

Preemption Fast Facts

To provide you with the best science and to reduce review time, please find the following science-approved facts for use in your campaigns and materials. After each fact, you will find fast facts based on the science, which can be cut and pasted word-for-word without need for additional science review. Please note that any change in wording will result in the need to run your documents through science review before release.

About Preemption

Preemption occurs when a higher level of government (such as a state legislature) restricts or withdraws the authority of a lower level of government (such as a city council) to act on a particular issue. It is becoming an increasingly common state legislative tactic and extending to a greater number of policy issue areas. In addition to blocking local lawmaking, another emerging preemption threat has seen states looking to punish cities and local lawmakers for passing local laws that they are trying to preempt, by tactics such as fining local lawmakers or withholding state funding for municipalities. This can perpetuate health disparities and inequity and hurt local democracy. To advance health equity, we must ensure that public policies at both the state and local levels prioritize areas of greatest need first. Local lawmakers should have the ability to pass laws that address the situation in their communities in order to do so.

Preemption Basics

FACT 1

The National Academies of Medicine recommends that the federal government and states avoid preempting local public health policies through ‘ceiling preemption’ and instead should set minimum requirements that would allow states and localities to further protect the public’s health.

Fast Facts:

- ▶ According to the National Academies of Medicine, the federal government should encourage policies that allow states and cities to protect their residents' health.
- ▶ States should support cities and counties in their efforts to create public health laws specific to what the people in their communities need and want, the National Academies of Medicine recommends.
- ▶ Rather than limiting the laws local governments can enact, National Academies of Medicine recommends that federal and state governments support laws that set minimum requirements for the public's health.
- ▶ Experts with the National Academies of Medicine recommend states set minimum standards for public health and allow localities to go further to protect the health of their communities.

Source:

National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division. For the Public’s Health: Revitalizing Law and Policy to Meet New Challenges. June 2011. Available at: <http://www.nationalacademies.org/hmd/Reports/2011/For-the-Publics-Health-Revitalizing-Law-and-Policy-to-Meet-New-Challenges.aspx>.

FACT 2

Preemption threats exist across numerous policy areas, including firearm control, minimum wage, paid sick leave, housing, nutrition, and tobacco control.

Fast Facts:

- ▶ An increasing number of states are passing laws that limit the ability of cities and counties to create local laws related to issues as diverse as tobacco control, nutrition standards, minimum wage and gun control.
- ▶ It’s important to know that the threat of preemption exists across many issues – from nutrition to tobacco to housing.

Sources:

Grassroot Change. Preemption Watch. Available at: <https://grassrootschange.net/preemption-watch/>.

Partnership for Working Families. Mapping State Interference. Available at: <https://www.forworkingfamilies.org/preemptionmap>.

FACT 3

As of September 2018, 12 states have passed tobacco-related preemption preventing local authorities from addressing smoke-free indoor air policies, 22 states have enacted youth access restricting tobacco, 18 states have laws preempting localities from passing ordinances related to tobacco product advertisements, and 11 states preempt local authorities from addressing tobacco licensure..

Fast Facts:

- ▶ Several states have prevented city governments from creating the laws locals want, such as smoke-free indoor air regulations.
- ▶ The Centers for Disease Control and Prevention reports that multiple states are trying to control local governments' decision making on everything from tobacco retailer licensing to ads for cigarettes, e-cigarettes and other tobacco products.
- ▶ A dozen states have passed laws preventing city lawmakers from creating smoke-free indoor air policies.
- ▶ More than 20 states prevent local municipalities from creating laws to restrict youth from buying tobacco products.
- ▶ Nearly 20 states ban local elected officials from passing ordinances that dictate ads related to tobacco.
- ▶ According to the Centers for Disease Control and Prevention, nearly a dozen states block local governments from creating tobacco licensing laws.
- ▶ While smoking rates have declined, the tobacco industry has pushed for new laws that prevent cities from passing effective policies to bring rates down even further.

Source:

Centers for Disease Control and Prevention. State Tobacco Activities Tracking and Evaluation (STATE) System preemption fact sheet: state preemption of any local tobacco control ordinances – advertising, licensure, smokefree indoor air, or youth access. November 2018. Available at: <https://chronicdata.cdc.gov/download/uu8y-j6ga/application/pdf>.

FACT 4

Several industries have been involved in food and nutrition preemption attempts, including restaurants, retail merchants, the beverage industry, and industrial agriculture, which can view local public health policies as a threat to their business model. Between 2008 and March 2018, 12 states enacted 13 preemptive food and nutrition policy laws, with the majority enacted in 2011 and 2013. The laws preempt local regulation of nutrition labeling or information (seven states); consumer incentive items (four states); 'food-based health disparities' (three states); the sale, distribution, or serving of food and beverages (two states); portion size (two states); food and beverage taxes and fees (two states); food safety (one state); menus (one state); 'nutritional content' (one state); 'nutritional criteria' (one state); and 'marketing' (one state).

