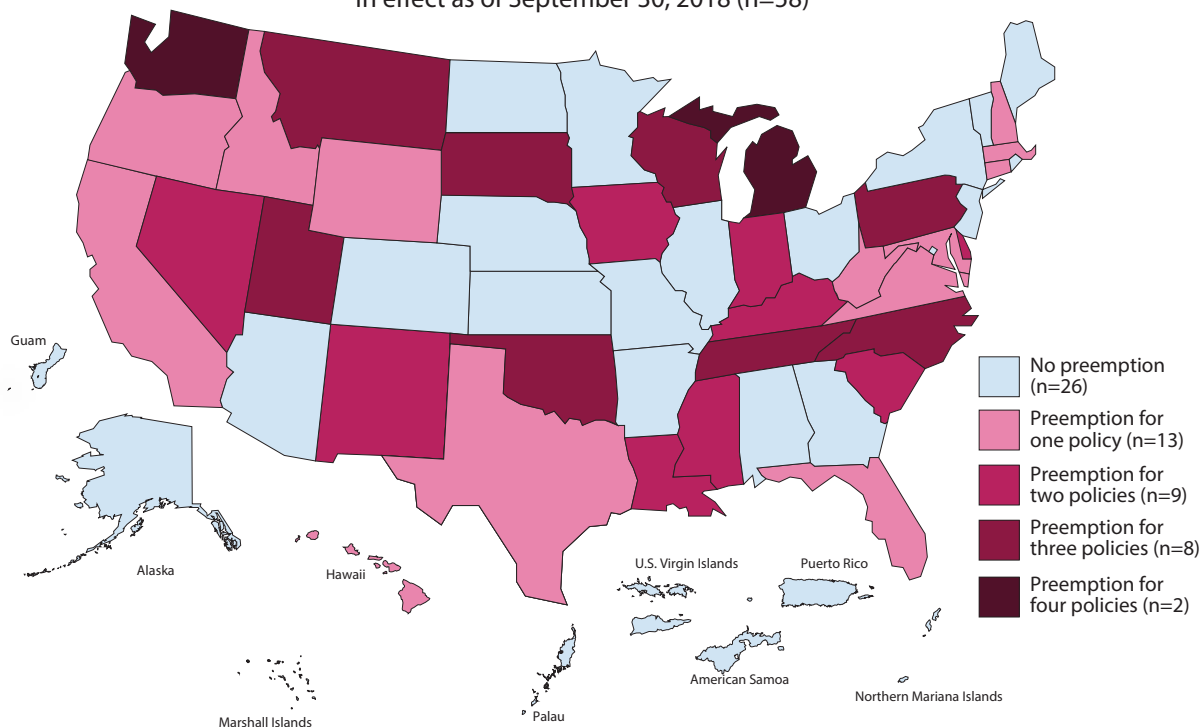


STATE System Preemption Fact Sheet

State Preemption of Any Local Tobacco Control Ordinances—Advertising, Licensure, Smokefree Indoor Air, or Youth Access

In effect as of September 30, 2018 (n=58)



Preemption Can Impede Local Tobacco Protection Efforts

Tobacco use is the cause of one of five deaths annually in the United States—more deaths than human immunodeficiency virus (HIV), illegal drug use, alcohol use, motor vehicle injuries, and firearm-related incidents combined.¹ In addition, millions of nonsmokers remain exposed to secondhand smoke in homes, workplaces, public places, and vehicles.

States are using various legislative tools to reduce smoking rates and protect the public from the adverse health effects of smoking. To limit exposure to secondhand smoke, states

can enact laws prohibiting or restricting smoking in enclosed places; such as, government worksites, private worksites, restaurants, and bars. To reduce tobacco use, states can also raise excise taxes on tobacco products and choose to enact statutes that limit advertising (by restricting the display of tobacco products, tobacco product promotion, or tobacco product samples). States can also restrict youth access to tobacco by prohibiting the sale or distribution of tobacco to young people and restricting access to tobacco product vending machines. Tobacco control policies have often been adopted at the state level after being carried out in a critical mass of communities within a state.² At the local level, policies can be more restrictive or comprehensive than state laws.

