



What Is Preemption and What Does It Mean for North Carolinians?

February 2007

What is preemption?

- Article 64 of North Carolina General Statutes Chapter 143 limits local governments' authority to adopt local laws (e.g., city or county ordinances, board of health rules) related to clean indoor air. State laws of this kind are called **preemptive** because they restrict local jurisdictions from passing their own clean indoor air laws that are stricter than the statewide clean indoor air laws.¹
- There are certain exemptions from this state law, including the General Assembly buildings, schools, prisons, college dormitories, health departments, social service departments and community colleges.

How does preemption prevent protection from exposure to secondhand smoke?

- A weak statewide law that prevents local communities from doing more doesn't protect anyone. Communities should have the right to provide more protection than a floor set by the state. The current state law sets the floor too low—the public is not protected from exposure to secondhand smoke and local decision-makers cannot do more to protect their communities.
- Clean indoor air advocates focus on convincing businesses to go smoke-free one by one, instead of passing one ordinance or rule that protects everyone.

What is the interest in restoring local control in North Carolina?

- In 1993, well before the US Surgeon General stated that "The scientific evidence is now indisputable: secondhand smoke is not a mere annoyance. It is a serious health hazard"², eighty-nine local communities passed laws protecting the public from exposure to secondhand smoke. Support and demand for clean indoor air has only grown stronger in the past fourteen years.
- Communities around the state are actively advocating for a repeal of the law preempting local action or an exemption from the preemptive law. Smoke-free Mecklenburg, Smoke-free Wake, Smoke-free Guilford, Smoke-free Rowan and advocates in Wilmington are gaining community support for a repeal and asking their legislators to support local control this legislative session. Mecklenburg County Commissioners, Charlotte City Council and the Greensboro City Council have all passed resolutions asking their local state legislators to assist them in gaining local control.

How did it happen in North Carolina?

- In July of 1993 legislation was passed prohibiting local governments from imposing smoking restrictions that are more stringent than the state's limited rules, even in non-state-controlled buildings, with a narrow list of exceptions. Under the law, local governments had three months (until October 15, 1993) to adopt local clean indoor air laws that were more stringent (i.e., more protective of health) than the state law.
- Within the three-month window, 89 local laws were passed in almost all counties in North Carolina. Some jurisdictions enacted ordinances and some counties adopted board of health rules.
- In November of 1993, several companies filed or threatened to file lawsuits challenging local laws in four of those counties (Wake, Guilford, Buncombe and Halifax) to contest the new local clean indoor air laws
 - Guilford County: Under threat of suit, the local board of health withdrew its law without contest.
 - Buncombe County: The local board of health litigated and won its case at the local level.
 - Wake County: The local board of health suspended enforcement of its rule,
 - Halifax County: The local board of health was sued and lost its case. The Court of Appeals held that the board's rule was invalid primarily because the local Board of Health – whose primary charge was to protect the public's health – took economic impact into account.³
- The findings in the Halifax case called into question the validity of nearly all the board of health rules passed in the three-month window.⁴ Because of the state law's preemptive clause and the Halifax county ruling, many local communities were not able to enforce their existing board of health rules.⁵

References:

- ¹ NC Gen. Stat. 143-595 et seq.
- ² U.S. Department of Health and Human Services news release "New Surgeon General's Report Focuses on the Effects of Secondhand Smoke"
Downloaded February 2007 at: <http://www.hhs.gov/news/press/2006pres/20060627.html>
- ³ City of Roanoke Rapids v. Peedin, 124 NC App 578 (95-461). Accessed February 2007 at:
<http://www.aoc.state.nc.us/www/public/coa/opinions/1996/950461-1.htm>
- ⁴ Dellinger A. What may North Carolina's local governments do to restrict smoking? Local Government Law, Institute of Government, University of North Carolina, Chapel Hill, February 1998; Number 83.
- ⁵ Goldstein, AO, Malek SH, Butzen AY. Labored Breathing: Policies to Eliminate Environmental Tobacco Smoke Exposure in North Carolina. NC Medical Journal. 2001; 62: 266-271.