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Fighting Preemption in State Legislatures

STAT-96 Conference

Saturday, October 5, 1996

1:45 pm to 3:15 pm

Austin, Texas

Facilitators:

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Legislative Counsel
Action on Smoking and Health (ASH)
Washington, D.C.

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Director of Government Relations
American Cancer Society
Texas Division

- I. Introductions
Name, agency, experience with preemption..... Cindy Antolik
- II. National Overview of State Preemption Battles..... Kathy Scheg
- III. Bill Language to Beware..... Kathy Scheg
- IV. Texas Case Study..... Cindy Antolik
- V. Questions and Answers

PREEMPTIVE STATE CLEAN INDOOR AIR & YOUTH ACCESS LAWS AND AFFECTED PROVISIONS

STATE	PART OF CODE WHERE PREEMPTION EXISTS	SPECIFIC PROVISIONS PREEMPTED
1 California	Youth Access	Only preempt the amount of fines localities may impose for violations of youth access provisions.
2 Connecticut	Clean Indoor Air	Any existing local ordinances relative to smoking.
3 Delaware	Clean Indoor Air	Any related provisions of local ordinances enacted after the effective date of the law.
4 Florida	Clean Indoor Air	Supersedes any municipal or county ordinances on the subject of the regulation of smoking.
5 Illinois	Clean Indoor Air	Smoking in public places after October 1, 1989.
6 Iowa	Clean Indoor Air, Youth Access	Any local law or regulation which is inconsistent with or conflicts with the clean indoor air and youth access laws.
7 Kentucky	Youth Access	Covers use, sale and distribution of tobacco products.
8 Louisiana	Clean Indoor Air, Youth Access	Ordinances or regulations relating to smoking in an office workplace which are more restrictive or stringent than the law after September 1, 1993; relating to sale, promotion and distribution of tobacco.
9 Maine	Youth Access	Regarding tobacco displays, product placement and the time of tobacco sales.
10 Massachusetts	Youth Access	The sale of cigarette rolling papers.
11 Michigan	Tobacco Tax	Covers sale or licensure of tobacco products for distribution purposes.
12 Mississippi	Youth Access	Covers use, sale, promotion, and distribution of tobacco.
13 Montana	Youth Access	Enactment of stricter youth access provisions.
14 Nevada	Clean Indoor Air	The smoking, use, sale, distribution, marketing, display, or promotion of tobacco products.
15 New Jersey	Clean Indoor Air	Enactment of ordinances more stringent than the state clean indoor air provisions.
16 New Mexico	Youth Access	All ordinances pertaining to the sale of tobacco products shall be consistent with state law.
17 New York	Youth Access	Sampling only.
18 North Carolina	Clean Indoor Air, Youth Access	Local ordinances enacted after 10/1/93 shall not exceed the state clean indoor air provisions; youth access covers the sale, distribution, display or promotion of tobacco products, except vending machines.
19 Oklahoma	Clean Indoor Air, Youth Access	Prohibits local governing bodies from enacting more stringent clean indoor air ordinances; youth access covers sale, purchase, distribution, advertising, sampling, promotion, display, possession, licensing, or taxation.
20 Oregon	Youth Access	Regulation of vending machines accessible to minors only.
21 Pennsylvania	Clean Indoor Air	All ordinances or rules concerning the provisions in the state clean indoor air law.
22 South Dakota	Tobacco Tax; Youth Access	Covers all matters relating to the use of tobacco products, except a person or public entity may voluntarily regulate its use on their property; youth access covers distribution, marketing, promotion and sale of tobacco.
23 Tennessee	Youth Access	Covers everything concerning regulation of tobacco products enacted or promulgated after 2/15/95, except those concerning smoking in local government buildings.
24 Utah	Clean Indoor Air	Clean indoor air provisions that are not essentially identical to state law.
25 Virginia	Clean Indoor Air	Local ordinances shall not contain provisions that exceed state clean indoor air law.
26 Washington	Youth Access	Localities from adopting or enforcing requirements for the licensure and regulation of tobacco product promotions and sales within retail stores.
27 Wisconsin	Youth Access	Youth access provisions must strictly conform to state law - covers sales to minors, sign posting, penalties to minors, sampling, sales of single cigarettes and vending machine restrictions.