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U.S. Department of Health and Human Services
Centers for Disease Control and Prevention

STATE System: CDC.gov/STATESystem
OSHData: CDC.gov/OSHData
Office on Smoking and Health: CDC.gov/Tobacco



Eliminate State laws that preempt stronger local tobacco control laws on **smokefree indoor air**¹³



Eliminate State laws that preempt stronger local tobacco control laws on **advertising**¹³



Eliminate State laws that preempt stronger local tobacco control laws on **youth access**¹³



Eliminate State laws that preempt stronger local tobacco control laws on **licensure**¹³

Data Source: State Tobacco Activities Tracking and Evaluation System (STATE), CDC/NCCDPHP. For more information, visit CDC.gov/tobacco/hp2020

Local communities have responded to public health concerns related to smoking and tobacco use. Communities have adopted and put into action some of the strongest, innovative, and effective tobacco control policies that have served as a catalyst for transitioning social norms about tobacco use. These policies discourage young people from initiating use and encourage adult tobacco users to quit.^{2,3}

What Is Preemption?

Some states, preempt, or prevent local communities from passing local laws that are more stringent or differ from a state's tobacco control policies related to advertising, smokefree indoor air, and youth access. A state may preempt local tobacco control laws in all or only in some categories. The tobacco industry has historically supported state preemption laws as a way to reverse existing local tobacco control laws and prevent future enactment of such laws.^{4,5,6} A Healthy People 2020 objective calls to eliminate state laws that preempt stronger local tobacco control laws, including local smokefree ordinances.⁷

Court Decisions Can Determine Preemption

Even if a state law does not have “express preemption” (i.e., that state law does not contain explicit preemptive language), a state court may find that the state has “implied preemption” (i.e., that state law is implicitly preemptive).⁸ If a local law is legally challenged, a court has the responsibility to interpret state statutes, as well as the state legislature's intent when the law was debated and passed. As a result, statutes must be read together with case law decisions to get a full understanding of a state's preemption status. In particular, court decisions related to smokefree indoor air have determined whether a state preempts the passing of local laws pertinent to tobacco prevention and control.

In several states, courts have weighed in and decisively influenced interpretations of whether states preempt local smoking restrictions. For example, a court in California ruled that the 1995 state smokefree law did not preempt local ordinances from making enclosed public places and places of employment smokefree. The court ruled that the state law

explicitly disclaimed any intent to preempt local governments from regulating smoking, and, in fact, expressly authorized local governments to prohibit smoking in any manner not consistent with the state law.⁹ In 2008, a South Carolina court found that the state statute, including the Clean Indoor Air Act, did not preempt a city from passing a local ordinance regulating smoking in public places.¹⁰ However, courts in New Hampshire and Washington ruled that state laws establishing smoking restrictions preempted local smoking restrictions in certain settings, even though the statutes in question did not contain explicit preemption language.^{8,11}

Enabling Local Communities to Pass Tobacco Control Measures

The only way for states to ensure that local tobacco control laws are not preempted is to include enabling clauses in state laws. These clauses explicitly allow local jurisdictions to pass ordinances that differ from the state law. This can have the effect of making the state law the floor for tobacco control regulations, rather than preemption provisions that establish state law as the ceiling.

State Efforts to Restore or Preserve Local Smokefree Indoor Air Control Since 2004

Once enacted, state preemptive laws have traditionally proven difficult to repeal. However, since 2004, seven states have successfully repealed provisions that preempted local smoking restrictions in some or all settings. The seven states that have repealed smokefree indoor air preemption are Illinois, Louisiana, Mississippi, Montana, Nevada, New Jersey, and Oregon. For example, state smokefree laws enacted in Oregon in 2007 and Iowa in 2008 removed preemptive language from previous statutes, thus rescinding preemption even in the absence of explicit enabling language.¹¹ In addition, there appears to be a trend for states that enact new smoking restrictions to include explicit enabling language. For example state smokefree laws enacted in 2006 in New Jersey and Louisiana included explicit nonpreemptive language that expressly enables communities to enact local smokefree ordinances.¹²

State Preemption of Any Local Tobacco Control Ordinances— Advertising, Licensure, Smokefree Indoor Air, or Youth Access