Fast Facts:

- ▶ Research shows that, corporate lobbyists push for state control of local issues in the interest of increasing the business' profits and power rather than protecting the public's health.
- ▶ A dozen states have laws on the books that limit food and beverage policies at the local level.
- ▶ Seven states control how their cities and counties display nutrition labels and information, three states restrict 'food-based health disparities' and two states put regulations on portion sizes.
- ▶ The playbook of Big Tobacco is now being used by other industries in many states on a variety of health issues, including nutrition policies.

Sources:

Pomeranz JL, Pertschuk M. Key drivers of state preemption of food, nutrition, and agriculture policy: a thematic content analysis of public testimony. *Am J Health Promot.* 2019;[Epub ahead of print]. doi: 10.1177/0890117118823163.

Pomeranz JL, Zellers L, Bare M, Pertschuk M. State preemption of food and nutrition policies and litigation: undermining government's role in public health. *Am J Prev Med.* 2019;56:47-57. doi: 10.1016/j.amepre.2018.07.027.

FACT 5

A qualitative analysis of the comments and testimonies from the legislative hearing on Kansas House Bill 2595, the most comprehensive food policy preemptive law enacted to date, revealed that several elements, including confusion about the bill language and coverage, the combination of both food and agriculture policy issues in one bill, and backing by multinational corporations, helped propel preemption forward to passage.

Fast Facts:

- ▶ Research shows that state lawmakers often support legislation that restricts local lawmaking abilities due to confusing bill language and not necessarily because they oppose the legislation itself.
- ▶ According to a recent study, corporate lobbyists often work to restrict local lawmakers' abilities to pass public health policies by working on behalf of multinational food, beverage and agriculture Goliaths.
- ▶ Creating confusion on bills is one tactic to pass preemption.

Source:

Pomeranz JL, Pertschuk M. Key drivers of state preemption of food, nutrition, and agriculture policy: a thematic content analysis of public testimony. *Am J Health Promot.* 2019;[Epub ahead of print]. doi: 10.1177/0890117118823163.

FACT 6

An online survey of mayors and health officials from 159 large cities in the U.S. found that the majority see preemption as an impediment to local policymaking — fewer than one-third of mayors and health officials implemented a local law when faced with preemption. Half of health officials and 40% of mayors sought legal advice when faced with preemption.

Fast Facts:

- ▶ When questioned in an online survey, mayors from more than 150 large U.S. cities say they see state interference as a barrier to local lawmaking.
- ▶ Health officials and mayors often feel exacerbated by state and federal interference, so they seek out legal help to find ways to get around it so they can best serve their local communities.
- ▶ State interference can prevent local lawmakers, like mayors, from enacting laws that support a community's needs, wants, goals and culture.
- ▶ More than 150 cities have faced concerns with state interference.
- ▶ More than 150 health officials and mayors have faced concerns with state interference.
- ▶ Mayors and health officials have found their hands are tied in serving their communities by state and federal interference.

Source:

Rutkow L, McGinty MD, Wetter S, Vernick JS. Local public health policymakers' views on state preemption; results of a national survey, 2018. *Am J Public Health.* 2019; e1-e4. doi: 10.2105/AJPH.2019.305140.

FACT 7

According to an online survey of mayors and health officials from the largest cities in the U.S., nearly all mayors and health officials found preemption to be an obstacle to local policymaking. For mayors, the issues most affected by preemption were safe housing (39%), transportation (36%), and firearms (34%). For health officials, the issues most affected by preemption were tobacco (45%), environmental hazards (41%), and minimum wage (36%).

Fast Facts:

- ▶ When questioned in an online survey, mayors from more than 150 large U.S. cities say they see state interference as a barrier to local lawmaking.
- ▶ When questioned in an online survey, mayors from more than 150 large U.S. cities reported states most often interfere with city policymaking in the areas of safe housing, transportation and guns.
- ▶ Local lawmakers are most often concerned about state interference in the areas of safe housing, transportation and guns.
- ▶ In an online study, mayors reported on local issues most affected by state interference; 39% said it was safe housing, 36% said it was transportation and 34% said it was firearms.
- ▶ Local health officials are most often concerned about state interference in the areas of tobacco, environmental hazards and minimum wage.
- ▶ In an online survey, local health officials reported on local issues most affected by state interference; 45% said it was tobacco, 41% said it was environmental hazards and 36% said it was minimum wage.

