



How State Laws Preempting Local Authority to Reduce Youth Access to Tobacco Products Adversely Impact Health

Background

Tobacco use kills 480,000 people in the United States each year, making it the leading cause of preventable death.¹ One of the most effective ways to reduce the negative impact of tobacco in the United States is to adopt laws that limit youth access to tobacco products, such as laws prohibiting tobacco sales to minors and restricting youth exposure to tobacco products and advertising.^{1,2,3} Laws that successfully restrict youth access to tobacco products reduce tobacco use among youth.^{1,4} Unfortunately, some local jurisdictions lack the legal authority to enact effective “youth access” laws because of preemption. What is preemption?

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Preemption is the invalidation of one jurisdiction’s law by the law of a higher jurisdiction.⁵ For example, a federal law can preempt (or invalidate) a state law, and a state law can preempt (or invalidate) a local law. In the context of tobacco control, state-level preemption removes or limits the legal authority of local levels of government, such as cities, counties, and boards of health, to enact local policies that reduce the burden of tobacco.

In 2012, 24 states preempted local laws limiting youth access to tobacco products. Twelve of these states had full preemption, which means local communities in these states are prevented from passing any type of local ordinance that would limit any kind of sales to youth. For example, local governments in these states are prohibited from passing laws that

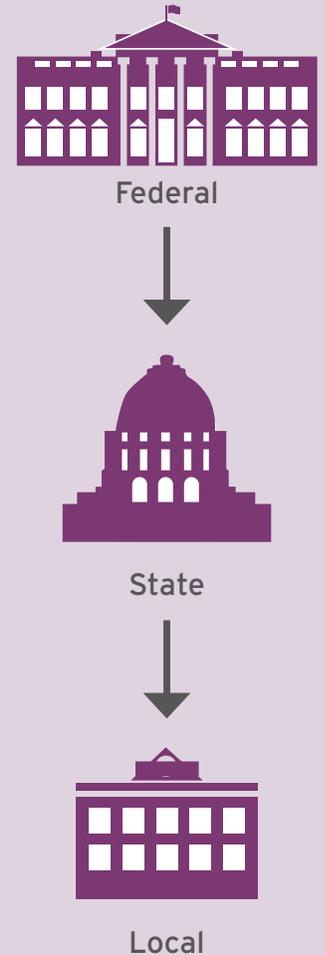
- Require tobacco retailers to obtain a license;
- Prohibit tobacco product sales from vending machines;
- Prohibit sales of different kinds of tobacco products, like youth-appealing smokeless tobacco products or electronic smoking devices; or
- Prohibit youth use or possession of tobacco products.

The number of states that preempt local youth access laws has remained essentially unchanged over the last decade. Despite strong opposition to preemption from every major health and tobacco control organization,^{6,7} there remains the threat that more states will preempt local laws that limit youth access.

Why is preemption bad?

There are many reasons to oppose preemption. More than ten studies have corroborated the effectiveness of combining community mobilization with local laws that limit youth access to tobacco products; in fact, the coupling of these strategies is a CDC Best Practice for reducing sales to youth and tobacco use among youth.^{1,2,3} By preempting local youth access laws, state governments are depriving local governments of a crucial tool for reducing the burden of tobacco in their communities.

Preemption also limits local innovation and disincentivizes local organizing. It undermines the ability of communities to respond to local emerging needs. It compromises the ability of localities to be laboratories of democracy.⁵ *What is most important, however, is that preemption is bad for public health.*



How does preemption negatively impact health?

State preemption of local government authority to reduce youth access to tobacco products has a profoundly adverse impact on health. **New research has found that preemption increases the number of youth who smoke as well as the intensity of their addiction.** For example, preemption increases the likelihood that youth smokers smoke every day by 18%; it also increases the likelihood by 19% that youth smokers smoked more than 11 cigarettes per day in the last month.

As a result of full state preemption of local youth access to tobacco laws, there are 36,485 more youth who smoke daily and 15,765 more youth who have smoked 11 or more cigarettes a day in the past month.

It's crucial that states eliminate preemption of laws that limit youth access to tobacco products and protect against any future efforts to establish youth access preemption within their states.

Resources

ChangeLab Solutions has the following resources available to help local communities interested in learning more about preemption.

- Preemption: What It Is, How It Works, & Why It Matters for Public Health www.changelabsolutions.org/publications/preemption-memo
- How State Preemption of Local Smokefree Air Laws Adversely Impacts Quitting www.changelabsolutions.org/publications/preemption_smokefree_air
- Understanding Preemption (fact sheet series): Fundamentals of Preemption, The Consequences of Preemption for Public Health Advocacy, Negotiating Preemption, and Preemption by Any Other Name www.changelabsolutions.org/publications/understanding-preemption

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