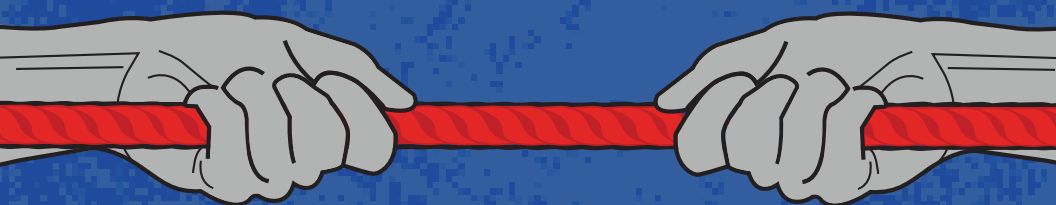




FACT SHEET

GUN LAWS, HOUSING, AND MORE



STATE VS LOCAL CONTROL

TUESDAY FEB 25, 2020

THE DEVELOPMENT OF THIS FACT SHEET MADE
POSSIBLE THANKS TO A GENEROUS GRANT
FROM THE **WILLIAM T. KEMPER FOUNDATION.**

FACT SHEET COMPILED BY CHRIS LEBEAU,
UMKC RESEARCH LIBRARIAN (RET.)

When it comes to the legislative processes, who is really in control – local, state, or federal lawmakers? “Preemption” occurs when a higher level of government removes regulatory power from a lower level of government.

By way of example, we know that Kansas City has a problem with gun violence, and while our new Mayor is working to address it with innovative policies, the balance of power between federal, state and local government is complicated in America.

How does a city or county effectively navigate these dynamics to create safe, healthy, and equitable communities, especially when there isn’t always agreement among lawmakers at each level? Can local governments in the metro area truly move the needle on topics like gun violence, affordable housing, and mental health care when they run the risk of having local efforts pre-empted at the state and federal level?

WHAT IS PREEMPTION?

Preemption occurs when a higher level of government supersedes the authority of lower levels.

Source: National League of Cities, nlc.org

The Supremacy Clause of the US Constitution gives the federal government the privilege of preempting state law. In the same manner, state government has authority, through the constitutions and statutes, to create laws for the state, cities, counties and other jurisdictions. States can both grant and limit the power of cities.

As with federal law, states may create a minimum standard law which local government may modify to meet local needs. This **“floor preemption”** is the more traditional form of preemption. For example, in many states, cities enact ordinances the supplement state law for childcare licensing.

A state can also exercise **“ceiling preemption,”** barring local government from “requiring anything more than or different from” the higher level law.⁽¹⁾ For instance, the Missouri state statutes ban “the entire field of legislation touching in any way firearms, components, ammunition and supplies to the complete exclusion of any order, ordinance or regulation by any political subdivision of this state.”⁽²⁾

“Blanket preemption” occurs when a state has no law addressing a particular issue but still forbids lower levels of government from enacting regulations on its own. For example, Iowa state law has no regulation requiring employers to provide paid sick leave and prohibits local government from establishing any such regulations.⁽³⁾

Preemption can serve a positive purpose. The federal Civil Rights Act (1964) and the Voting Rights Act (1965) preempted states and cities from enacting discriminatory laws. On the other hand, preemption can block a city’s ability to take corrective action on issues or to experiment with innovative local regulations which may benefit the state later. Local referendums can be overturned, denying voters a voice.⁽⁴⁾ During the period 2015-2017 both St. Louis and Kansas City residents voted for a higher minimum wage than the minimum wage set by state of Missouri. The state legislature passed a minimum wage preemption law several days after the Kansas City vote causing the vote to be struck down in the courts.

Researchers find that over the past 20 years the nature of state preemption has changed.

Lawmakers are quicker to preempt local government action “when it does not suit their political, social, or economic beliefs or agendas.” Industry-backed “special interests have significantly increased their lobbying efforts at the state level” and across multiple states.⁽⁵⁾ The NRA and the Plastics Industry are two such examples. Forty-five states⁽⁶⁾ have enacted preemptive firearms laws to prohibit local government from implementing tougher gun regulations.

