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The status of local smoking regulations in North Carolina following a state preemption bill

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The Status of Local Smoking Regulations in North Carolina Following a State Preemption Bill

Elizabeth Conlisk, PhD; Michael Siegel, MD; Eugene Lengerich, VMD; William Mac Kenzie, MD; Sally Malek, MPH; Michael Eriksen, ScD

Objective.—To determine the number and protectiveiveness of local smoking regulations adopted before the implementation of a preemptive statewide smoking control bill.

Method.—Review of local smoking control regulations from all 100 counties and 85 municipalities with populations greater than 5000 in North Carolina.

Main Outcome Measures.—Adoption of local smoking control regulations before and during the 3-month delay in enactment of the preemptive bill. Protective ness of regulations was based on restrictions on smoking and requirements for separate ventilation systems at private work sites: none (smoking unrestricted); minimal (smoking restricted to designated areas); partial (smoking restricted to designated areas served by separate ventilation systems); and complete (smoking prohibited). Because some regulations would be phased in gradually over the next 5 years, we evaluated the requirements that will be in effect by January 1, 2000.

Results.—Between July 15 and October 15, 1993, the number of local smoking regulations in North Carolina increased from 16 to 105. By the year 2000, 59% of private employees still will not be guaranteed any protection from work site environmental tobacco smoke; 19% will have minimal protection, 22% will have partial protection, and none will have complete protection.

Conclusions.—The 3-month delay in preemption created an unnatural time frame for communities to organize, debate, and adopt smoking restrictions. Despite the adoption of 89 new regulations, no private employees will be guaranteed complete protection from work site environmental tobacco smoke by the year 2000; new regulations can no longer be adopted. HB 957 has been a setback for public health in North Carolina.

THE ASSOCIATION between environmental tobacco smoke (ETS) and lung cancer in nonsmokers who experience long-time exposure to ETS has been well documented.1-3 Because the work site is the primary source of ETS exposure for most nonsmoking adults,4 Healthy People 2000 calls for each state to enact legislation that prohibits or severely restricts smoking at places of employment.5 As of January 1994, a total of 80 counties and cities in the United States had adopted regulations that specifically prohibit work site smoking; in contrast, no state had legislated such a ban.6

The success of local bans has prompted the tobacco industry to support smoking control legislation at the state level that preempts local regulations that are more restrictive.2,8 These bills are usually promoted as prohealth measures that guarantee a minimum uniform set of restrictions for all communities. However, the restrictions are usually very weak, and local governments are prevented from adopting more restrictive measures in the future. To date, preemptive smoking control legislation has been enacted in 16 states including North Carolina, the leading tobacco-producing state in the country (Centers for Disease Control and Prevention, Office on Smoking and Health, unpublished data, 1994).9

North Carolina's preemption bill, HB 957, was enacted by the General Assembly on July 15, 1993.10 Its main requirement was that smoking be permitted in at least 20% of space in state-controlled buildings. Nonsmoking areas were not required. More important, the bill prohibited local regulatory boards from adopting more restrictive regulations for public or private buildings after October 15, 1993; local regulations adopted before that date would be grandfathered in. During the 3-month period between July 15 and October 15, 1993, smoking regulations were proposed in more than half of the counties in North Carolina, prompting the media to declare HB 957 an unexpected victory for tobacco control.11
We report herein the number of regulations adopted before and during this 3-month period and evaluate the extent to which these regulations will provide protection from ETS at private work sites.

Methods

Local smoking regulations were compiled for all 100 counties and the 85 municipalities with populations greater than 5000 in North Carolina. A local smoking regulation was defined as a county or city ordinance or a board of health regulation that restricts smoking in any public or private place. In North Carolina, county ordinances apply only to the unincorporated areas of counties, and city ordinances apply only to incorporated areas. Board of health regulations apply to both the incorporated and unincorporated areas of the county(s) where the board has jurisdiction. In counties and cities where both an ordinance and a board of health regulation were adopted, the more restrictive regulation applies.

