

## History of Preemption of Smokefree Air by State

*Note: Dates in parentheses indicate when preemptive state law was enacted.*

### States with any type of Preemption of Smokefree Air Laws

- 1. Connecticut:** Connecticut has preempted local control since 1991. State law supersedes any existing local ordinances and prohibits any new local ordinances relative to smoking in private workplaces (1991), government buildings, and restaurants (1993). The 2003 Clean Indoor Air Act made restaurants and bars 100% smokefree, but retained the 1993 preemptive provision. "The provisions of this section shall supersede and preempt the provisions of any municipal law or ordinance relative to smoking effective prior to, on, or after October 1, 1993." CONN. GEN. STAT. § 19a-342 (2003).
- 2. Florida:** Florida has preempted local control since 1985. State law supersedes any municipal or county ordinances on the subject of the regulation of smoking in public places, government buildings, private workplaces (1985) and restaurants (2001). The 2003 Clean Indoor Air Act made restaurants 100% smokefree, but retained the existing preemptive provisions. "This legislation expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject." FLA. STAT. ch. 386.201 et seq. (2003).
- 3. Michigan:** Michigan preempts the right of local governments to enact smokefree regulations restricting smoking in restaurants and bars. A vague preemptive provision was enacted in 1983. "A county, city, village, or township shall not regulate those aspects of food service establishments or vending machines which are subject to regulation under sections 333.12901 et seq. of the Michigan Compiled Laws except to the extent necessary to carry out the responsibility of a local health department." MICH. COMP. LAWS § 333.12915 (1983).

In 2001, in response to a local smokefree law enacted in Marquette, a Michigan appeals court found that Michigan law preempts local ordinances that are more restrictive than state law on smoking in restaurants and bars. Michigan Restaurant Association et al. v. City of Marquette (2001).

In 2009, the Michigan Supreme Court ruled on a challenge to non-hospitality workplace ordinances in Emmet, Antrim, and Otsego Counties, upholding these local laws and clarifying the right of Michigan local governments to adopt smokefree air laws for non-hospitality workplaces. The ruling, however, did not address the existing preemption that still prohibits local laws from restricting smoking in restaurants and bars. In December 2009, the Michigan Legislature enacted a smokefree law for all workplaces, restaurants and bars minus casinos, but it unfortunately did not address the preemption provision.

- 4. Nebraska:** Nebraska law does not preempt the passage of local smokefree laws, except for such laws that regulate smoking in cigar bars. In 2009, the Legislature enacted LB355, which exempts cigar bars from the Nebraska Clean Indoor Air Act and specifically states that local smokefree ordinances shall not apply to cigar bars. NEB. REV. STAT. §§ 53-131 (2009).
- 5. New Hampshire:** New Hampshire preempts communities from enacting ordinances that regulate smoking in workplaces and public places if they are premised on protecting public health. Colebrook, NH enacted a smokefree law in 2003 and business owners challenged the law on the basis of preemption. In 2003, the New Hampshire Supreme Court ruled that the state Clean Indoor Air Act

"constitutes a comprehensive and detailed statutory scheme" with "no statutory provision permitting additional municipal regulation of smoking in restaurants" and that, therefore, state law preempts local smokefree ordinances more stringent than state law. *J.T.R. Colebrook, Inc. v. Town of Colebrook* <http://www.courts.state.nh.us/supreme/opinions/2003/coleb111.htm> (2003). New Hampshire enacted the Indoor Smoking Act of 2007 for 100% smokefree restaurants and bars, effective September 17, 2007, which did not restore local control. NH RSA 155: 64-77. (2007).

- 6. North Carolina:** North Carolina *partially preempts* local smokefree air laws (2009). Starting in 1993, the state preempted all local control of local smokefree air laws: "This law does not supersede any local law, rule, or ordinance enacted prior to October 1, 1993. After this date, local laws, rules, or ordinances shall not be amended or enacted to contain restrictions regulating smoking, which exceed those in this law." N.C. GEN. STAT. § 143 601 (1993). Starting in 2005, the legislature enacted several laws to chip away at preemption by adding to the list of locations that are exempt from preemption, including local health and social services departments (2005).

In 2009, the Legislature enacted HB2, which brings smokefree air to all restaurants and bars, and also partially restores local control by permitting local governments to regulate smoking in local government buildings and vehicles and in specified public places. Preemption remains for a number of locations including places that are specifically exempted by HB2.

