pataki reached a compromise on a bill to make New York the first state to require cigarette fire safety standards. The bill gave the tobacco industry two years from January 1, 2001 to meet the fire safety standards for cigarettes established by regulation and another six months (to July 1, 2003) until the industry was required to sell only fire-safe cigarettes.³³ Governor Pataki signed the bill into law on August 17, 2000.³⁴

In the fall of 2002, the OFPC published its *Derivation of a Cigarette Safety Performance Standard* explaining the process by which it developed a standard to limit the risk that cigarettes “will ignite upholstered furniture, mattresses or other household furnishings.”³⁵ OFPC tested 200 cigarette brands (comprising about eighty-five percent of the domestic market in 1999) and measured the percent of full-length burns for those cigarettes.³⁶ This was done to determine the cigarette’s ignition strength.

In its public comments on the proposed OFPC regulations, R.J. Reynolds Tobacco Co. complained that the regulations were “flawed because they seek to impose policy choices that extraterritorially and unreasonably burden interstate commerce.”³⁷ An alleged burden on interstate commerce has been the basis of tobacco industry lawsuits filed against other forms of regulations (e.g., *Philip Morris, Inc., et al., v. Reilly* (2000), challenging Massachusetts’ tobacco ingredient disclosure statute).

In January of 2003, the *New York Daily News* reported that Governor Pataki might delay fire-safe cigarette requirements as a cost-cutting move. The article noted

that tobacco companies “lobbied hard against the regulations” being developed to implement the 2000 law.³⁸ Governor Pataki ultimately backed away from the proposal, claiming that it was an idea that had been discussed and rejected and inadvertently ended up in the proposed executive budget.³⁹ When the Pataki Administration subsequently extended the deadline for filing public comments about the proposed regulations to establish fire safety standards, health advocates placed blame for the delay onto the tobacco industry’s pressure on the state. “We have a very simple message for the tobacco industry: Delay in this process equals death,” said Mr. Haven of NY PIRG.⁴⁰

By June of 2003, Assemblyman Pete Grannis (D-Manhattan) publicly criticized Governor Pataki and the New York Secretary of State Randy Daniels for being too slow to meet the original July 1, 2003 deadline. Less than a month later, the *New York Times* reported that the Pataki Administration blamed the implementation, not tobacco industry lobbying, on the technical problems of devising rules that no other governmental entity has previously tried to regulate.⁴¹

In response to its proposed fire-safe cigarette regulations, the OFPC reportedly received 7,500 pages of comments from the tobacco and convenience store industries.⁴² After the initial public comment period ended, the OFPC published an *Addendum to: Derivation of a Cigarette Fire Safety Performance Standard* and concluded that its “test data give a strong indication for the potential for significant reduction of ignition probability in real circumstances.”⁴³

The OFPC then published a *Notice of Revised Rule Making*, which provided for an additional comment period.⁴⁴ Of the roughly 572 pages of comments submitted, approximately 117 were one or two page comments submitted by citizens, most of whom supported the proposal, and approximately 355 pages were technical in nature.⁴⁵ Regulations requiring all cigarettes sold in New York to be fire-safe took effect on June 28, 2004.⁴⁶

IV. LEGAL CHALLENGES MADE BY THE TOBACCO INDUSTRY

The tobacco industry's main legal argument against fire-safe cigarette legislation was that such regulation would violate the Commerce Clause. In its public comments, R.J. Reynolds argued the regulations placed "an unreasonable burden on interstate commerce" and alleged that the OFPC "has not made a supportable determination that any benefits of the new standards outweigh the burdens placed on manufacturers and the cigarette industry as a whole."⁴⁷ R.J. Reynolds' public comments clearly implied that it may use litigation to try to invalidate the statute and the regulations. Indeed, privately in an internal, hand-written memo dated July 19, 2001, an R.J. Reynolds representative asked, "Who sues NY on commerce clause? When is it ripe?...Injunctive relief."⁴⁸

Philip Morris USA expressed its historical view on fire-safe cigarette legislation as follows:

While we believe that a national standard is the best way to address the issue, PM USA has been active in RCIP [reduced cigarette ignition propensity] efforts at the state level, supporting state laws that require that all manufacturers comply with the RCIP standard first adopted by New York. In our view, conflicting standards from state to state would be an undue burden on interstate commerce.⁴⁹

The tobacco industry also “lobbied hard against the regulations aimed at forcing the industry to make cigarettes slow-burning and self-extinguishing.”⁵⁰

To date, the tobacco industry has not challenged New York’s fire-safe cigarette statute or the OFPC regulations.

