

National Cancer Institute's State Cancer Legislative Database (SCLD): Preemption and Smoke-Free Air Laws

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Background

- **Preemption:** the law of a higher level of government takes precedence over the law of a lower level of government.
- **Federal preemption:** based on the Supremacy Clause of the Constitution.
- **State preemption:** prevents local ordinances from conflicting with state law.

Types of Preemption

- **Express preemption:** a law explicitly states that it takes precedence over a lower-level lawmaking authority.
- **Implied preemption:** a court determines that a higher-level law preempts lower-level lawmaking authorities, although the higher level law does not explicitly say so.
 - **Conflict preemption:** occurs when a lower-level law directly conflicts with or would interfere with the goal of a higher-level law.
 - **Field preemption:** occurs when a higher-level law comprehensively regulates an issue, leaving no room for further regulation.
- **Floor preemption:** occurs when a higher-level law sets forth minimum requirements and explicitly allows lower-level governments to pass more stringent requirements.
- **Ceiling preemption:** a higher-level authority prohibits lower-level entities from enacting: (1) more stringent requirements, or (2) any ordinance at all on the same topic.

State Court Decisions

Challenges to Preemption Laws

Preemption laws frequently are challenged and therefore interpreted by the court. Six states have case law upholding preemption, while 11 states have case law striking down preemption.

Examples:

• Michigan:

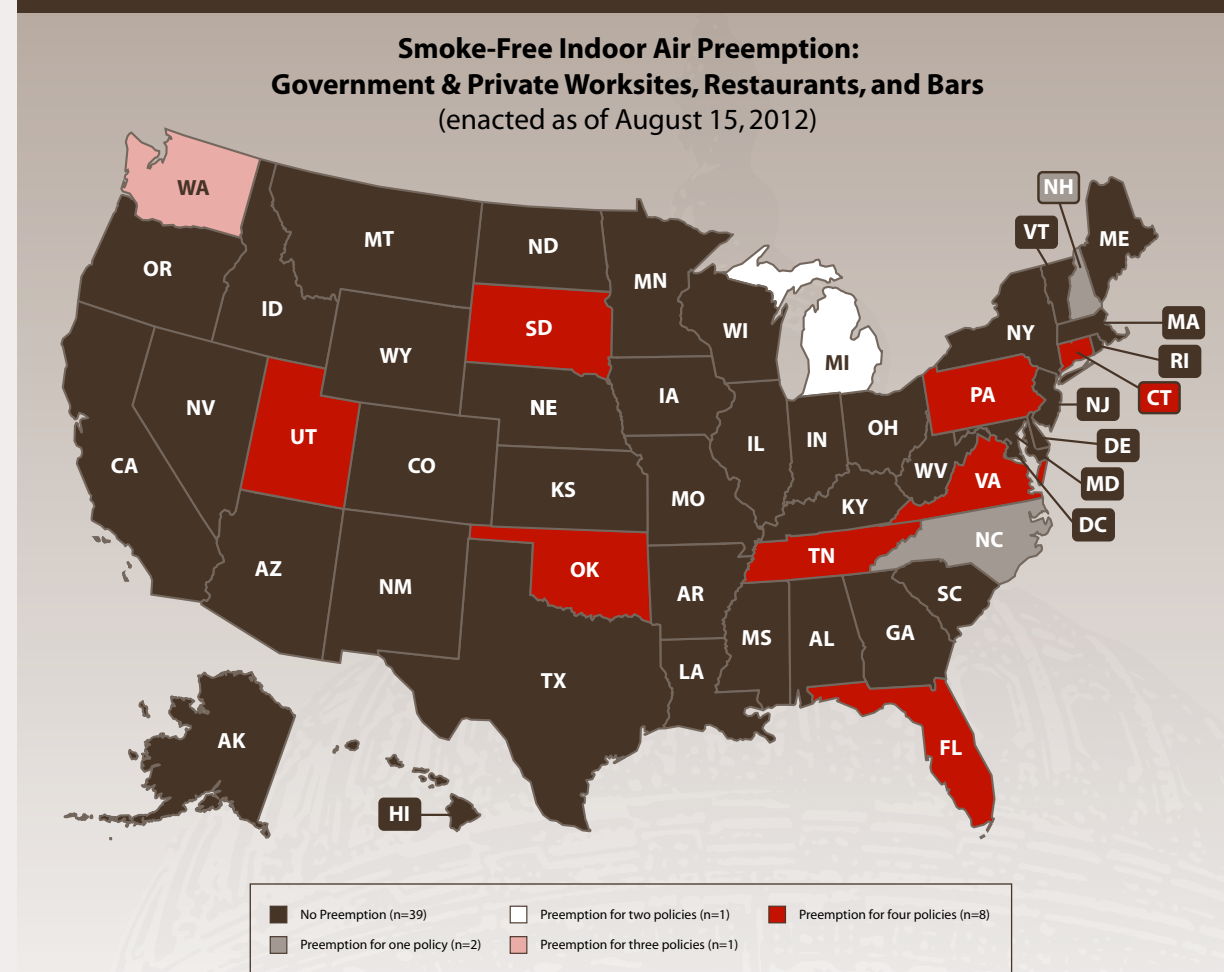
- *McNeil et al. v. Charlevoix County*, 772 N.W.2d 18 (2009): the defendants argued that the Northwest Michigan Community Health Agency was preempted from local regulation by the Michigan Clean Indoor Air Act. The Michigan Supreme Court held that the Public Health Indoor Air Regulation of 2005 was not preempted, thereby affirming the decision of the Court of Appeals. Therefore, indoor air laws on workplaces are not preempted.