- 7. Oklahoma:** Oklahoma has preempted local control since 1987. Local governing bodies are prohibited from enacting clean indoor air ordinances that are stronger than state law (1987). The 2003 Smoking in Public Places and Indoor Workplaces Act restricted smoking in some indoor workplaces and required restaurants to be either smokefree or have separately ventilated smoking rooms by March 1, 2006, and reconfirmed preemption of local smokefree air laws. "The State Legislature by adopting this act intends to preempt any other regulation promulgated to control smoking in public places and to standardize laws that governmental subdivisions may adopt to control smoking. Cities and towns may enact and enforce laws prohibiting and penalizing conduct under provisions of this act, but the provisions of such laws shall be the same as provided in this act and the enforcement provisions under such laws shall not be more stringent than those of this act." OK. STAT. ANN. tit. 21, § 1-1527 (2003).
- 8. Pennsylvania:** Pennsylvania preempts local smokefree air laws as of September 9, 2008, except for the city of Philadelphia. "This act shall supersede any ordinance, resolution or regulation adopted by a political subdivision concerning smoking in a public place. No political subdivision shall have the authority to adopt or enforce any ordinance, regulation or resolution which is in conflict with this act. Exception: shall not apply to a city of the first class. A city of the first class may not change or amend its ordinance to conflict with any provision of this act." PA. Act 27 of 2008 (2008).

**History:** The 1988 Pennsylvania Clean Indoor Air Act included a clause preempting all municipalities, except for Philadelphia, from enacting smokefree air laws. "This act shall preempt and supersede any local ordinance or rule concerning this subject matter, except that this preemption shall not apply to local rules or regulations that were adopted by cities of the second class and were in effect prior to 9/1/88." 35 PA. CONS. STAT. ANN. §§ 1230.1 & 1235.1 (1988).

In 1999, the preemption clause in the 1988 Act was repealed by the Legislature. Then in 2000, the Legislature enacted a measure purporting to repeal the 1999 repealer. For complicated reasons, it was never clear whether the 1999 repealer was valid. Thus, the state was left with a legal conundrum: did the Clean Indoor Air Act of 1988 still prevent municipalities from enacting their own smokefree laws?

The uncertainty remained for several years, as two trial courts came to opposing conclusions about whether state law preempts local legislation. Then, in an appeal of a trial court ruling supporting local control, an appellate court ruled that state law does in fact preempt local legislation. Thus, it stood

that Pennsylvania municipalities--except for Philadelphia--do not have the right to enact local laws.

In November 2006, Allegheny County enacted a strong smokefree law, which was challenged in court by two bar owners on the ground that state law preempted the County from acting. This argument was rejected in *Mitchell's Bar & Rest. Inc. v. Allegheny County*, No. GD 06-29159 (PA Court of Common Pleas, Allegheny County, Dec. 22, 2006). The court ruled that, given the uncertainty of the status of the original preemption clause, it must presume that the County law is valid. The court did, however, enjoin enforcement of the law with respect to bars until April 30, 2007 to give the Legislature an opportunity to assert its right to preempt the field of smoking regulation.

In January 2007, Erie County enacted a strong smokefree law, which was also challenged in court on the ground of preemption. In *Bowen et. al. v. Erie County, Pennsylvania et. al.*, No. 10504-2007 (PA Court of Common Pleas, Allegheny County, Mar. 2, 2007), the court also ruled that the 1999 repealer never went into effect. Thus, the court determined that municipalities have no right to enact their own laws on the subject of smokefree air and permanently enjoined enforcement of the County law. This ruling is now being appealed.

In May 2007, on appeal of the Allegheny County ruling, the state Commonwealth Court reversed the trial court's refusal to permanently enjoin the law and found that Pennsylvania communities do not have the right to adopt smokefree laws because the purported repeal of the preemption clause in the 1988 Clean Indoor Air Act was, in fact, never effective. (Commonwealth Court of Pennsylvania, No. 192 C.D. 2007, May 22, 2007.)

In June 2008, the Legislature enacted SB246, which explicitly states that Pennsylvania municipalities do not have the right to local control and are prohibited from enacting smokefree laws. The law concedes that Philadelphia may keep their existing smokefree law, but cannot strengthen it.