V. THE PROPONENTS’ RESPONSE

Proponents were confident that the regulations would withstand any legal challenge the tobacco industry might pose, especially regarding non-federal issues.⁵¹ Officials at the OFPC and their counsel “consulted all the time.”⁵² The NY PIRG reached out to Action on Smoking and Health and to the Tobacco Products Liability Project for an assessment of any legal threats that the law and its regulations might face.⁵³ The main concern was that a formal legal challenge would delay implementation of New York’s law long enough to get Congress to adopt a federal standard that would pre-empt state laws.⁵⁴

Given New York’s “groundbreaking effort”⁵⁵ to regulate cigarette ignition propensity, both Mr. Sciandra and Mr. Haven anticipated the possibility that some tobacco interest would sue. The expectation of litigation was based on the industry’s rhetoric that the law would create “havoc” regarding interstate commerce.⁵⁶ Mr. Haven expected that the industry “planned to use litigation.”⁵⁷ While direct “threats were not being made to [NY PIRG],”⁵⁸ both Mr. Sciandra and Mr. Haven strongly and publicly urged New York officials to proceed in a timely manner to avoid having Congress take up the issue in place of New York. For example, in the summer of 2003, Mr. Sciandra denounced the Pataki Administration for not having issued regulations to put the law

into effect—“Why the delay?” he asked.⁵⁹ Mr. Sciandra also told the *New York Times* that the tobacco companies were waiting for federal legislation, “which they would write, which would be weak and would pre-empt New York’s law.”⁶⁰

Similarly, John F. Mueller of the OFPC anticipated that there could well be litigation filed by the tobacco industry since this was the first time cigarettes were being regulated in this way.⁶¹ Because of the industry’s “scorched-earth” track record of trying to fend off regulation, officials from OFPC were “extraordinarily careful” in preparing the regulations.⁶² When asked about the fact that no tobacco company sued New York to block the new law or the regulations implementing it, Mr. Mueller said it was “kind of surprising they didn’t [sue].”⁶³

VI. THE OPPOSITION’S RESPONSE

In addition to lobbying efforts and public comments alleging violations of the Commerce Clause, the tobacco industry attempted to pre-empt New York State from regulating cigarette ignition propensity by pushing for federal legislation.

In April 2002, proponents of fire-safe cigarette regulation in the 107th Congress introduced the Joseph Moakley Memorial Act of 2002 (“Moakley Act”) named for the late Congressman Joseph Moakley (D-MA).⁶⁴ The Act aims to reduce deaths and injuries caused in cigarette fires by mandating that tobacco companies produce fire-safe cigarettes. Two months later, on June 20, 2002, Representatives Edolphus Towns (D-NY) and Cliff Stearns (R-FL) introduced HR 4981, the Fire-Safe Cigarette Act of 2002 (“Towns-Stearns Act”) as competing legislation in the House.⁶⁵ Health and safety advocates preferred the Moakley Act over the Towns-Stearns Act because the latter

would have pre-empted the states from passing fire-safe cigarette laws. The Campaign for Tobacco-Free Kids issued a press release accusing Philip Morris of asking its “allies to introduce weak legislation in the House, HR 4981 and HR 5059, that would preempt New York from implementing strong standards for fire safe cigarettes”⁶⁶

Interestingly, Philip Morris initially supported the Moakley Act but later “withdrew its support for the Moakley Act and joined the rest of the tobacco industry in supporting the Towns-Stearns Act.”⁶⁷ Neither bill was passed by Congress.

The tobacco industry was widely credited—or, more accurately, blamed—when Governor Pataki vetoed the first fire-safe cigarette bill. Lead sponsor Assemblyman Grannis (D-Manhattan) “said he thinks tobacco companies fought the bill out of fear that consumption would decrease because self-extinguishing cigarette would last longer than today’s products.”⁶⁸ While Assemblyman Grannis pledged to ask the Assembly to override Governor Pataki’s veto, he made the link explicit, “I think this was the governor desperately searching for an excuse to veto . . . This was all about the governor protecting big tobacco, about big tobacco money to Republicans.”⁶⁹ “Tobacco companies lobbied against the bill, asserting that state-by-state fire-safety standards would be a burden for them. ‘We’re supportive of a federal standard, and really believe that that is the way to promulgate regulations and standards on fire safety,’ said Mike Pfeil, vice president for communications of Philip Morris U.S.A.”⁷⁰

