

WHAT YOU NEED TO KNOW ABOUT PREEMPTION

What is Preemption?

Preemption occurs when a higher level of government supersedes the authority of lower levels.¹ For example, a state can preempt cities by saying localities cannot set their own minimum wage and must adhere to the state's minimum wage.

Why Does Preemption Matter?

As a legislative tool, preemption is neither inherently good nor bad. But the misuse and abuse of preemption can be harmful, especially when it limits the ability of cities to respond to the needs of their residents.

What are the Types of Preemption?

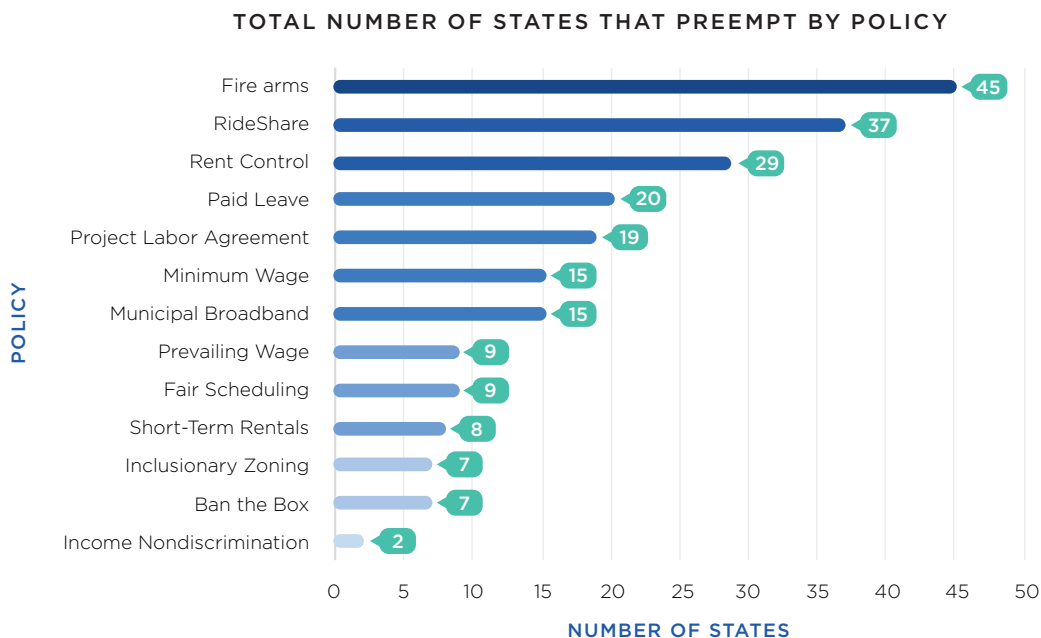
EXPRESS PREEMPTION:

When the state law explicitly (or expressly) conveys its intent to limit or entirely restrict lower levels of government from regulating a particular policy area. Examples of such laws would include, but are not limited to such language as, "exclusive regulatory authority," "occupy the field," and "no more stringent than a state statute."²

IMPLIED PREEMPTION:

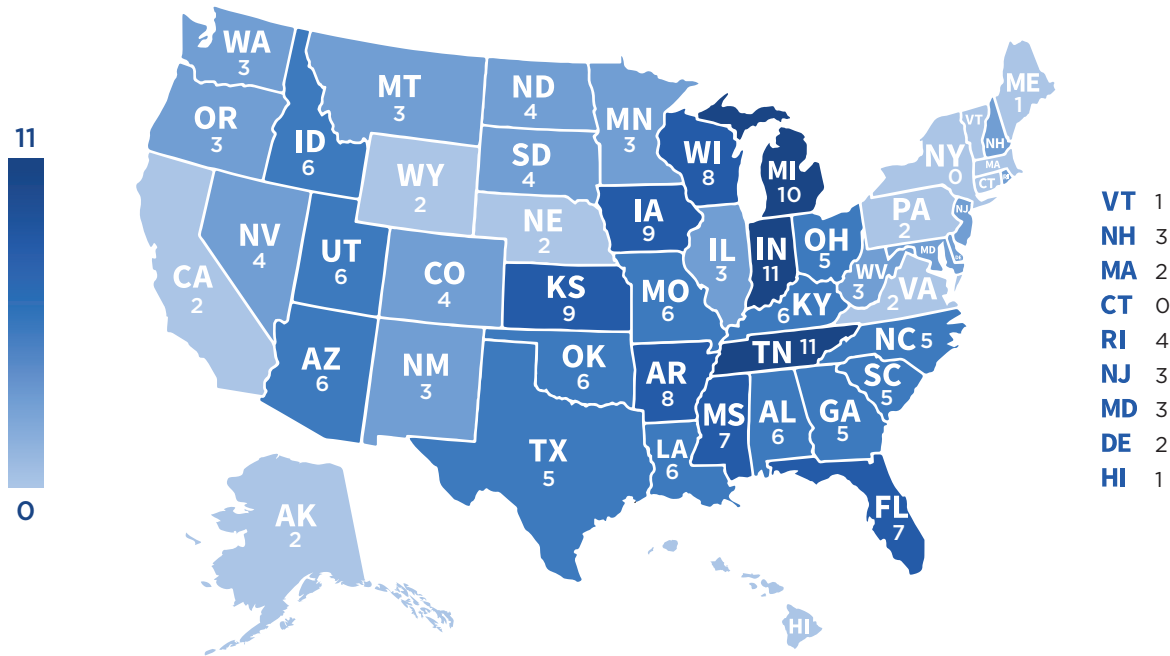
When state law can be used to invalidate a lower level authority even though explicit preemptory language does not exist. Implied preemption is most often clarified through litigation (i.e., case law) and Attorney General opinions. It can also include barriers states create to prevent local policy, such as state barriers to municipal broadband.