• South Carolina:

- *Foothills Brewing Concern, Inc v. City of Greenville*, 660 S.E. 2d 264 (2008): when challenged by bars and restaurants in the city, the trial court struck down the city's ordinance as being preempted by the state Clean Indoor Air Act. However, on appeal, the court found that the Clean Indoor Air Act did not preempt the entire field of indoor smoking, and that the city ordinance was not preempted. Therefore, the ordinance is valid and enforceable.

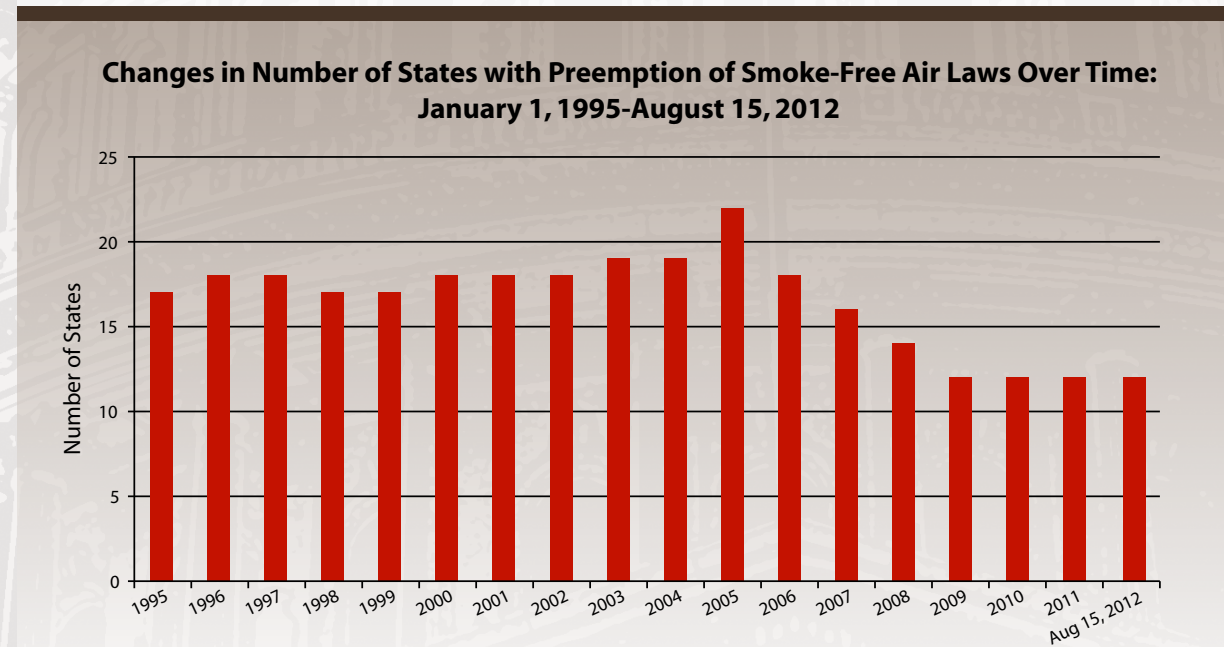
• New Hampshire:

- *JTR Colebrook, Inc. v. Town of Colebrook*, 829 A.2d 1089 (2003): the defendants argued that the state clean air law did not preempt the municipal ordinance that regulated smoking in restaurants. The state Supreme Court held that the state law covered the field of smoking regulation and did not leave room for municipal regulation. Therefore the municipal ordinance was preempted.



Examples

- **Florida:** preempts local smoking regulations in bars, restaurants, private worksites and government worksites
- **Washington:** preempts smoking regulations in government worksites, bars, and restaurants
- **New Hampshire:** preempts smoking regulations in restaurants



The SCLD Program

Purpose:

The SCLD Program provides information for: (1) evaluating the effect of state legislation on public health; (2) facilitating the application of cancer control science; and (3) monitoring legislative trends.

Description:

The SCLD Program maintains information about state laws and resolutions addressing selected cancer-related topics, including access to state-of-the-art treatment, breast cancer, cervical cancer, colorectal cancer, genetics, health disparities, health-related treatment (bone marrow and lymphedema), obesity prevention, ovarian cancer, prostate cancer, skin cancer, surveillance (cancer registries), testicular cancer, tobacco use, and uterine cancer.

Approach:

The SCLD Program utilizes: (1) a standard approach to identifying and abstracting relevant state legislation and adopted resolutions; (2) data dictionary and hierarchical keyword system; (3) quality control procedures; and (4) multiple data output formats.

Limitations:

The SCLD does not contain state-level regulations; executive orders; measures implemented by counties, cities, or other localities; opinions of Attorneys General; or data addressing the implementation of state laws.

The Database

Database Records

Since 1989, the NCI SCLD Program has monitored laws and resolutions covering numerous cancer-related topics. As of August 31, 2012, the database contained more than 9,000 legislative abstracts.

The Web site is located at www.sclد-nci.net.

The Web site is updated through August 31, 2012 and will not be updated after this date.

SCLD Program Resources

Standard Resources

- SCLD Program Web site
- *SCLD Update* quarterly newsletter and Legislative Data Byte
- Topical fact sheets
- Data tables

Conference Presentations

Analysis of SCLD data and development of oral and poster presentations for scientific and professional organization meetings.

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