Interestingly, in 2000, Philip Morris had launched a new, banded cigarette paper called PaperSelect for use in its *Merit* brand of cigarettes.⁷¹ “Philip Morris found that cigarettes wrapped with the new paper were thirty to ninety percent less likely than

control cigarettes to ignite test fabrics.”⁷² The new brand also performed well in consumer taste tests.⁷³ According to Mr. Haven, the development of the PaperSelect may have tempered Philip Morris’ opposition to the New York regulations and led the company to decide that the New York regulation might create a marketing advantage for Philip Morris over its competitors.⁷⁴

VII. THE IMPACT OF THE TOBACCO INDUSTRY’S LEGAL RHETHORIC ON THE INITIATIVE

Tobacco industry opposition meant that the OFPC went about the process of adopting the regulations in the same manner as if there had been an explicit threat to sue.⁷⁵ In other words, because of a scorched earth history of fighting their opponents, the tobacco companies did not even have to issue explicit threats to sue in order to achieve the desired result of regulatory delay.

In February 2003, when there was an additional delay in the implementation of the regulations, health advocates blamed “the delay on the tobacco industry’s putting pressure on the state,” according to the *Buffalo News*.⁷⁶ “You read about how the tobacco companies have changed, but this really shows their true colors. They need more time? They’ve been working on this for 30 years and now they need 60 more days? Give me a break,’ said Russell Sciandra, director of the Center for a Tobacco Free New York.”⁷⁷

Nonetheless, the New York law is rightfully considered a public health success. As Executive Director of the Trauma Foundation at San Francisco General Hospital Mr. McGuire put it in 2005:

The importance of the state legislative efforts cannot be overstated. The state efforts have generated, in some instances, national media coverage. Additionally, hundreds of organizations and thousands of advocates and supporters have united in fighting the well financed defensive efforts of the tobacco industry. Because there is no federal preemption of state law in the cigarette fire safety arena, the state lobbying efforts have been able to proceed—with ultimate success.⁷⁸

Despite the tobacco industry’s efforts to dissuade other states from enacting fire-safe cigarette laws,⁷⁹ from June 17, 2005 to June 2009, similar laws were enacted in forty-six states and in the District of Columbia.⁸⁰

With respect to the public health impact of New York’s fire-safe cigarette law, a study conducted by the Harvard School of Public Health concluded that within the first six months of the New York standard having taken effect, “the law was being complied with, that sales of cigarettes were not affected, and that the toxicity levels of the ‘new’ cigarettes were roughly equivalent with that of other cigarettes.”⁸¹

VIII. LESSONS LEARNED

The major lesson learned is that persistence by legislators, advocates and government officials over many years on many fronts can overcome enormous obstacles. A realistic assessment of the opposition at the very outset of the effort is essential. The threat of litigation required lawyers to carefully and realistically assess the strength of the legal issues that could be raised in litigation. Even though no one sued to block implementation of New York’s law, the threat of eventual litigation and its concomitant costs to the state made it critical for lawyers consulted by legislators and advocates to assess the true risks of litigation. With respect to advocates, to be successful, they must be willing and able to fight on multiple fronts, sometimes

simultaneously. They also must be able to marshal support from key government officials.

RESEARCH METHODOLOGY

The Project utilized descriptive case study methodology to examine instances of state and local public health legislation that was opposed with legal rhetoric or faced a direct legal challenge. Descriptive case study methodology is designed to present a complete description of a case within its context. The descriptive case study technique was selected because of the lack of prior research on the issue of defensive public health litigation and the resulting lack of established theory in the area. The primary unit of analysis for each study was the proponent of the public health initiative. Background research for each case study included local and national media coverage, legislative and/or administrative documents, documents generated by the opposition, scholarly articles, legal filings and judicial opinions. A minimum of two in-depth telephone interviews were conducted for each case. Where possible, one interview was of a public health official, and one interview was with an attorney affiliated with the public health official. Given the resources available to conduct the studies interviews with opponents were not conducted.

¹ Andrew McGuire, *To Burn or Not to Burn: An Advocate's Report from the Field*, 11 INJ. PREVENTION 264-266 (2005).

² Tom Precious, *Law Is First To Require Fire-Safe Cigarettes*, BUFFALO NEWS, June 15, 2000, at 1A.

³ New York State Legislative Service, *Memorandum of Senator Frank Padavan, in New York State Legislative Annual-2000* 196 (2000).

⁴ Hall, Jr., J., National Fire Protection Association, *U.S. Smoking-Material Fire Problem* i (November 2008), <http://www.nfpa.org/assets/files//PDF/OS.Smoking.pdf> (last visited Aug. 10, 2009).

