Preemption is a legislative or judicial scheme in which a higher level of government (state or federal) strips lower level governments of their authority over a specific subject matter. Preemption is the tobacco industry's top legislative goal because it concentrates authority at the state (or federal) level, where the industry is stronger and can more readily protect its interests.

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"The simple reality is that all of West Virginia’s ... clubs are public. And nobody should smoke in any of them, hurting the lungs of other patrons."

- Charleston Gazette Editorial, August 29, 2003
What is preemption? (Continued)

Whether expressed or implied, locating the boundaries of preemption is tricky. Preemption clauses are often ambiguous; assessing the extent of implied preemption is even harder. Although the industry often cries preemption, only the courts can make a final determination of the scope and effect (if any) of alleged preemption. Many state judiciaries have strong precedents in favor of home rule and local control, even in the face of seemingly explicit preemption language.

Big Tobacco puts profit over health.

Industry attempts to wipe out local control have taken many forms, among them: legislation doing away with municipal ordinances or board of health regulations; legal challenges against board of health authority; or troublesome bureaucratic requirements for communities considering tobacco control laws. While the industry’s strategies emerge and change over the years, the goal remains the same: wipe out local tobacco control laws.

Cigarette use costs West Virginia an estimated $1.8 billion annually.

Why Local Regulations?

Local clean indoor air regulations offer several advantages over state or federal legislation. They:

- Are easier to enact and strengthen;
- Provide more comprehensive and stronger protection from secondhand smoke;
- Offer more accessible and accountable enforcement mechanisms;
- Serve as the source of innovation and advances in tobacco control policy-making; and,
- Involve public education and grassroots organizing, leading to changes in decreasing acceptance of smoking in society.

How do you fight preemption of local clean air laws?

The following steps can help state tobacco prevention coalitions reduce their vulnerability to preemption and other threats to local control:

- Support local clean indoor air campaigns in your area. The more local laws on the books, the more motivated grassroots supporters you can activate. The presence of many local regulations can in effect "preempt" enactment of state preemption.

- Reach consensus that preemption or any other threat to local control is unacceptable. Adopt a formal policy statement or resolution supporting local control and opposing preemption.

- Educate lobbyists that local control is vital to public health; preemption is never a negotiable item. Always include an explicit non-preemption clause in proposed legislation.

- Maintain a system to closely monitor bills in the state legislature. Keep an eye on both tobacco and non-tobacco bills.

- Be vigilant for last-minute parliamentary maneuvers by the tobacco industry to hijack or amend bills during the waning hours of the legislative session.

- Build an infrastructure for grassroots activity – recruit supporters, develop databases that sort by legislative district and set up systems to run phone banks/trees, direct mail, action alerts, e-mails, blast faxes, etc.

- Secure commitments from supportive legislators to consider preemption a deal-breaker, especially those legislators who are likely to introduce or sponsor legislation. Educate legislative leadership and the governor on the importance of protecting local control.

- Reach out to activate allies who are naturally opposed to preemption, e.g., city and county leagues, board of health associations, alcohol and gun control coalitions, local jurisdictions with tobacco control laws, environmentalists, etc.

From: Preemption: Taking the Local Out of Tobacco Control