

The Evolving Face of Preemption: New Tactics to Limit Local Control

The tobacco industry's main legislative goal today remains the same as it has been for four decades: to enact preemptive laws in each state that eliminate the power of communities to adopt smokefree and other tobacco control laws that are stronger than state law.

The tobacco industry prefers to fight tobacco control initiatives at the state or federal level where their lobbyists, their front groups (such as the American Legislative Exchange Council), and campaign contributions are much more effective than they are in individual communities. At the local level, the tobacco industry is at a significant disadvantage and finds it nearly impossible to defeat local policy campaigns, so they try to prevent local ordinances via preemption at the state level.

By working with the hospitality, gaming, and electronic cigarette industries, the tobacco industry has tried to build up support for preemptive legislation in order to maintain their financial interests. Likewise, the American Legislative Exchange Council (ALEC) is a powerful corporate front group that works to undermine a wide range of public health, environmental, civil rights, labor, and consumer protections – including smokefree air and tobacco control. The last few years has seen an ALEC-supported surge in shutting down meaningful local policy change across the U.S. through preemption.

Preemption is a constant, evolving threat and advocates need to be aware of new tactics in order to prevent industry-sponsored language. Protecting local control is more important than ever now that numerous corporate interests have taken a page from the tobacco industry's playbook, and tactics will continue to evolve.

Exempt and Preempt Tactic

Starting in 2008, there has been a surge in "**exempt and preempt**" bills, which aim to create an exemption in a state smokefree law for a particular type of establishment, and then prohibit local governments from closing this loophole by making those establishments smokefree. Exempt and preempt bills are also being used to target local regulation of electronic smoking devices.

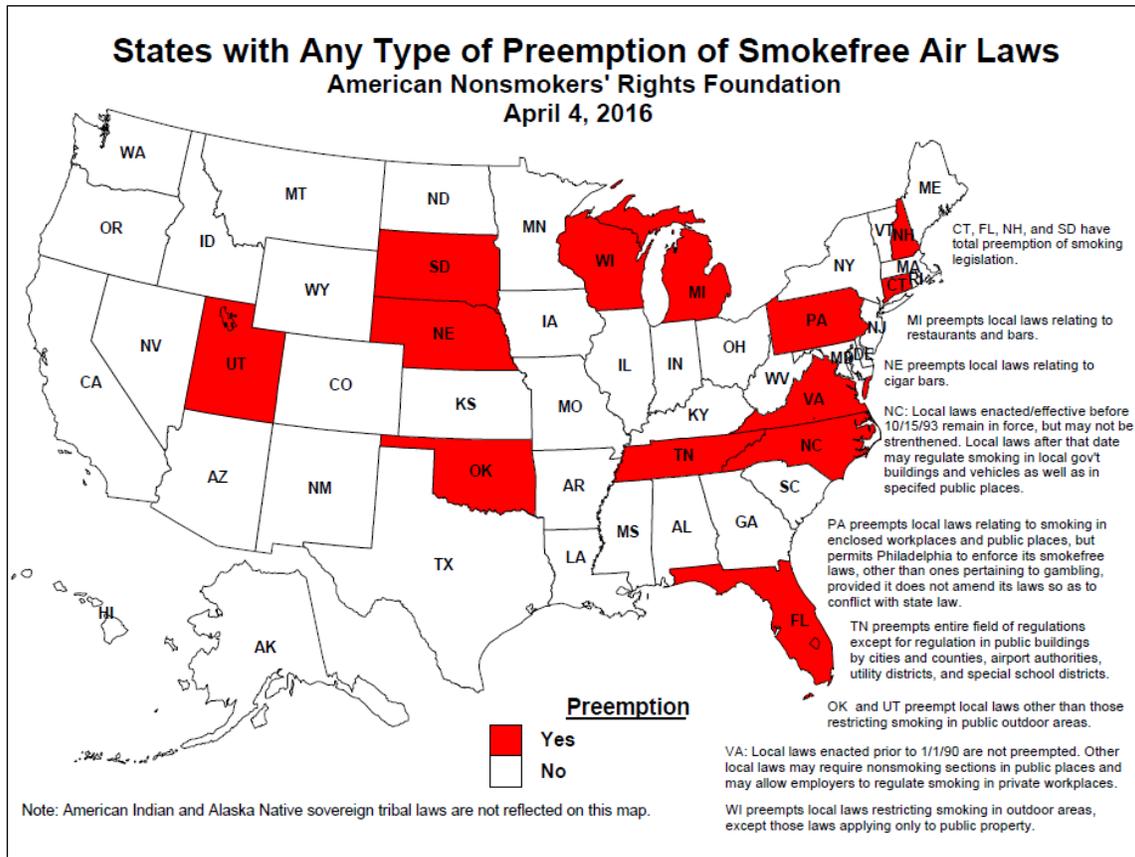
These bills are a significant concern because they chip away at the right to local control and stifle future progress by preventing local communities from expanding smokefree protections to the specified locations.

