



## Preemption by Any Other Name

*New policies preempting local or state regulation can have a profound effect on public health, and language indicating “preemptive intent” can appear in many different forms. This fact sheet is designed to help advocates spot preemptive intent so that they can address it as new policies are negotiated.*

Preemption occurs when a higher level of government restricts or even eliminates the authority of a lower level of government to regulate a certain issue. It is important for public health advocates to be able to recognize preemptive intent when new policies are proposed. Here are some of the more common words or phrases that could indicate preemptive intent:

**Consistent:** “[A]ny order or ordinance by any political subdivision *shall be consistent with and not more restrictive* than state law and regulations governing lending or deposit taking entities regulated by the division of finance or the division of credit unions.” Mo. Ann. Stat. § 362.109 (West 2009) (imposing limits on local authority to regulate certain banks that are subject to state law).

**Exceed:** “A State or a political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of . . . plants, biological control organisms, plant pests, noxious weeds, or plant products that are consistent with and *do not exceed* [federal] regulations or orders. . . .” Plant Protection Act § 436, 7 U.S.C. § 7756(b)(2)(A) (2007) (imposing limits on state and local authority to regulate plants and related organisms).

**Exclusive:** “The department has *exclusive* regulatory authority over all hazardous waste generation, transportation, storage, treatment and disposal and other management practices in the state[.]” ALA. CODE § 22-30-4 (1987).

*This fact sheet is one in a series from NPLAN on how the legal concept of preemption works and why it matters for public health. For other fact sheets in this series, see [www.nplan.org](http://www.nplan.org).*

**Occupy the field:** “[I]t is the intent of the Legislature to *occupy the whole field* of health and sanitation standards for retail food facilities, and the standards set forth in this part and regulations adopted pursuant to this part shall be exclusive of all local health and sanitation standards relating to retail food facilities.” CAL. HEALTH & SAFETY CODE § 113705 (West 2006).

**Preempt** (and variations thereof): “[T]his part *preempts* the laws of any State to the extent that such laws are inconsistent with this part . . .” Homeland Security Act of 2002 § 899H(b), 6 U.S.C. § 488g(b) (2008).

**Restrictive:** “Local laws and ordinances that are inconsistent with, *more restrictive than*, or exceed the requirements of state law shall not be enacted and are preempted and repealed. . . .” WASH. REV. CODE ANN. § 66.28.240 (West 1989) (relating to alcoholic beverages).

**Sole authority:** “The Louisiana Wildlife and Fisheries Commission shall have *sole authority* to control and regulate all aspects of hunting, fishing, and boating in all water conservation districts. . . .” LA. REV. STAT. ANN. § 38:2501 (1993).

**Statewide concern:** “The general assembly further declares that the licensing and regulation of massage parlors are matters of *statewide concern*. . . .” COLO. REV. STAT. § 12-48.5-102 (1977).

**Stringent:** “[N]o political subdivision may enact an ordinance . . . that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, . . . unless the ordinance or resolution is the same as or similar to, and *no more stringent than, a state statute*.” WIS. STAT. ANN. § 66.0409(2) (West 2003).

**Supersede:** “The provisions of this act shall *supersede* any other statute, municipal ordinance and rule or regulation adopted pursuant to law concerning smoking in an indoor public place or workplace. . . .” N.J. STAT. ANN. § 26:3D-63 (West 2006).

**Uniform:** “For the purposes of equitable and *uniform* regulation and implementation, the Legislature through this chapter is the exclusive regulator of all matters relating to the distribution, marketing, promotion, and sale of tobacco products.” S.D. CODIFIED LAWS § 34-46-6 (1994).

## Additional Resources:

The following companion resources are available at [www.nplan.org](http://www.nplan.org):

- *Fundamentals of Preemption*
- *The Consequences of Preemption for Public Health Advocacy*
- *Negotiating Preemption: Strategies and Questions to Consider*
- *Preemption: What It Is, How It Works, and Why It Matters for Public Health*



[phlpnet.org](http://phlpnet.org)

*The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) is a project of Public Health Law & Policy (PHLP). PHLP is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.*

*This fact sheet was developed in partnership with the Public Health Law Center at William Mitchell College of Law.*

*Support for this fact sheet was provided by a grant from the Robert Wood Johnson Foundation.*