How Widespread is Preemption?



Note: These 12 policy areas represent only a fraction of the preemptive laws that restrict cities. This should not be interpreted as a comprehensive list. Sources: [Local Solutions Support Center](#); [Economic Policy Institute](#); [State Preemption Laws](#)

TOTAL NUMBER OF POLICIES PREEMPTED BY STATE



Sources: [Local Solutions Support Center](#); [Economic Policy Institute](#); [State Preemption Laws](#)

What are the Forms of Preemption?

VACUUM PREEMPTION:

This is when a state prohibits cities from doing something without setting any standards of its own. For example, Wisconsin does not allow municipalities to enact paid leave law, but it did not create its own policy either, thus leaving a policy vacuum.³

CEILING PREEMPTION:

When a state prohibits cities from doing anything different from what state law already mandates. For example, tax and expenditure limits (TELEs) set a ceiling on tax rates or levies.

FLOOR PREEMPTION:

This is when a state sets a minimum standard and allows cities to enact laws with requirements above that minimum

standard. For example, a state could set a minimum wage of \$12 an hour, but allow localities to set a higher minimum wage of \$15 if it is an expensive city to live in.

PUNITIVE PREEMPTION:

This is when a higher level of government threatens to punish a lower level of government. For example, in Arizona the state threatens to withhold shared revenue from cities that have ordinances found to be in conflict with state law.⁴

NULLIFICATION PREEMPTION:

When a state retroactively nullifies something that a city has already passed. Some instances include the state of North Carolina preempting Charlotte's LGBTQ+ friendly ordinance, as well as the state of Texas preempting a ballot referendum in Denton from banning fracking.⁵

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¹ ChangeLab Solutions. June 2019 ed., ChangeLab Solutions, 2019, pp. 1-6, Fundamentals of Preemption.

² Public Health Law Center "Preemption by Any Other Name," 2010

³ Temple University Center for Public Health Law Research. "Preemption, Paid Leave, and the Health of America." Bill of Health, 19 Mar. 2020, blog.petrieflom.law.harvard.edu/2020/03/16/preemption-paid-leave-and-the-health-of-america/.

⁴ Joffe-Block, Jude. "Arizona Law Targets City Governments By Cutting Off Funds." NPR, NPR, 19 Dec. 2016, www.npr.org/2016/12/19/506199963/arizona-law-targets-city-governments-by-cutting-off-funds.

⁵ Gordon, Michael, et al. "Understanding HB2: North Carolina's Newest Law Solidifies State's Role in Defining Discrimination." Charlotteobserver, Charlotte Observer, 26 Mar. 2016, www.charlotteobserver.com/news/politics-government/article68401147.html.

Malewitz, Jim. "Curbing Local Control, Abbott Signs 'Denton Fracking Bill.'" The Texas Tribune, The Texas Tribune, 18 May 2015, www.texastribune.org/2015/05/18/abbott-signs-denton-fracking-bill/.

ADDITIONAL RESOURCES

[Restoring City Rights in an Era of Preemption: A Municipal Action Guide](#)
[Principles of Home Rule for the Twenty-First Century](#)
[Local Democracy and Preemption](#)

FOR MORE INFORMATION

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