9. **South Dakota:** South Dakota has preempted local control since 1995. State law preempts all matters relating to the use of tobacco products, except that a person or public entity may voluntarily regulate its use on their own property. "The legislature is the exclusive regulator of all matters relating to the use of tobacco products." S.D. CODIFIED LAWS §10-50-64 (1995) and § 22-36-2 (2002).
10. **Tennessee:** Tennessee has preempted local control of all privately owned buildings since 1994, but smokefree air laws in public buildings may be enacted by cities and counties, airport authorities, utility districts, and special school districts. "The general assembly intends by this part and other provisions of Tennessee Code Annotated to occupy and preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation of tobacco products enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state or any agency thereof is void; provided, that cities, counties and counties having a metropolitan form of government may regulate the use of tobacco products in buildings owned or leased by such political subdivisions; and provided further, that airport authorities created pursuant to the provisions of title 42; utility districts created pursuant to the provisions of title 7; and special school districts may regulate the use of tobacco products in buildings owned or leased by such entities. Notwithstanding any other provision of the law to the contrary, individual owners or operators of retail establishments located within an enclosed shopping mall shall retain the right to determine the policy on the use of tobacco products within such person's establishment." TN CODE ANN. § 39-17-1551 (1994).

In 2006, the legislature enacted a law to make all state government buildings smokefree, which also specified that local governments have the right to make their government buildings smokefree. "Cities, counties, and counties having a metropolitan form of government are specifically allowed to regulate the use of tobacco products in buildings owned or leased by such political subdivisions." TENN. CODE ANN. § 4-4-121 (2006). The 2007 Non-Smoker Protection Act did not restore local control (2007).

- 11. Utah:** Utah has preempted local control since 1995, except for local laws restricting smoking in public outdoor areas. State law preempts any local smokefree ordinances that are not identical to state law. The 2006 Utah Indoor Clean Air Act, which made all workplaces, restaurants, and bars (as of 2009) smokefree, left the preemptive provision intact. "This law supersedes any ordinance enacted by a governing body of a political subdivision that restricts smoking and that is not essentially identical to the provisions of this chapter." UTAH CODE ANN. § 26-38-6 (2006).
- 12. Virginia:** Virginia has preempted local control since 1990. VA. CODE ANN. §§ 15.2-2803 (1990). Local laws enacted prior to 1/1/90 are not preempted. Local laws enacted after 1/1/90 may require nonsmoking sections in public places, may not address private workplaces other than allowing employers to regulate smoking in private workplaces, and may not contain provisions that exceed state law (2009).

In 2009, the legislature enacted a smokefree restaurant and bar law which further enumerated the extent of the preemptive provisions of the state law. "No ordinances enacted by a locality prior to January 1, 1990, shall be deemed invalid or unenforceable because of lack of consistency with the provisions of this chapter. Except as provided in [§ 15.2-2829](#), no ordinances adopted after January 1, 1990, shall contain provisions or standards that exceed those established in this chapter. However, any ordinance may provide that employers may regulate smoking in the private work place as they deem appropriate under the following circumstances: (i) if the designation of smoking and no-smoking areas is the subject of a written agreement between the employer and his employees, the provisions of the written agreement shall control such designation and (ii) a total ban on smoking in any work place shall only be enforced by the employer upon an affirmative vote of a majority of the affected employees voting, unless such ban is the subject of a contract of employment between the employer and the employees as a prior condition of employment. No ordinance adopted pursuant to this subsection shall affect no-smoking policies established by employers prior to the adoption of such ordinance." VA. CODE ANN. [§ 15.2-2828](#). (2009) For additional preemption provisions, see also: VA. CODE ANN. [§ 15.2-2829](#) - [§ 15.2-2831](#) (2009).

- 13. Wisconsin:** Wisconsin law does not preempt the passage of local smokefree indoor air laws and includes an explicit anti-preemption clause for indoor air. However, the 2009 Smokefree Wisconsin Act preempts local laws restricting smoking in outdoor areas other than those laws applying only to public property. "This section does not limit the authority of any county, city, village or town to enact ordinances or of any school district to adopt policies that, complying with the purpose of this section, protect the health and comfort of the public." (2000) "If a county, city, village or town enacts an ordinance, or if a school district adopts a policy, regulating or prohibiting outside smoking in certain areas as authorized under this subsection, the ordinance may apply only to public property under the jurisdiction of the county, city, village, town, or school district. Such ordinance shall provide that the person in charge of a restaurant, tavern, private club, or retail establishment located in an area subject to the ordinance may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club, or retail establishment where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke. Such ordinance may not define the term 'reasonable distance' or set any specified measured distance as being a 'reasonable distance'." (2009) WI STAT. ANN. § 101.123 (2)(c) (2000, 2009).