⁵ *Id.*

⁶ Andrew McGuire, *How the Tobacco Industry Continues to Keep the Home Fires Burning*, 8 TOBACCO CONTROL 67, 68 (1999).

⁷ Cigarette Safety Act of 1984, Pub. L. No. 98-567, 98 Stat. 2925 (codified as an amended at 15 USC 2054 (1984)).

⁸ Fire Safe Cigarette Act of 1990, Pub.L. 101-352, 104 Stat. 405 (codified as an amended at 15 USC 2054 (1990)).

⁹ Andrew McGuire, *supra* note 7 at 69.

¹⁰ N.Y. EXEC. LAW § 156-c(2.a).

¹¹ *Id.*

¹² 19 N.Y.C.R.R. § 429.3.

¹³ 19 N.Y.C.R.R. § 429.4.

¹⁴ 19 N.Y.C.R.R. § 429.1.

¹⁵ NY Exec Law sec. 156-c.4.

¹⁶ NY Exec Law sec. 156-c.5.a.

¹⁷ *Id.*

¹⁸ NY Exec. Law sec. 156-c.5.c.

- ¹⁹ M. Gunja, et al., *The Case for Fire Safe Cigarettes Made through Industry Documents*, 11 TOBACCO CONTROL at 351 (2002).
- ²⁰ *Id.* at 346.
- ²¹ Annys Shin, *Fighting for Safety*, WASHINGTON POST, January 26, 2008, at D1.
- ²² *Id.*
- ²³ E-mail from Russ Haven, Legislative Counsel, NYPIRG to Edward Sweda, Senior Staff Attorney, Public Health Advocacy Institute (March 17, 2009) (on file with author).
- ²⁴ *Id.*
- ²⁵ R.J. Reynolds, *Strategic Plan 1996, Summary*, Bates No. 511403473/3477, <http://legacy.library.ucsf.edu/tid/bus60d00/pdf> (last visited Aug. 10, 2009).
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ R.J. Reynolds, *Fire Safe Message Points, New York State (DRAFT)*, Bates No. 522928229, <http://legacy.library.ucsf.edu/tid/qhb70d00/pdf> (last visited Aug. 10, 2009).
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ *Id.*
- ³² Richard Perez-Pena, *Governor Vetoes a Bill to Require Fire-Safe Tobacco*, N.Y. TIMES, May 24, 2000, at A1.
- ³³ *N.Y. State OKs Bill on Self-Snuffing Cigarettes*, CHICAGO TRIBUNE, June 15, 2000, at 19.
- ³⁴ Joe Mahoney, *Fire-Safe Cigarette Law Inked*, N.Y. DAILY NEWS, August 18, 2000, at 8.
- ³⁵ N.Y. Office of Fire Prevention and Control, *Derivation of Cigarette Fire Safety Performance Standard at 1* (November 15, 2000) (on file with author).
- ³⁶ *Id.*
- ³⁷ R.J. Reynolds Tobacco Co., Comments to Proposed Rulemaking: Fire Safety Standards for Cigarettes (I.D. No. DOS-53-02-00018-P) at 52 (on file with author).
- ³⁸ Joe Mahoney, *Pataki May Ice Safer-Cig Rule*, N.Y. DAILY NEWS, January 31, 2003, at 34.
- ³⁹ *New York Delays "Low Ignition Cigarette" Law*, SMOKE SHOP NEWS, February 2003, <http://www.smokeshopmag.com/0203/signal2.htm> (last visited Aug. 7, 2009).
- ⁴⁰ William Hammond, Jr., *N.Y. Grants Delay on 'Fire Safe' Cigarettes*, N.Y. SUN, February 20, 2003, at 3.
- ⁴¹ James McKinley, *Smoking Foes Blame Lobbying for Delay in Fire-Safe Cigarettes*, N.Y. TIMES, July 1, 2003, at B2.
- ⁴² *New Fire-Safe Cigarette Rules in N.Y.*, Convenience Store News, July 2, 2003.
- ⁴³ N.Y. Office of Fire Prevention and Control, *Addendum to: Derivation of a Cigarette Fire Safety Performance Standard 6* (August 15, 2003) (on file with author).
- ⁴⁴ 25 N.Y. Reg. 30 (Sept. 3, 2003).
- ⁴⁵ Assessment of Public Comment, <http://www.dos.state.ny.us/fire/cigrulepc.hym> (last visited Sept. 29, 2008).
- ⁴⁶ Erin Duggan, *"Fire-safe" Cigarettes Move onto State's Shelves; Albany Department of Health Says 95% of Tobacco Companies Have Met Rules That Go into Effect Monday*, TIMES-UNION (Albany, NY), June 25, 2004, at B3.
- ⁴⁷ R.J. Reynolds Tobacco Co., Comments to Proposed Rulemaking: Fire Safety Standards for Cigarettes (I.D. No. DOS-53-02-00018-P) at 52 (on file with author).
- ⁴⁸ R.J. Reynolds, *Mary Beth Cahill Kennedy's Chief of Staff Ran Some of Markey's Campaign*, Bates No. 525131119/1120, <http://legacy.library.ucsf.edu/tid/php20d00/pdf> (last visited Aug. 10, 2009).
- ⁴⁹ Phillip Morris, USA, Government Affairs, *Reduced Cigarette Ignition Propensity 45* (January 2008), http://www.philipmorrisusa.com/en/cms/Responsibility/Government_Relations/Legislative_Issues/pdfs/reduced_cigarette_ignition_prop.pdf.aspx?src=search (last visited Aug. 10, 2009).
- ⁵⁰ Joe Mahoney *supra* note 39.
- ⁵¹ Telephone Interview with Nathan Hamm, Associate Attorney, Office of the General Counsel (February 4, 2009).
- ⁵² *Id.*

