

Albany County plan to shelve tobacco displays raises legal issues

Critics fear action would cost taxpayers millions to defend

By Jordan Carleo-Evangelist Updated 11:20 pm, Friday, April 3, 2015



IMAGE 1 OF 4

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Albany County Executive Dan McCoy announces legislation banning the display of tobacco products in Pharmacies at a press conference April 3, 2015 at ShopRite in Slingerlands, N.Y. (Skip Dickstein/Times ... [more](#))

Bethlehem

Albany County is moving to ban the display of tobacco products in pharmacies — a law that anti-smoking advocates said they believed would be the only one of its kind in the nation and virtually certain to face a free speech challenge in court.

County **Executive Dan McCoy** unveiled the proposal Friday, seven months after vetoing a law that outright banned the sale of tobacco products in stores containing pharmacies.

In striking down that law, which would have been the first in New York, McCoy cited technical flaws that he said invited a lawsuit and vowed to follow up with a measure that instead would shield the products from public view.

"We have over 43,000 smokers in Albany County, and I would like to see that number come down," McCoy said Friday at the Slingerlands ShopRite flanked by executives from Price Chopper, Hannaford and Rite Aid. "What we're trying to do is save lives."

But advocates said **McCoy's** plan, which will be introduced in the County Legislature later this spring, is actually a riskier legal play than banning tobacco sales in pharmacies, which has survived court challenges elsewhere.

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The leading anti-smoking crusader in the County Legislature panned McCoy's move as wrongheaded and potentially harmful to the broader anti-tobacco movement.

"It will cost county taxpayers millions of dollars probably, and it could take years to get through the courts," said **Latham Democrat Timothy Nichols**, who sponsored the pharmacy ban vetoed by McCoy. "If I thought that this was doable, I would have done it a long time ago."

Since the veto, Nichols has sharply criticized McCoy for accepting more than \$10,000 in campaign contributions from lobbyists that represent tobacco companies and from Rite Aid.

McCoy's proposal, sponsored by **Guilderland Democrat Mary Lou Connolly**, would bar retail stores with pharmacies from displaying "any Tobacco Product in a manner that permits a consumer to view (it) prior to purchase."

Retailers could offer customers tobacco menus – but only after they've proved they are at least 18 years old. Violators would be hit with fines ranging from \$2,000 to \$10,000. The only mention of advertising is a requirement that ads on the menus include federal health warnings.

In 2012, the Rockland County village of Haverstraw swiftly abandoned a law — billed as first in the nation — banning tobacco displays in all retail stores after it was sued by the tobacco industry, which contended it violated free speech. In 2013, New York City backed away from a similar proposal.

For those reasons, local anti-tobacco advocates have shied away from display bans in favor of measures they know to be on sturdier legal ground, said **Judy Rightmyer**, program director of the **Capital District Tobacco-Free Coalition**.

Rightmyer's group backed Nichols' ban on tobacco sales in pharmacies and also supports local restrictions on sales around schools. Nichols said he's drafting just such a law.

"I think the major difficulty with this will be the legal challenge that's inevitable — and will the county want to take on that legal challenge. It's going to be costly," Rightmyer said of McCoy's proposal. "From what we know, it probably might withstand a challenge, but it would be a long legal battle."

McCoy suggested he may be open to eventually extending the ban to all retailers, saying "you have to start somewhere."

On Friday, representatives of the three major local supermarket chains said they are already voluntarily complying with the standard imposed by the law.

Price Chopper has shielded tobacco products behind opaque displays since 2007, said **David Golub**, a senior vice-president at the Schenectady-based chain.

"We wanted to take a leading role in doing the right thing," Golub said. "We had a big drop in sales and we lost all our advertising income from the cigarettes."

ShopRite did the same when it re-entered the market in 2011 — in part because of the store's proximity to **Niskayuna High School**, said **Tom Urtz**, vice president of human resources and community affairs.

Cohoes Assemblyman **John T. McDonald III** and Halfmoon Sen. **Kathy Marchione** are sponsoring a bill that would ban tobacco displays in pharmacies statewide.

"This is not banning or forbidding tobacco sales, it's shielding them so they don't have an impact on children," said McDonald, who owns Marra's Pharmacy in Cohoes. "You can't have cigarette products displayed prominently next to somebody while you're trying to give them a flu shot."

Connolly said McCoy's proposal strikes a fair balance between safeguarding public health and not unfairly shackling businesses.

"It may not be exactly what (the advocates) wanted, but for God's sakes, isn't it a free society?" Connolly said. "Cigarettes are bad; they're harmful, but they're legal."

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