### **States without Laws Preempting Smokefree Air**

- 14. Alabama:** Alabama law does not preempt the passage of local smokefree laws and **includes an explicit anti-preemption clause**. "Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce local laws, ordinances, or regulations that comply with at least the minimum applicable standards set forth in this act" (2003).
- 15. Alaska:** Alaska law does not preempt the passage of local smokefree laws.

16. **Arizona:** Arizona law does not preempt the passage of local smokefree laws. The 2006 Clean Indoor Air Act makes all workplaces, restaurants and bars 100% smokefree (5/1/07) and **includes an explicit anti-preemption clause**. "This section does not prevent a political subdivision of the State from adopting ordinances or regulations that are more restrictive than this section nor does this section repeal any existing ordinance or regulation that is more restrictive than this section." ARIZ. REV. STAT. § 36-601.01 (2006).
17. **Arkansas:** Arkansas law does not preempt the passage of local smokefree laws. The 2006 Arkansas Clean Indoor Air Act **includes an explicit anti-preemption clause**. "This subchapter is cumulative to and does not prohibit the enactment of any other general or local laws, rules, or regulations of state or local governing authorities or local ordinances prohibiting smoking that are more restrictive than or are in direct conflict with this subchapter." ARK. CODE ANN. § 20-27-1808 (2006).
18. **California:** Despite the conflicting language in CA Labor Code Sec. 6404.5 (1994) regarding preemption, subsequent interpretation of the law and legal opinions demonstrate that California communities have the right to enact smokefree air laws, including with respect to areas addressed by the Labor Code provision. A favorable ruling in the case City of San Jose v. Department of Health Services et al.: H016744 (Santa Clara County Super. Ct. No. CV752231), regarding the regulation of smoking in nursing homes, found that both the CA Labor Code Sec. 6404.5 and a prior law, the California Indoor Clean Air Act of 1976 (Health & Safety Code section 118875 et seq.), allow local governments to regulate smoking in ways that are not inconsistent with or already covered by state law. Indeed, more than two dozen communities have enacted laws that cover areas addressed by Labor Code Sec. 6404.5 without challenge.
19. **Colorado:** Colorado law does not preempt the passage of local smokefree laws. The 2006 Colorado Clean Indoor Air Act makes all restaurants and bars 100% smokefree and **includes an explicit anti-preemption clause**. "A local authority may enact, adopt and enforce smoking regulations that cover the same subject matter as the above state law. No local authority may adopt any local regulation of smoking that is less stringent than the above state law, except a local authority may specify a radius of less than 15 feet for the area included within an entryway." COLO. REV. STAT. ANN. § 25-14-207(2)(a) (2006).
20. **Delaware:** Delaware municipalities were preempted from enacting smokefree air laws (1996) until the state repealed the preemptive language in the 2002 Delaware Clean Indoor Air Act, which makes all workplaces, restaurants, and bars 100% smokefree. DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).
21. **Georgia:** Georgia law does not preempt the passage of local smokefree laws. The 2005 Smokefree Air Act **includes an explicit anti-preemption clause**. "This chapter shall be cumulative to and shall not prohibit the enactment of any other general or local laws, rules, and regulations of state or local governing authorities or local ordinances prohibiting smoking which are more restrictive than or in direct conflict with this chapter." GA. CODE ANN. §§ 31-12A-1 et seq. (2005).
22. **Hawaii:** Hawaii law does not preempt the passage of local smokefree laws. The 2006 Smoke Free Hawaii law makes all workplaces, restaurants, and bars 100% smokefree and **includes an explicit anti-preemption clause** "(a) Nothing in this chapter shall be construed to supersede or in any manner affect a county smoking ordinance; provided that the ordinance is at least as protective of the rights of nonsmokers as this chapter.(b) Nothing in this chapter shall prohibit a county from enacting ordinances more stringent than this chapter." HAW. REV. STAT. § 328J-15 (2006).
23. **Idaho:** Idaho law does not preempt the passage of local smokefree laws. The 2005 Clean Indoor Air Act makes restaurants 100% smokefree and **includes an explicit anti-preemption clause**. "Nothing in this chapter shall be interpreted to prevent local, county or municipal governments from adopting

ordinances or regulations more restrictive than the provisions contained herein." IDAHO CODE §§ 39-5501 et seq. (2005).