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Location	Preemption Summary	Advertising	Licensure	Smokefree Indoor Air	Youth Access
Alabama	No Preemption	No	No	No	No
Alaska	No Preemption	No	No	No	No
American Samoa	No Preemption	No	No	No	No
Arizona	No Preemption	No	No	No	No
Arkansas	No Preemption	No	No	No	No
California	Preemption for one policy	No	No	No	Yes
Colorado	No Preemption	No	No	No	No
Connecticut	Preemption for one policy	No	No	Yes	No
Delaware	Preemption for two policies	Yes	No	No	Yes
District of Columbia	No Preemption	No	No	No	No
Florida	Preemption for one policy	No	No	Yes	No
Georgia	No Preemption	No	No	No	No
Guam	No Preemption	No	No	No	No
Hawaii	Preemption for one policy	No	Yes	No	No
Idaho	Preemption for one policy	No	Yes	No	No
Illinois	No Preemption	No	No	No	No
Indiana	Preemption for two policies	Yes	No	No	Yes
Iowa	Preemption for two policies	No	Yes	No	Yes
Kansas	No Preemption	No	No	No	No
Kentucky	Preemption for two policies	Yes	No	No	Yes
Louisiana	Preemption for two policies	Yes	No	No	Yes
Maine	No Preemption	No	No	No	No
Marshall Islands	No Preemption	No	No	No	No
Maryland	Preemption for one policy	No	Yes	No	No
Massachusetts	Preemption for one policy	No	Yes	No	No
Michigan	Preemption for four policies	Yes	Yes	Yes	Yes
Minnesota	No Preemption	No	No	No	No
Mississippi	Preemption for two policies	Yes	No	No	Yes
Missouri	No Preemption	No	No	No	No
Montana	Preemption for three policies	Yes	Yes	No	Yes
Nebraska	No Preemption	No	No	No	No
Nevada	Preemption for two policies	Yes	No	No	Yes
New Hampshire	Preemption for one policy	No	No	Yes	No
New Jersey	No Preemption	No	No	No	No
New Mexico	Preemption for two policies	Yes	No	No	Yes
New York	No Preemption	No	No	No	No
North Carolina	Preemption for three policies	Yes	No	Yes	Yes
North Dakota	No Preemption	No	No	No	No
Northern Mariana Islands	No Preemption	No	No	No	No
Ohio	No Preemption	No	No	No	No
Oklahoma	Preemption for three policies	Yes	No	Yes*	Yes
Oregon	Preemption for one policy	No	No	No	Yes
Palau	No Preemption	No	No	No	No
Pennsylvania	Preemption for three policies	No	Yes	Yes	Yes
Puerto Rico	No Preemption	No	No	No	No
Rhode Island	No Preemption	No	No	No	No
South Carolina	Preemption for two policies	Yes	No	No	Yes
South Dakota	Preemption for three policies	Yes	No	Yes	Yes
Tennessee	Preemption for three policies	Yes	No	Yes	Yes
Texas	Preemption for one policy	No	Yes	No	No
U.S. Virgin Islands	No Preemption	No	No	No	No
Utah	Preemption for three policies	Yes	No	Yes	Yes
Vermont	No Preemption	No	No	No	No
Virginia	Preemption for one policy	No	No	Yes	No
Washington	Preemption for four policies	Yes	Yes	Yes	Yes
West Virginia	Preemption for one policy	Yes	No	No	No
Wisconsin	Preemption for three policies	Yes	Yes	No	Yes
Wyoming	Preemption for one policy	No	No	No	Yes

Current Status of State Preemption Related to Smokefree Indoor Air

As of September 30, 2018, 12 states have laws or court decisions in effect that explicitly preempt local ordinances from restricting smoking in government worksites, private worksites, restaurants, or bars. Seven of these 12 states preempt local action in all four of these settings. Michigan preempts local smoking restrictions in restaurants and bars, but allows restrictions in worksites. New Hampshire also preempts local smoking restrictions in restaurants but has no provision in the other three settings. One state (North Carolina) preempts local smoking restrictions in private worksites, and allows local smokefree indoor air restrictions in government worksites, restaurants, and bars. Washington preempts local smoking restrictions in government worksites, restaurants, and bars but not in private worksites.

