

# Preemption

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Preemption occurs when a state prevents local jurisdictions from enacting laws that differ from or are more stringent than state law. State preemptive laws are associated with “fewer local ordinances restricting smoking, a reduced level of worker protection from secondhand smoke, and reduced support for smoke-free policies among current smokers.”<sup>1</sup>

## Why Tobacco Companies Want Preemption

- Tobacco companies are motivated to preempt local jurisdictions from enacting stronger tobacco control laws than states because they know that:<sup>2</sup>
  - It is easier to pass tobacco control legislation at a local level, where policymakers are more responsive to constituents and less responsive to lobbyists and donors;
  - It is easier to enforce tobacco control legislation at a local level; and
  - It is harder for Big Tobacco to lobby against tobacco control legislation at a local level, especially when many pieces of local legislation are being considered throughout a state.

## Pennsylvania

- In Pennsylvania, a number of tobacco control laws contain preemption, including clean indoor air and youth access laws.<sup>3</sup>
- The Pennsylvania Clean Indoor Air Act, which went into effect in 2008, includes a preemption clause that prohibits any local ordinances in the Commonwealth from passing a clean indoor air law that is more restrictive than the Pennsylvania Clean Indoor Air Act. However, Philadelphia’s preexisting clean indoor air law is exempt from the preemption clause.
- Pennsylvania localities are also preempted from enacting local youth access to tobacco laws stronger than Act 112, Pennsylvania’s 2002 youth access law.

## Other States

- Thirteen states currently have preemption of smoke-free air laws. In addition to Pennsylvania, these include: Connecticut, Florida, Michigan, Nebraska, New Hampshire, North Carolina, Oklahoma, South Dakota, Tennessee, Utah, Wisconsin, and Virginia.<sup>4</sup>

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<sup>1</sup> Mowrey, P., et al. (2012). The Impact of State Preemption of Local Smoking Restrictions on Public Health Protections and Changes in Social Norms. *Journal of Environmental and Public Health*. Volume 2012. <http://www.hindawi.com/journals/jep/2012/632629/abs/>.

<sup>2</sup> Americans for Nonsmokers’ Rights. (n.d.). *Get the Facts: Preemption*. <http://www.no-smoke.org/getthefacts.php?id=17>.

<sup>3</sup> American Lung Association. (2014). *State Legislated Actions on Tobacco Issues*. <http://www.lungusa2.org/slati/appendix.php>.

<sup>4</sup> Americans for Nonsmokers’ Rights. (2015). *States with Any Type of Preemption of Smokefree Air Laws*. <http://www.no-smoke.org/pdf/preemptionmap.pdf>.