

96-04

STATEMENT OF POLICY

Opposition to Preemption of Local Tobacco Control Regulations

Policy

The National Association of County and City Health Officials advocates for the inclusion of language in all state legislation to preserve local government autonomy for more restrictive tobacco control ordinances and regulations, including those governing smoke-free indoor air, restricting tobacco product advertising and promotion, and restricting minors' access to tobacco products. NACCHO urges state legislatures to enact such legislation. NACCHO encourages local public health officials to work to see that all state tobacco control preemptive legislation be repealed.

Justification

Tobacco use is the leading preventable cause of premature death, disability and disease in the United States. Each year, an estimated 443,000 people die prematurely from smoking or exposure to secondhand smoke, and another 8.6 million suffer from a serious illness caused by smoking.¹ Approximately 46.6 million U.S. adults smoke cigarettes.² Each day, more than 3,800 young people under 18 years of age smoke their first cigarette, and more than 1,000 youth under age 18 become daily cigarette smokers.³

An estimated 88 million nonsmoking Americans, including 54% of children aged 3–11 years, are exposed to secondhand smoke. Secondhand smoke exposure causes serious disease and death, including heart disease and lung cancer in nonsmoking adults and sudden infant death syndrome, acute respiratory infections, ear problems, and more frequent and severe asthma attacks in children. Each year, primarily because of exposure to secondhand smoke, an estimated 3,000 nonsmoking Americans die of lung cancer, more than 46,000 die of heart disease, and about 150,000–300,000 children younger than 18 months have lower respiratory tract infections.⁴

Preemptive legislation at the state level prohibits localities from enacting laws that vary from or are more stringent than state law. In the case of tobacco legislation, state preemption language prevents local governments from passing stronger, more comprehensive regulations regarding smoke-free indoor air, from restricting tobacco product advertising and promotion, or from restricting minors' access to tobacco products.

The tobacco industry has historically supported state preemption laws as a way to reverse existing local tobacco control ordinances and prevent future enactment of such ordinances.⁵ In fact, "the tobacco industry's leading legislative strategy during the past decade has been the preemption of state tobacco control laws."⁶

For many years, the Federal Cigarette Labeling and Advertising Act (FCLAA) preempted states from taking any action, for health purposes, to restrict cigarette advertising or promotion. However, the Family Smoking Prevention and Tobacco Control Act, signed into law June 22, 2009 and in effect as of June 22,



2010, changes this by allowing states or local communities to restrict or regulate the time, place and manner (but not the content) of any cigarette advertising or promotions.⁷

The U.S. Department of Health and Human Services made the elimination of preemption in tobacco control a national goal in Healthy People 2020, with the following objective: Eliminate State laws that preempt stronger local tobacco control laws. This includes preemption on smoke-free indoor air, preemption on advertising, and preemption on youth access.⁸

In 2010, 12 states preempted stronger local tobacco control laws on smoke-free indoor air, 18 states preempted stronger local tobacco control laws in advertising, and 22 States preempted stronger local tobacco control laws on youth access to tobacco products.⁹ Compared to the substantial progress made since 2000 in reducing the number of states that preempt local smoke-free indoor air policies, there has been no progress made in reducing the number of states that preempt local advertising and marketing restrictions and youth access restrictions in the past decade.¹⁰

Record of Action

Adopted by the NACCHO Board of Directors

June 12, 1996

Updated November 2010

Updated May 2013

References

- 1 Centers for Disease Control and Prevention (CDC). Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004. *Morbidity and Mortality Weekly Report (MMWR)* 2008; 57(45); 1226–1228.
- 2 U.S. Department of Health and Human Services. Tobacco Facts and Figures. Retrieved May 16, 2013 from <http://betobaccofree.hhs.gov/about-tobacco/facts-figures/index.html>.
- 3 U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012. Retrieved May 16, 2013 from <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/index.html>.
- 4 CDC. Targeting the Nation's Leading Killer: At a Glance 2011. Retrieved May 16, 2013 from <http://www.cdc.gov/chronicdisease/resources/publications/AAG/osh.htm>.
- 5 Hobart R. Preemption: taking the local out of tobacco control. Chicago, IL: American Medical Association; 2003.
- 6 Jordan, J.; Pertschuk M.; and Carol, J. Preemption in Tobacco Control: History, Current Issues, and Future Concerns. No. 97- 0424. Berkeley, CA: Americans for Nonsmokers' Rights/Western Consortium for Public Health, 1994.
- 7 Campaign for Tobacco-Free Kids. (2010) The Impact of the New FDA Tobacco Law on State Tobacco Control Efforts [fact sheet]. Retrieved from <http://www.tobaccofreekids.org/research/factsheets/pdf/0360.pdf>.
- 8 U.S. Department of Health and Human Services. Healthy People 2020 objective TU-16: Eliminate State laws that preempt stronger local tobacco control laws [online]. 2010. Retrieved Dec. 16, 2010 from <http://www.healthypeople.gov/2020/topicsobjectives2020/objectiveslist.aspx?topicid=41>.
- 9 CDC. State Tobacco Activities Tracking and Evaluation (STATE) System [online]. 2010. Retrieved Dec. 16, 2010 from <http://apps.nccd.cdc.gov/statesystem/Default/Default.aspx>.
10. CDC. State preemption of local tobacco control policies restricting smoking, advertising, and youth access --- United States, 2000--2010. *MMWR* August 26, 2011 / 60(33); 1124–1127. Retrieved May 16, 2013 from <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6033a2.htm>.