



Preemption by Any Other Name

Words and Phrases Indicating Preemptive Intent

New policies preempting local or state regulation can have a profound effect on public health, and language indicating “preemptive intent” can appear in many different forms. This fact sheet is designed to help advocates spot preemptive intent so that they can address it as new policies are negotiated.

Preemption is a legal doctrine that provides that a higher level of government may limit, or even eliminate, the power of a lower level of government to regulate a certain issue. Federal laws can preempt state and local laws, and state laws can preempt local laws. Laws can use different words to signify preemption.. It is important for public health advocates to be able to spot preemptive intent in proposed laws. Here are some examples of laws that contain the more common words or phrases that demonstrate preemptive intent:

This fact sheet is one in a series from NPLAN on how the legal concept of preemption works and why it matters for public health. For other fact sheets in this series, see www.changelabsolutions.org.

Consistent with: “[A]ny order or ordinance by any political subdivision *shall be consistent with* and not more restrictive than state law and regulations governing lending or deposit taking entities regulated by the division of finance or the division of credit unions.”¹

Do not exceed: “A State or a political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of . . . plants, biological control organisms, plant pests, noxious weeds, or plant products that are consistent with and *do not exceed* [federal] regulations or orders. . . .”²

Exclusive: “The department has *exclusive* regulatory authority over all hazardous waste generation, transportation, storage, treatment and disposal and other management practices in the state[.]”³

Matters of statewide concern: “The general assembly further declares that the licensing and regulation of massage parlors are *matters of statewide concern*. . . .”⁴

No more stringent: “[N]o political subdivision may enact an ordinance . . . that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, . . . unless the ordinance or resolution is the same as or similar to, and *no more stringent* than, a state statute.”⁵

Occupy the field: “[I]t is the intent of the Legislature to *occupy the whole field* of health and sanitation standards for retail food facilities, and the standards set forth in this part and regulations adopted pursuant to this part shall be exclusive of all local health and sanitation standards relating to retail food facilities.”⁶

Preempt (and variations thereof): “[T]his part *preempts* the laws of any State to the extent that such laws are inconsistent with this part”⁷

Restrictive: “Local laws and ordinances that are inconsistent with, *more restrictive than*, or exceed the requirements of state law shall not be enacted and are preempted and repealed. . . .”⁸

Sole authority: “The Louisiana Wildlife and Fisheries Commission shall have *sole authority* to control and regulate all aspects of hunting, fishing, and boating in all water conservation districts. . . .”⁹

Supersede: “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. . . .”¹⁰ **Uniform:** “For the purposes of equitable and *uniform* regulation and implementation, the Legislature through this chapter is the exclusive regulator of all matters relating to the distribution, marketing, promotion, and sale of tobacco products.”¹¹

Additional Resources:

The following preemption resources are available online at www.changelabsolutions.org: *Fundamentals of Preemption*, *Preemption and Public Health Advocacy*, *Negotiating Preemption—Strategies and Questions to Consider*, and *Preemption: What It Is, How It Works, and Why It Matters for Public Health*.



ChangeLab Solutions
Law & policy innovation for the common good.

changelabsolutions.org

The National Policy & Legal Action Network to Prevent Childhood Obesity (NPLAN) is a project of ChangeLab Solutions, a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

This fact sheet was developed in partnership with the Public Health Law Center at William Mitchell College of Law.

Support for this fact sheet was provided by a grant from the Robert Wood Johnson Foundation.

© 2013 ChangeLab Solutions

¹ Mo. Ann. Stat. § 362.109 (West 2009) (imposing limits on local authority to regulate certain banks that are subject to state law).

² Plant Protection Act § 436, 7 U.S.C. § 7756(b)(2)(A) (2007) (imposing limits on state and local authority to regulate plants and related organisms).

³ Ala. Code § 22-30-4 (1987).

⁴ Colo. Rev. Stat. § 12-48.5-102 (1977).

⁵ Wis. Stat. Ann. § 66.0409(2) (West 2003).

⁶ Cal. Health & Safety Code § 113705 (West 2006).

⁷ Homeland Security Act of 2002 § 899H(b), 6 U.S.C. § 488g(b) (2008).

⁸ Wash. Rev. Code Ann. § 66.28.240 (West 1989) (relating to alcoholic beverages).

⁹ La. Rev. Stat. Ann. § 38:2501 (1993).

¹⁰ N.J. Stat. Ann. § 26:3D-63 (West 2006).

¹¹ S.D. Codified Laws § 34-46-6 (1994).