In 2009, two states adopted exempt and preempt bills, which highlighted the need to increase education and awareness among advocates and policymakers about this industry-friendly tactic. Nebraska exempted cigar bars from the state's newly adopted smokefree air law, and preempted communities from restricting smoking in these newly created loopholes. Wisconsin preempted communities from adopting smokefree laws within a reasonable distance from restaurants, bars and other retail establishments—which were exempt from the state's new smokefree air law.

In recent years, exempt and preempt bills have targeted a wide range of venues, including cigar bars, private clubs, veterans' clubs, bars, pool halls, gaming venues, as well as the broader categories of

preempting any venue exempted by a state smokefree law, or preempting Boards of Health from adopting smokefree regulations.

It is important to stay alert towards any efforts to restrict local control, with a particular eye towards exempt and preempt bills which have the potential for slipping under the radar, especially since the tactic may not seem so harmful to advocates and policymakers who are less familiar with the dangers of preemption.



Blanket Preemption

The latest industry trend to tie the hands of local government is being called **blanket preemption**. Blanket preemption aims to strip local control from communities on a broad spectrum of issues—typically for all local policies or for all public health issues.

These bills often target public health, environmental, labor, and social justice laws where progress is typically first made at the local level. Outrageous new blanket preemption bills are being pursued by corporate interests, including the tobacco industry and ALEC, and threaten the very foundation of local control and community action.

In 2016, a blanket preemption bill in Oklahoma seeks to preempt all types of local laws, including smokefree air, by prohibiting municipalities and counties from enacting rules that do not conform to state statutes. Oklahoma's law is very similar to the first blanket preemption bill introduced in **Texas** in 2015, which would have prohibited the adoption of local laws on any issue. That bill did not pass, but the Texas legislature did pass a law prohibiting local regulation of fracking, which was the primary

target of the blanket preemption bill. The blanket preemption strategy evidently is to start with a bill that would preempt everything, and then to reach a “compromise” to preempt only some issues – like smokefree laws.

In West Virginia, multiple blanket preemption bills would undermine local public health regulations on all issues. All new or existing public health regulations passed by local Boards of Health would have to get approval by County Commissions or be voided. In other words, it creates an added level of hoops and hurdles for proponents of smokefree laws to navigate and an added tool enabling Big Tobacco to undermine public health laws.

It's Essential to Be Prepared

Bills to eliminate local control are expected in many states during current and upcoming legislative sessions. Preemption bills usually come at inconvenient times when their sponsors think they can sneak bills through, often at the last minute.

It's essential to prepare in advance to be able to communicate quickly and work collaboratively, so that statewide public health and local control partners can immediately take action to stop any attacks on local control. For advice on forming a Preemption Strike Force to quickly and effectively respond to preemption threats, see www.protectlocalcontrol.org/docs/preemptionstrikeforce.pdf, and learn about the history and impact of preemption at www.protectlocalcontrol.org/docs/USpreemptionFactsheet.pdf

Learn more about protecting local control in your area by visiting www.protectlocalcontrol.org and www.GrassrootsChange.org

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