- 24. Illinois:** A provision in the 1989 Illinois Clean Indoor Air Act prevented local jurisdictions from enacting smokefree restrictions that were more stringent than the state legislation, or restrictions that vary from the state legislation, for government worksites, private worksites and restaurants. The preemptive provisions grandfathered in 19 municipalities, including Chicago (1989). In 2005, preemption was partially repealed for home-rule municipalities, which were allowed to enact local smokefree air laws (2005).

In 2006, a state statute fully repealed preemption by allowing all non-home-rule municipalities and counties to enact smokefree air laws. The statute **includes an explicit anti-preemption clause**. "Any home-rule unit of local government, any non-home rule municipality or any non-home rule county within the unincorporated territory of the county in this state may regulate smoking in public places, but that regulation must be no less restrictive than state law. Any home rule unit that has passed an ordinance concerning the regulation of smoking prior to October 1, 1989 is exempt. In addition, any home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county may regulate smoking in any enclosed indoor area used by the public or serving as a place of work if the area does not fall within the definition of a 'public place' under state law." 410 ILL. COMP. STAT. 80/11 (2006).

- 25. Indiana:** Indiana law does not preempt the passage of local smokefree laws and **includes an explicit anti-preemption clause**. "A county, city, town, or other governmental unit is not prohibited from adopting an ordinance more restrictive than this chapter." IND. CODE. §§ 16-41-37-1 et seq. (2003).

- 26. Iowa:** Iowa no longer preempts local control of smokefree laws. The 2008 Smokefree Air Act does not include preemptive language. Before the enactment of the 2008 law, local governments were preempted from enacting clean indoor air regulations which are inconsistent with or conflict with the provisions of Iowa Code 142B, the 1990 Iowa Clean Indoor Air Act, due to a 2003 court ruling that the 1990 state law is preemptive. The language read: "For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter." IOWA CODE §§ 142B et seq. (1990).

In 2000, the Iowa Attorney General issued an opinion that local smokefree ordinances were preempted by state law. Following this opinion, the city of Ames enacted a smokefree law in 2001. In response, eight Ames business owners, with financial backing from Phillip Morris, filed a lawsuit claiming that the ordinance was preempted by state law. In February 2002, an Iowa District Court ruled that the Ames law was legal and not preempted by state law. The ruling was appealed and in May 2003, the Iowa Supreme Court overturned the lower court decision on the grounds that Iowa law preempts stricter local ordinances. James Enterprise Inc. et al. v. City of Ames (2003).

- 27. Kansas:** Kansas law does not preempt the passage of local smokefree laws and **includes an explicit anti-preemption clause**. "Nothing in this act shall prevent any city or county from regulating smoking within its boundaries, so long as such regulation is at least as stringent as that imposed by this act." KAN. STAT. ANN. §§ 21-4009 to 21-4013 (1987).

- 28. Kentucky:** Kentucky law does not preempt the passage of local smokefree laws. In 1994, a statewide preemption law was adopted that applied to government buildings; KY REV. STAT. ANN. § 61.165 (1994). On April 22, 2004, the Kentucky Supreme Court upheld a smokefree ordinance in Lexington against a challenge based on preemption. In a 6-1 ruling, the Court held that the Lexington ordinance was not preempted by state law and was not an improper infringement upon property rights. This provided legal justification for all communities in Kentucky enact smokefree laws.

Lexington-Fayette County Food and Beverage Association v. Lexington-Fayette Urban County Government, et al. (2004).

The preemptive language that prohibited communities from enacting smokefree laws for government buildings was repealed as of July 1, 2006 (2006). "Except as otherwise specified for the Capitol and Capitol Annex above, a policy for smoking in governmental office buildings or workplaces may be adopted by county, municipal, special district, urban-county, charter county or consolidated local governments. Any policy adopted may apply to any office buildings, workplaces, or facilities that are owned, operated, or under the jurisdiction of that government, including but not limited to jails and detention facilities." KY REV. STAT. ANN. § 61.165 (2006).