Source:

Rutkow L, McGinty MD, Wetter S, Vernick JS. Local public health policymakers' views on state preemption; results of a national survey, 2018. *Am J Public Health.* 2019; e1-e4. doi: 10.2105/AJPH.2019.305140.

Preemption and Health

FACT 8

A 2012 study found that state preemptive laws of local smoking restrictions were 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, suggesting that state preemptive laws have several effects that could impede broader tobacco control efforts.

Fast Facts:

- ▶ In areas where states restrict municipalities from enacting smoking laws, there are fewer local ordinances restricting smoking, less protections for workers exposed to secondhand smoke and reduced support for smoke-free policies.
- ▶ It is more difficult to pass laws to protect workers and residents from second-hand smoke in areas where states restrict municipalities from enacting smoking laws.
- ▶ Workers and residents are at an increased risk for disease when states prevent cities from passing smoke-free laws.
- ▶ One study found that state preemptive laws were associated with fewer local ordinances restricting smoking.

Source:

Mowery PD, Babb S, Hobart R, Tworek C, MacNeil A. The impact of state preemption of local smoking restrictions on public health protections and changes in social norms. *J Environ Public Health.* 2012; 2012:632629. doi: 10.1155/2012/632629.

FACT 9

A 2017 editorial published in the American Journal of Public Health suggested preemption may, in part, explain diverging trends in mortality between states. For example, life expectancy at birth in New York and Mississippi differed by an average of 5.5 years in 2014, up from a 1.6-year difference in 1980. Mississippi has preempted health-promoting local laws related to paid sick days, a higher minimum wage, stricter firearm regulations, and requiring that calorie counts be posted, while New York has passed no preemption laws in these areas.

Fast Facts:

- ▶ State restrictions on local lawmaking could be responsible for the varying mortality rate between states. In some states where state laws restrict local health policymaking, people die younger than in states without such restrictions.
- ▶ One study suggests that people die younger in states that block local health policies.
- ▶ People in New York state live, on average, up to five-and-a-half years longer than people in Mississippi, where state lawmakers have put restrictions on what types of public health policies cities can implement.
- ▶ People in Mississippi die, on average, up to five-and-a-half years sooner than people in New York, where state lawmakers don't put restrictions on what types of public health policies cities can implement.
- ▶ States that restrict local minimum wage regulations, gun laws, nutrition labeling and paid sick time off are linked to lower life expectancy.
- ▶ States that do not have local restrictions related to minimum wage regulations, gun laws, nutrition labeling and paid sick time off are linked to higher life expectancy.

Source:

Montez JK. Deregulation, devolution, and state preemption laws' impact on U.S. mortality trends. *Am J Public Health.* 2017; 107:1749-1750. doi: 10.2105/AJPH.2017.304080.

FACT 10

When states preempt local governments from raising minimum wages, it may have important implications on social determinants of health. For example, several studies have linked increases in the minimum wage to decreases in smoking prevalence among low-wage/low-skilled workers, especially females.

Fast Facts:

- ▶ States that prohibit cities and counties from creating health policies are more likely to have a population with negative health outcomes.
- ▶ The health of workers is at stake when states prevent cities from creating health policies.
- ▶ Women in cities with higher minimum wages are less likely to smoke than women who live in areas where states have set limits on a city's ability to raise the minimum wage.
- ▶ Cities that raise the minimum wage also may see a decline in smoking rates. OR: Cities that have the ability to raise the minimum wage also may see a decline in smoking rates.
- ▶ People in cities with higher minimum wage rates are less likely to smoke than those who live in areas where states have set limits on a city's ability to raise the minimum wage.

Source:

Paul Leigh J, Leigh WA, Du J. Minimum wages and public health: a literature review. *Prev Med.* 2019; 118:122-134. doi: 10.1016/j.ypmed.2018.10.005.

Preemption and Health Equity

FACT 11

A report from the Partnership for Working Families examined preemption of minimum wage, paid sick leave and affordable housing policies in four states and found that this preemptive legislation is particularly harmful to women and people of color.

Fast Facts:

- ▶ States that restrict local lawmaking are especially harmful to the success of women and people of color.
- ▶ Women and people of color are less likely to reach their full potential in states that restrict laws meant to increase the minimum wage and implement paid sick leave.
- ▶ State interference in local public health is particularly harmful to women and people of color.

Source:

Partnership for Working Families. For All of Us, By All of Us: Challenging State Interference to Advance Gender and Racial Justice. May 2019. Available at: <http://www.forworkingfamilies.org/resources/publications/challenging-state-interference-advance-gender-and-racial>.