State and city tensions appear to reflect Democratic-Republican splits. Democrats cluster in urban areas where problems beg for solutions not required elsewhere while Republicans tend to occupy suburban and rural areas.⁽⁷⁾ “National-level polarization...is pushing conflict down to states and localities.” When decision-making is divorced from the core wants and needs of community members, it creates a perilous environment.⁽⁸⁾

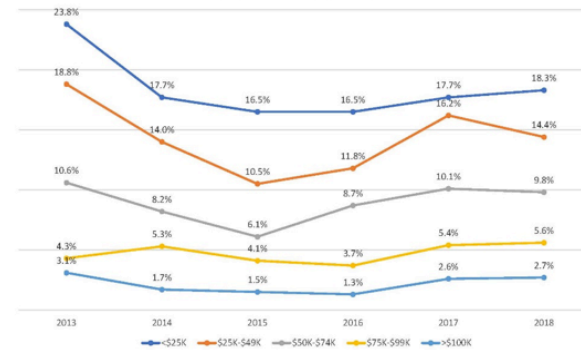
Examples of State Preemption

(Note: Most state laws have some exclusions)

	Missouri	Kansas
Cigarette and Tobacco Taxes	The General Assembly preempts the entire field of legislation increasing the taxation of cigarettes and tobacco products to the complete exclusion of any...ordinance...by any political subdivision. MO Rev Stat § 149.192 (2018)	No law
Firearms	Preempts local authority over firearms and ammunition. Mo. Rev. Stat. § 21.750.2 Missouri allows local governments to regulate "open carrying of firearms readily capable of lethal use" by people who do not have a valid concealed carry endorsement or permit. (source: https://lawcenter.giffords.org/preemption-of-local-laws-in-missouri/)	Preempts virtually all local authority over firearms, with limited exceptions including carrying concealed firearms in public buildings under certain circumstances... Kan. Stat. Ann. § 12-16,124(a) Kan. Stat. § 75-7c10
Gambling	The General Assembly preempts any other regulation of the area. MO Rev Stat § 572.100 (2016)	Cities...may provide by ordinance for the suppression of common nuisances...and for the seizure and destruction of all gambling tables, gambling devices... KS Stat § 21-922 (2014)
Plastic or Paper Bags	Political subdivisions are prohibited from imposing ban, fee, or tax on. There is no ban on using plastic bags. MO Rev Stat § 260.283 (2015)	No law
Minimum Wage Limitation	MO law prohibits local jurisdictions from requiring a minimum wage higher than the state's. Mo Rev. Stat. 67.1571	No city, county or local government unit shall enact...any ordinance...which requires an employer to...pay compensation or wages at any rate higher than the minimum wage Kan. Stat. Ann. 12-16,130
Sick Time	Law prohibits political subdivisions from requiring an employer to provide...employment benefits," including paid or unpaid sick days, sick leave, vacation, and health or retirement benefits. Mo. Rev. Stat. § 285.055.1	Preempts any local law related to wages and benefits, including earned sick days. Kan. Stat. Ann. §§ 12-16,131; 12-16,130
Rent Control	No law	The state prohibits rent control or control of real estate purchase price by political subdivisions...in addition the state prohibits a political subdivision from requiring the owner of private property to control rents or purchase price as a condition of any request for a zoning regulation. Kan. Stat. Ann 12-16,120
Inspection, Interior	No law	Prohibition of local ordinances requiring inspection of private residences... This subsection shall not apply to inspections of mixed-use residential and commercial property. Kan Stat Ann 12-16,138 (2016)
Ride Sharing	No county or municipality shall impose a special tax specifically applicable solely to a motor vehicle used in a ride-sharing arrangement. MO Rev Stat § 285.200.	No law
Property Tax Lid	The Hancock Amendment is a multi-part tax limitation statute requiring approval of voters if taxes and fees would increase above a certain amount. It limits the amount of property taxes that can be used to fund local government or local taxing jurisdictions such as school districts. MO Rev Stat Article X, sections 16-24⁽⁹⁾	Law ties city and county budget increases to inflation, capping the amount of property tax revenue officials can raise without seeking a vote of citizens. Kan. Stat. §79-2925c

How Policy Decisions Impact Poverty

Percent Uninsured by Income Level
in Johnson County, KS 2013-2018



Source: United Community Services of Johnson County, 12/31/2019.