- 29. Louisiana:** Louisiana law no longer preempts the passage of local smokefree laws. Ordinances or regulations relating to smoking in an office workplace, which were more restrictive or stringent than state law, were prohibited after September 1, 1993 (1993). In 2003, the 1993 state law was partially repealed to allow local laws that restrict smoking in indoor public places that do not hold liquor licenses. Louisiana state law still superseded any municipal or parish governing authority from restricting smoking in gambling outlets, restaurants that serve alcohol, bars, and retail tobacco shops (2003).

Louisiana fully repealed preemption as part of the 2006 Louisiana Smokefree Air Act, which makes all workplaces and restaurants 100% smokefree and **includes an explicit anti-preemption clause** to allow any municipal or parish governing authority to enact smoking restrictions, effective January 1, 2007. "Nothing in the law above shall be construed to restrict the power of any parish, city, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smokefree public places as set forth above." LA REV. STAT. ANN. §§ 40:1300.255(D) (2007).

- 30. Maine:** Maine law, which makes all workplaces, restaurants and bars 100% smokefree, does not preempt the passage of local smokefree laws.
- 31. Maryland:** Maryland law does not preempt the passage of local smokefree laws and **includes an explicit anti-preemption clause**. "Nothing in this subtitle shall be construed to preempt a county or municipal government from enacting and enforcing more stringent measures to reduce involuntary exposure to environmental tobacco smoke." MD STAT. Ch. 52, § 24-510 (2007).
- 32. Massachusetts:** Massachusetts law does not preempt the passage of local smokefree laws. The 2004 Massachusetts Smokefree Air Law makes all workplaces, restaurants & bars 100% smokefree and **includes an explicit anti-preemption clause**. "Nothing in this section shall preempt further limitation of smoking by the commonwealth or any department, agency or political subdivision of the commonwealth." MASS. GEN. LAWS ch. 270, § 22 (2004).
- 33. Minnesota:** Minnesota law does not preempt the passage of local smokefree laws and **includes an explicit anti-preemption clause**. "Nothing in sections 144.414 to 144.417 prohibits a statutory or home rule charter city or county from enacting and enforcing more stringent measures to protect individuals from secondhand smoke." MINN. STAT. § 144.417 (2007).
- 34. Mississippi:** Mississippi law does not preempt the passage of local smokefree laws. Mississippi preempted local laws addressing smoking in state government workplaces. In 2006, the Legislature enacted a law to prohibit smoking in all government buildings, which includes a specific anti-preemption clause for these venues. "The law prohibiting smoking in government buildings and university/college classroom buildings shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or to prohibit any municipality or county from adopting additional ordinances with regard to the use of smoking in public places." MISS. CODE ANN. § 29-5-161 (2006).

