



Why Preemption is Bad for Tobacco Control

Public health practitioners and tobacco control advocates generally agree that preemption is detrimental to tobacco control efforts. Preemption occurs when a “higher” level of government eliminates or limits the authority of a “lower” level of government to regulate a certain issue. When laws are preempted, they have no force or effect. Because local control is so integral to tobacco control, the tobacco industry and its allies have historically used, and continue to use, preemptive strategies to thwart smoke-free laws, youth access and retailer licensing restrictions, advertising and promotion regulations, and similar policies.



For decades, the strongest and most innovative tobacco control policies have emerged at the local level – often after long and hard-fought grassroots community efforts – before ultimately being adopted at the state or federal level. These grassroots campaigns increase local awareness of tobacco control issues, build community readiness and support, and foster public debate about the need for policy change and healthy social norms. A preemptive state or federal law can invalidate many local tobacco control policies that represent years of efforts at the local level. Moreover, once enacted, preemptive laws are traditionally difficult to repeal, and can affect not just the legal but also the advocacy landscape for years to come. Unfortunately, but not surprisingly, research has shown that preemption has resulted in health and social norm disparities between states where local authorities have the ability to adopt tobacco control policies and states where local authorities are preempted from enacting such policies.

The tobacco industry has been relentless in its pursuit of preemption to weaken, impede or defeat tobacco control efforts. Preemptive policies and legal challenges can often block state and local advances in tobacco control, and seemingly innocuous preemptive language inserted into proposed legislation can derail important tobacco control initiatives. For more information, see the Consortium’s [*Preemption: The Biggest Challenge to Tobacco Control*](#). This publication describes common ways preemption can affect tobacco control strategies, and provides examples of preemptive and non-preemptive legislative language, guidelines on preventing or addressing preemption in tobacco control legislation, select tobacco-related legal challenges to preemption, and a list of resources on preemption and tobacco control.

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