Public Health Plagued By Preemption

States with Any Type of Preemption of Smokefree Air Laws
American Nonsmokers' Rights Foundation
January 2, 2019

Preemption

Yes
No

CT, FL, NH, and SD have total preemption of smoking legislation.
MI preempts local laws relating to restaurants and bars.
NE preempts local laws relating to cigar bars.
NC: Local laws enacted/effective before 10/15/93 remain in force, but may not be strengthened. Local laws after that date may regulate smoking in local government buildings and vehicles as well as in specified public places.
PA preempts local laws relating to smoking in enclosed workplaces & public places, but permits Philadelphia to enforce its smokefree laws, other than ones pertaining to gambling, provided it does not amend its laws so as to conflict with state law.
TN preempts entire field of regulations except for regulation in public buildings by cities and counties, airport authorities, utility districts, and special school districts, as well as on the grounds of municipal property.
OK and UT preempt local laws other than those restricting smoking in public outdoor areas.
VA: Local laws enacted prior to 1/1/90 are not preempted. Other local laws may require nonsmoking sections in public places and may allow employers to regulate smoking in private workplaces.
WI preempts local laws restricting smoking in outdoor areas, except those laws applying only to public property.

Note: American Indian and Alaska Native sovereign tribal laws are not reflected on this map.
At ANR, we are no strangers to preemption. This tricky tactic was cultivated and perfected by the tobacco industry. We know the industry never quits, so we have never stopped tracking and defending against preemptive strikes.

Reference Refresh

A little rusty on the vocabulary? According to the National Policy and Legal Analysis Network, preemption occurs when a “higher” level of government eliminates or limits the authority of a “lower” level of government to regulate a certain issue. Preemption can take different forms: either explicitly spelled out in a statute, or implied, which is murkier and based on legislative intent. Implied preemption can result in a legal challenge to interpret what the law says, which is why our model language always recommends expressly stating that state laws do not preempt local action. An example of this industry interference trick is in the fact Pittsburgh, PA, Nashville, TN, and Oklahoma City are barred from enacting local smokefree laws.

Seem confusing? It’s meant to be. Preemption is a technical challenge crafted by expert attorneys as a way to combat the success of advocates organizing to build strong coalitions and change their communities. Not only is the terminology confusing, but it can be incredibly difficult to track. The tobacco industry and its allies like ALEC (American Legislative Exchange Council) tend to sneak language into bills that are likely to pass and do so during inopportune times.

Trends in Preemption

Currently, there are 13 states that preempt local smokefree laws. Eight of these states do not have a 100% smokefree law for all non-hospitality workplaces, restaurants, and bars, which means that the 20.8% of the U.S. population that lives in these 8 states continues to be exposed to secondhand smoke. View a story here about a Florida family suffering under preemption. To make progress in preempted states, either the preemption law needs to be repealed or a strong, statewide smokefree law needs to be adopted to extend protections in all workplaces, bars, restaurants, and casinos. Tobacco companies would rather have one big fight at the legislature where they have lobbyists and campaign contributions versus having to fight public health measures city by city.

Recently, during a review of Pennsylvania fiscal code, state legislators moved to preempt the City of Philadelphia from being able to regulate flavored tobacco products. The fiscal code review process happens over the summer, operates largely under the radar, and did not allow opportunity for public input. It's no coincidence that a coalition of health advocates had been working in Philadelphia with the city council to consider the impact of restricting the sale of flavored tobacco products. Pennsylvania is no stranger to preemption, and as cities like Philadelphia and Pittsburgh lead the way in creating policy solutions to challenging problems, it's not uncommon for the state to respond by revoking the ability of cities to implement these innovative laws.

Public health groups working on public health issues from paid sick leave and environmental protection are on watch for preemption and seeking to learn from the experience of ANR and the tobacco control movement in protecting local control. We remain steadfast that local leads the way and that the best defense against Big Tobacco is to never give up the fight for smokefree air.

Find more information at: Protect Local Control
MEDIA INQUIRIES

Staff members are available to speak to the media regarding smokefree air policy issues, current campaigns, future trends, and existing laws. Our staff can also provide information on electronic cigarette aerosol, marijuana secondhand smoke, smoking in multi-unit housing, tobacco-free college campuses, and a variety of other issues.

SMOKEFREE LISTS & MAPS

The ANR Foundation contains the only national repository of state and local tobacco-related ordinances and regulations in the United States. For information regarding the number and type of smokefree laws and policies in the U.S., please visit our Lists & Maps page.

SISTER SITES

The information on this website is intended for public information and educational purposes. If you would like advice on active smokefree campaigns or other advocacy information, visit our sister websites: nonsmokersrights.org protectlocalcontrol.org smokefreecasinos.org smokefreemusiccities.org