- 35. Missouri:** Missouri law does not preempt the passage of local smokefree laws and **includes an explicit anti-preemption clause**. "Nothing in sections 191.775 and 191.776 shall prohibit local political subdivisions or local boards of education from enacting more stringent ordinances or rules." MO. REV. STAT. § 191.777 (1992).
- 36. Montana:** Montana no longer preempts local control. Preemption expired on September 30, 2009. In 2003, the state enacted a law that preempted local governments from enacting smokefree air ordinances that restrict smoking in any facility with a video gaming license (2003). Then, the 2005 Clean Indoor air act made all workplaces and restaurants 100% smokefree, but it included a statewide preemption provision until 2009, when the smokefree bar and casino portion of the law went into effect (2005). "The provisions of this part preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation until September 30, 2009." MONT. CODE ANN. §§ 50-40-101 et seq. (2005).
- 37. Nevada:** Nevada law no longer preempts the passage of local smokefree laws. Starting in 1993, state law prohibited municipal regulation of smoking in government buildings and restaurants in 1993 and was fully extended in 1999 to "the smoking, use, sale, distribution, marketing, display, or promotion of tobacco products." The 2006 Nevada Clean Indoor Air Act, which makes all workplaces and restaurants 100% smokefree, restored local control and **includes an explicit anti-preemption clause**. "Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards in the above law." NEV. REV. STAT. § 202.2483(4) (2006).
- 38. New Jersey:** New Jersey law no longer preempts the passage of local smokefree laws. State law prohibited the enactment of ordinances more stringent than the state clean indoor air provisions for restaurants, private workplaces, public places (2000). The New Jersey Smokefree Air Act of 2006, which makes all workplaces, restaurants and bars 100% smokefree, restored local control and **includes an explicit anti-preemption clause**. "The provisions of this act shall supersede any other statute, municipal ordinance and rule or regulation adopted pursuant to law concerning smoking in an indoor public place or workplace, except where smoking is prohibited by municipal ordinance or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire or protecting public health, and except for those provisions of a municipal ordinance which provide restrictions on or prohibitions against smoking equivalent to, or greater than, those provided under this act." N.J. STAT. ANN. § C.26:3D-63 (2006).
- 39. New Mexico:** New Mexico law does not preempt the passage of local smokefree laws. "It is not the intent of the legislature to preempt the field of regulation of smoking in public from the enactment of ordinances by local governing bodies which are not inconsistent with the Clean Indoor Air Act." N.M. STAT. ANN. §§ 24-16-2 (1978). The 2007 Dee Johnson Clean Indoor Air Act makes all restaurants and bars 100% smokefree and **includes an explicit anti-preemption clause**. "Nothing in the Dee Johnson Clean Indoor Air Act shall be construed to preempt or in any manner preclude specific provisions of a county or municipal smoking ordinance; provided that the smokefree provisions of such a county or municipal ordinance are inclusive of all minimum standards and provisions for smokefree areas within the Dee Johnson Clean Indoor Air Act." N.M. STAT. ANN. §§ 24-16-12 (2007).
- 40. New York:** New York law does not preempt the passage of local smokefree laws. The 2003 Clean Indoor Air Act makes all workplaces, restaurants and bars 100% smokefree and **includes an explicit anti-preemption clause**. "Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article." N.Y. [PUB. HEALTH] LAW § 1399-r(3) (2003).

- 41. North Dakota:** North Dakota law does not preempt the passage of local smokefree laws. The 2005 North Dakota Smoke-Free Law makes all workplaces 100% smokefree and **includes an explicit anti-preemption clause**. "A city or county ordinance, a city or county home rule charter, or an ordinance adopted under a home rule charter may not provide for less stringent provisions on smoking than those provided by state law. Nothing in this act shall preempt or otherwise affect any other state or local tobacco control law that provides more stringent protection from the hazards of environmental tobacco smoke." N.D. CENT. CODE § 23-12-10.2 (2005).
- 42. Ohio:** Ohio law does not preempt the passage of local smokefree laws and **includes an explicit anti-preemption clause**. The 2006 state smokefree law makes all workplaces, restaurants and bars 100% smokefree. "The provisions of this chapter shall be liberally construed so as to further its purposes of protecting public health and the health of employees and shall prevail over any less restrictive state or local laws or regulations. Nothing in this chapter shall be construed to permit smoking where it is otherwise restricted by other laws or regulations." OHIO REV. CODE ANN § 3794.04 (2006).
- 43. Oregon:** Oregon no longer preempts the passage of local smokefree laws. Local control was restored on January 1, 2009. Prior to 2009, a 2001 state law preempted all smokefree ordinances related to public and private workplaces unless the local regulations were passed before July 1, 2001. "A local county, district, municipality, port or political subdivision of this state may not prohibit smoking in any areas listed in this section unless the local government prohibition was passed before July 1, 2001." OR. REV. STAT. §§ 433.863. (2001). The 2007 Oregon Smokefree Workplace Law for 100% workplaces, restaurants, and bars repealed the preemptive provision, which went into effect on 1/1/2009. ORS § 433.863 (2007).
- 44. Rhode Island:** Rhode Island law no longer preempts the passage of local smokefree laws. The 2004 Public Health and Workplace Safety Act made all workplaces, restaurants, and bars 100% smokefree and included a temporary preemption provision that prohibited local communities from enacting smokefree laws until October 1, 2006 (2004). "It is the declared policy of this state that there be uniformity in the application and enforcement of smoking prohibitions as defined in this chapter. Any enactment relating to prohibitions in an area defined in this chapter shall be by statute as enacted by the general assembly; provided, however, that the general assembly may by statute delegate such authority to the cities and towns. [Effective until October 1, 2006.]" R.I. GEN. LAWS § 23-20.10-15 (2005).
- 45. South Carolina:** On March 31, 2008, the South Carolina Supreme Court unanimously ruled that local governments have the right to enact and enforce smokefree laws. The Supreme Court ruling upheld the local smokefree law enacted by the City of Greenville in October 2006, which paves the way for other South Carolina communities to move forward with enacting and enforcing smokefree laws.