Healthcare

Medicaid Expansion: Expanding Medicaid (KanCare) would provide an additional 150,000 Kansans with health insurance coverage.

Without Advance Premium Tax Credit, the average ACA monthly premium is \$651

How Policy Decisions Impact Poverty

Housing Preemption Laws:

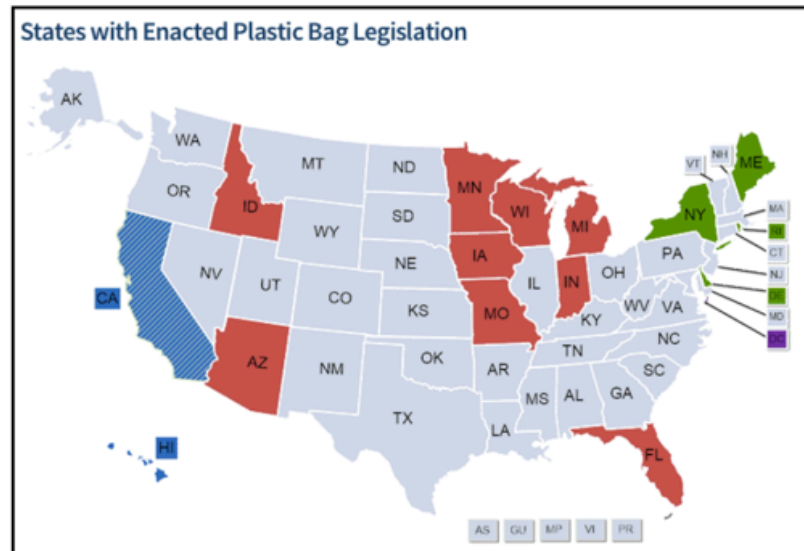
- **Inspection Restrictions:** Prohibition of Local Ordinances Requiring Inspections of Private Residences (KSA 12-16,138 (2016))
- **Mixed-Income Housing:** Prohibiting Rent Control or Control of Real Estate Purchase Price by Political Subdivisions (KSA §12-16,120 (2016))

Employment Preemption Laws:

- **Paid Leave:** Prohibiting cities and counties from requiring employers to provide employees paid sick days or paid family leave. (KSA §12-16,130 (2013))
- **Minimum Wage:** Prohibiting cities and counties from raising their local minimum wages above Kansas' state minimum wage. (KSA §12-16,130 (2013))
- **Fair Schedules:** Prohibiting cities and counties from establishing any laws governing work schedules – such as laws requiring employers to give advance notice of work schedules or pay a premium for requiring workers to be "on call" for shifts. These laws are often referred to as "fair work scheduling" laws. (Law: KSA §12-16,130 (2016))

Source: United Community Services of Johnson County, 12/31/2019.

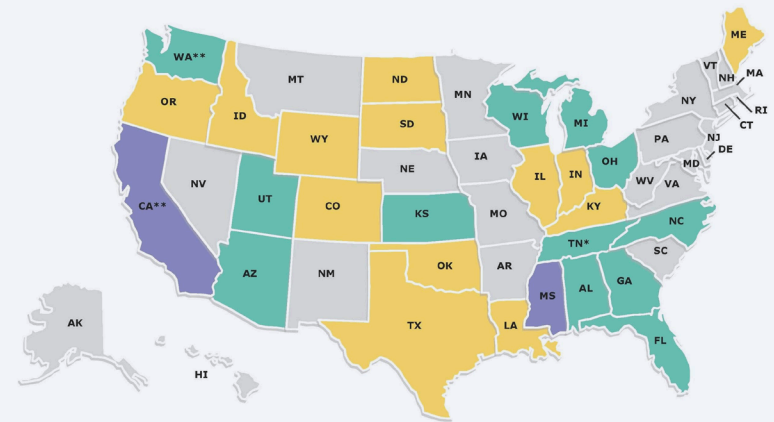
States with Enacted Bag Legislation



Sierra Club. Why are so many states banning plastic bag bans? (Web) December 15, 2017