⁵³ Telephone Interview with Russ Haven, Legislative Counsel, NY PIRG (February 6, 2009).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ James McKinley, Jr., *supra* note 42.

⁶⁰ *Id.*

⁶¹ Telephone Interview with John Mueller, Deputy State Fire Administrator, New York's Office of Fire Prevention and Control (February 4, 2009).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ H.R.4607 (*see also* 148 CONG. REC. E646 (daily ed. April 26, 2002) (statement of Rep. Markey)).

⁶⁵ M. Gunja, *Fire Safe Cigarettes*, 40 HARV. J. ON LEGIS. 559, 559-560 (2003).

⁶⁶ Press Release, Campaign for Tobacco-Free Kids, Stearns-Towns Fire Safe Cigarette Bills Good For Tobacco Industry, NOT Health of America's Children and Families (July 12, 2002), <http://www.tobaccofreekids.org/Script/DisplayPressRelease.php3?Display=520>.

⁶⁷ M. Gunja, *supra* note 66.

⁶⁸ James Odatto, *Self-extinguishing Smokes Out, For Now*, TIMES-UNION (Albany, NY), May 26, 2000, at A1.

⁶⁹ Richard Perez-Pena, *Governor Vetoes a Bill to Require Fire-Safe Tobacco*, N.Y. TIMES, May 26, 2000, at A1.

⁷⁰ *Id.*

⁷¹ M. Gunja, *supra* note 66 at 563.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Telephone Interview with Russ Haven, Legislative Counsel, NY PIRG (February 6, 2009).

⁷⁵ Telephone Interview with Nathan Hamm, Associate Attorney, Office of the General Counsel (February 4, 2009).

⁷⁶ Tom Precious, *Law Requiring Fire-Safe Cigarette Delayed Again*, BUFFALO NEWS, February 14, 2003, at A11.

⁷⁷ *Id.*

⁷⁸ Andrew McGuire, *supra* note 1 at 265.

⁷⁹ See Lorillard, *State Fire-Safe Cigarette Laws Are Unwise and Should Be Rejected* (Nov. 29, 2000), Bates No. 99246251, <http://legacy.library.ucsf.edu/tid/jik94c00/pdf> (last visited Aug. 10, 2009) (criticizing other states' attempts to follow New York's lead: "New York has already embarked on the development of fire-safe cigarette standards. There is no good reason for other states to devote their resources to duplicating its work," and arguing that "[m]ultiple state 'fire-safe' design requirements would violate the Commerce Clause of the U.S. Constitution.")

⁸⁰ Coalition for Fire-Safe Cigarettes, Firesafecigarettes.org, State-by-State Efforts, <http://firesafecigarettes.org/itemDetail.asp?categoryID=93&itemID=1295&URL=Legislative%20updates/State-by-state%20efforts> (last visited Aug. 10, 2009).

⁸¹ Andrew McGuire, *supra* note 1 at 265 (citing Harvard School of Public Health, "*Fire Safer*" Cigarettes: *The Effect of the New York State Cigarette Fire Safety Standard on Ignition Propensity, Smoke Toxicity, and the Consumer Market* (2005), available at <http://www.firesafecigarettes.org/assets/files/harvardstudy.pdf> (last visited Sept. 24, 2009)).