Prior to this ruling, the law with respect to preemption in South Carolina was unsettled. A state statute provided that all laws, ordinances or rules pertaining to tobacco products may not supersede state law (1996), but it was subject to varying interpretations and two trial courts in the state reached opposite conclusions on the issue in 2006 and 2007.

In June 2006, the town of Sullivan's Island enacted a 100% smokefree workplace law, the first of its kind in South Carolina, and the law was upheld against a legal challenge based on preemption. In *Beachfront Entertainment, Inc., et. al. v. Town of Sullivan's Island*, No. 2006-CP-10-3501 (SC Court of Common Pleas, Charleston County, Dec. 20, 2006), the court found neither express nor implied preemption in state law. The court noted that S.C. Code § 5-7-30, a part of the Home Rule Act, specifically authorizes municipalities to enact regulations "preserving health, peace and good government" and that "the power to regulate and control smoking is widely recognized."

In October 2006, Greenville enacted a strong smokefree law, which was also challenged in court on the ground of preemption. This time, in *Foothills Brewing Concern, Inc. et. al. v. City of Greenville*, No. 2006-CP-23-7803 (SC Court of Common Pleas, Greenville County, Mar. 8, 2007), the court not only ruled that the City law was preempted by State law, but also that it violated the State Constitution by criminalizing conduct that is not illegal under State criminal laws governing the same subject. The court thus declared the law to be void and unenforceable and permanently enjoined its enforcement.

While the preemption issue was unresolved, municipalities in South Carolina other than those within the jurisdiction of the Greenville County court were still free to enact their own smokefree air laws, subject to the possibility that any law might be challenged on the basis of preemption.

- 46. Texas:** Texas law does not preempt the passage of local smokefree laws.
- 47. Vermont:** Vermont law, which makes all restaurants and bars 100% smokefree, does not preempt the passage of local smokefree laws and **includes an explicit anti-preemption clause**. "Nothing in this chapter shall be construed to supersede or in any manner affect a municipal smoking ordinance provided that the provisions of such ordinance are at least as protective of the rights of nonsmokers as the provisions of this chapter." VT STAT. ANN. tit. 18, § 37-1746 (1993).
- 48. Washington:** Washington law no longer preempts the passage of local smokefree laws. After the Pierce County Board of Health passed a smokefree air law in 2003, the Washington Supreme Court ruled that state law superseded the right of municipalities and counties from enacting smokefree air laws. The 2005 Washington Clean Indoor Air Act, approved by Washington voters as Initiative 901, made all workplaces, restaurants and bars 100% smokefree and repealed the preemptive language (2005).
- 49. West Virginia:** West Virginia law does not preempt the passage of local smokefree laws.
- 50. Wyoming:** Wyoming law does not preempt the passage of local smokefree laws.

#### Sources:

Americans for Nonsmokers' Rights, Protect Local Control, Legislative Bill Tracking, [www.protectlocalcontrol.org](http://www.protectlocalcontrol.org), 2006-2010.

American Lung Association. State Legislated Actions on Tobacco Issues (SLATI) Reports and website, 2003-2010. <http://slati.lungusa.org>.

Centers for Disease Control. "Preemptive state tobacco-control laws - United States, 1982-1998." *Morbidity and Mortality Weekly Report*, 48 (SS03): 21-62, June 25, 1999. <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss4803a2.htm#tab12>

Centers for Disease Control. "Preemptive State Smoke-Free Indoor Air Laws - United States, 1999-2004." *Morbidity and Mortality Weekly Report*, 54 (10): 250-253, March 18, 2005. <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5410a4.htm>

Centers for Disease Control. "State Preemption of Local Smoke-Free Laws in Government Work Sites, Private Work Sites, and Restaurants - United States, 2005--2009." *Morbidity and Mortality Weekly Report*, 59(04):105-108, February 5, 2010. <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5904a4.htm>.