<https://www.sierraclub.org/ohio/blog/2017/12/why-are-so-many-states-banning-plastic-bag-bans>

Growing Number of State Laws Limit Local Government Control Over Food and Nutrition



- State Commonsense Consumption Acts
- State Preemption of Local Food and Nutrition Policies
- State Preemption of Local Food and Nutrition Policies and State Commonsense Consumption Acts

*preempts non-elected bodies of local government only

**reflects laws preempting new soda taxes passed in June and November 2018, after study's data collection was completed

Medical Press

<https://medicalxpress.com/news/2018-11-state-laws-limit-local-food.html>

Policy	# of States with Preemption
Minimum Wage	24
Paid Leave	17
Anti-Discrimination	3
Ride Sharing	37
Home Sharing	3
Municipal Broadband	17
Tax and Expenditure Limitations	42

National League of Cities. Center for City Solutions.

"City Rights in an Era of Preemption: A State-by-State Analysis," 2017

<https://nlc.org/sites/default/files/2017-02/NLC%20Preemption%20Report%202017.pdf>

For Further Reading...

Select Articles by Professor Allen Rostron:

- "A New State Ice Age for Gun Policy." Harvard Law & Policy Review, 2016.
https://harvardlpr.com/wp-content/uploads/sites/20/2016/06/10.2_3_Rostron.pdf
- "Tort Litigation About Guns Will Continue." Jurist: Legal News & Research, December 31, 2016.
<https://www.jurist.org/commentary/2016/12/tort-litigation-about-guns-will-continue/>
- "Why do gun-makers get special economic protection?" The Conversation, March 13, 2018.
<https://theconversation.com/why-do-gun-makers-get-special-economic-protection-93241>
- "It's time to repeal the gun industry's exceptional legal immunity." The Conversation, December 9, 2015. <https://theconversation.com/its-time-to-repeal-the-gun-industrys-exceptional-legal-immunity-51950>

Other Articles:

- "Home Rule: Why Cities Need to Talk About Local Control," by Megan Gilliland, The League of Kansas Municipalities. Kansas Government Journal, Volume 106, Number 1, January/February 2020. https://www.lkm.org/page/Home_Rule
- "As Prairie Village explores plastic bag ordinance, Kansas Chamber gets behind effort to preempt such bans," by Juliana Garcia, February 13, 2020. Shawnee Mission Post.
<https://shawneemissionpost.com/2020/02/13/as-prairie-village-explores-plastic-bag-ban-kansas-chamber-gets-behind-effort-to-preempt-such-bans-86954>

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https://www.changelabsolutions.org/sites/default/files/2019-07/Fundamentals_of_Preemption_FINAL_20190621.pdf
- (2) Missouri Statutes 21.750.
<https://www.revisor.mo.gov/main/OneSection.aspx?section=21.750&bid=455&hl=>
- (3) Fundamentals of Preemption. ChangeLab Solutions, June 2019, 3.
https://www.changelabsolutions.org/sites/default/files/2019-07/Fundamentals_of_Preemption_FINAL_20190621.pdf
- (4) National League of Cities. Center for City Solutions. Restoring city rights in an era of preemption: a municipal action guide. 2019, 3.
<https://www.nlc.org/sites/default/files/2019-12/Restoring-City-Rights-in-an-Era-of-PreemptionWeb.pdf>
- (5) National League of Cities.
<https://www.nlc.org>
- (6) Preemption of Local Laws. Giffords Law Center.
<https://lawcenter.giffords.org/gun-laws/policy-areas/other-laws-policies/preemption-of-local-laws/>
- (7) Lauren E. Phillips. "Impeding Innovation: State Preemption of Progressive Local Regulations." Columbia Law Review 117 (Dec. 2017): 2225
- (8) Brooks Rainwater. National league of cities. City rights in an era of preemption: state by state analysis. 2017, 1.
<https://nlc.org/sites/default/files/2017-02/NLC%20Preemption%20Report%202017.pdf>
- (9) Free Self Help Legal Information for Missouri Residents, "Missouri Hancock Amendment."
<https://court.rchp.com/free-legal-help/library-of-legal-articles/missouri-hancock-amendment/>