Twenty-seven states have passed laws that explicitly allow local communities to adopt smoking restrictions that are stricter or differ from the state standard. One state—Oklahoma—does not preempt local regulation for government worksites only.

Eleven states, the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands (excluding the court-decided preemption status in New Hampshire and Washington) do not have any explicit language in their statutes regarding the presence or absence of preemption of local smoking restrictions in government worksites, private worksites, restaurants, and bars.

Current Status of State Preemption Related to Other Tobacco Control Efforts

As of September 30, 2018, 22 states have laws preempting local ordinances related to youth access to tobacco — 20 states preempt local restrictions on selling tobacco products to young people, and 19 states preempt local restriction on distributing tobacco products to youth. Seventeen states have laws that preempt local ordinances related to restrictions on tobacco product vending machines.

Eighteen states have laws preempting localities from passing ordinances related to the advertisement of tobacco products. Within the four types of tobacco advertising laws (laws that restrict tobacco advertising in general, laws that restrict the display of tobacco products, laws that restrict the promotion of tobacco, and laws that restrict the distribution of tobacco product samples), three states have preemption laws for only one type. Five states have preemption statutes for two

* Oklahoma does not preempt local regulation for government worksites only.

OSHData presents comprehensive tobacco prevention and control data in an online, easy to use, interactive data application.

Download the entire dataset from OSHData.

types of advertising laws and three states have preemption for three types of advertising. Seven states preempt all types of local tobacco advertising restrictions.

As of September 30, 2018, 11 states have laws preempting localities from passing ordinances related to licensure of tobacco products—including both over-the-counter and vending machine sales of tobacco, whereas eight states preempt local restrictions on retail licenses for the over-the-counter sale of tobacco products only. It is up to local and state governments to decide whether it is appropriate to address this problem through governmental action.

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Preemption Glossary

General Terms

Preemption: State prevents local authorities from passing laws that differ from or are stricter than the state law.

Enabling: State specifically allows local authorities to pass laws that differ from and are stricter than state the law.

State: The 50 states and the District of Columbia.

Smokefree Indoor Air Terms

Government worksites: Preemption of local laws related to the restriction of smoking in places of work that are owned, leased, or operated by state or local governments.

Private worksites: Preemption of local laws related to the restriction of smoking in places of work other than those that are owned, leased, or operated by governments.

Restaurants: Preemption of local laws related to the restriction of smoking in establishments that serve food for consumption on the premises.

Bars: Preemption of local laws related to the restriction of smoking in establishments that primarily serve alcohol for consumption on the premises.

Youth Access Terms

Distribution: Preemption of local laws related to the distribution of tobacco products to minors.

Youth Tobacco Sales: Preemption of local laws related to the restriction of the retail sale of tobacco products to minors. Most states define a minor as a person under the age of 18. Four states—Alabama, Alaska, New Jersey and Utah define a minor as a person younger than the age of 19. In one state (Hawaii) it is defined as persons aged <21 years.

Vending machines: Preemption of local laws related to the sale of tobacco products through vending machines.

Advertising Terms

Advertising (generally): Preemption of local laws related to the broad advertising of tobacco products (i.e., promotion, sampling, or display).

Display: Preemption of local laws related to the retail advertising and display of tobacco products in stores.

Promotion: Preemption of local laws related to retail promotions, coupons, and discounts for the sale of tobacco products.

Sampling: Preemption of local laws related to the distribution of tobacco product samples to the public for free or at a small cost.

Licensure Terms

Over-the-counter: Whether there is any statutory state preemption of local regulations related to over-the-counter sales of tobacco. Over-the-counter means tobacco products are sold in face-to-face transactions direct to an individual consumer.

Vending Machines: Whether there is any statutory state preemption of local regulations related to vending machine sales of tobacco. Vending Machines mean coin or token operated machines that dispense tobacco products.

The STATE System contains data synthesized from state-level statutory laws. It does not contain state-level regulations; measures implemented by counties, cities, or other localities; opinions of Attorneys General; or relevant case law decisions for tobacco control topics other than preemption; all of which may vary significantly from the laws reported in the database, fact sheets, and publications.

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