We learned of all smoking regulations by contacting the 88 boards of health, 100 boards of county commissioners, and 85 city councils by mail, asking if and when a smoking control regulation(s) had been adopted. Nonrespondents were contacted by telephone. Copies of all regulations were obtained and were classified by the date (quarter) of adoption. The four quarters were defined to begin on the dates January 15, April 15, July 15, and October 15, so that the 3-month delay in preemption following HB 957 constituted one complete quarter.

To determine protectiveness, we examined requirements for nonsmoking areas and for separate heating, ventilation, and air-conditioning (HVAC) systems at private work sites. We focused on private work sites because they employ approximately 83% of the nonagricultural workforce in North Carolina. Regulations were classified into four levels of protection (Table 1): none (no restrictions on smoking); minimal (smoking restricted to designated areas; separate HVAC system not required); partial (smoking restricted to designated areas; separate HVAC system required); and complete (smoking prohibited).

Results

Between January 1, 1988, and July 15, 1993, a total of 16 local smoking regulations were adopted in North Carolina: two by boards of health, five by county commissions, and nine by city councils (Figure). These regulations were adopted on a sporadic basis, with a slight rise following the release of the Environmental Protection Agency's report on ETS in January 1993. In the quarter following the adoption of HB 957, 89 more regulations were adopted: 27 by boards of health, 21 by county commissions, and 41 by city councils. Eighty-eight of these 89 regulations were the first smoking control measures ever adopted by the respective regulatory board.

Most regulatory boards did not adopt any smoking restrictions for private work sites—either they did not adopt a smoking regulation, or the regulations they adopted did not include any requirements that pertain to private work sites (Table 2). Twenty-four percent of boards of health adopted regulations that met the criteria for minimal or partial protection, compared with only 2% of county commissions and 4% of city councils. No regulatory board adopted regulations that met the criteria for complete protection.

By the year 2000, when all regulations will have gone into effect, 59% of the 2.6 million private employees in North Carolina will still not be guaranteed any legal protection from ETS at their work site; 19% will have minimal protection, 22% will have partial protection, and 0% will have complete protection.

Comment

North Carolina's preemption bill, HB 957, included an unusual legislative compromise that gave local regulatory

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Table 1 — Classification of Local Smoking Regulations by Level of Protection From Environmental Tobacco Smoke (ETS) at Private Work Sites

<table>
<thead>
<tr>
<th>Level of Protection From ETS</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>No smoking restrictions for private work sites</td>
</tr>
<tr>
<td>Minimal</td>
<td>Smoking restricted to designated areas; separate HVAC* system not required</td>
</tr>
<tr>
<td>Partial</td>
<td>Smoking restricted to designated areas; separate HVAC system required</td>
</tr>
<tr>
<td>Complete</td>
<td>Smoking prohibited</td>
</tr>
</tbody>
</table>

*Heating, ventilation, and air-conditioning.

Table 2.—Protectiveness of Local Smoking Regulations* Adopted in North Carolina by Regulatory Boards

<table>
<thead>
<tr>
<th>Regulatory Board</th>
<th>None</th>
<th>Minimal</th>
<th>Partial</th>
<th>Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boards of health (n=85), %</td>
<td>76</td>
<td>11</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td>County commissions (n=100), %</td>
<td>98</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>City councils (n=85), %</td>
<td>96</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

*Effective on or before January 1, 2000.
boards 3 months to adopt smoking re-
restrictions that would be grandfathered
in. During this 3-month interim, the num-
ber of local smoking regulations in North
Carolina increased from 16 to 105. As of
January 1, 2000, when all requirements
will be in effect, 59% of private employ-
ees will still not be guaranteed any pro-
tection from work site ETS. Nineteen
percent will be guaranteed minimal pro-
tection. Although their work sites will be
required to have a nonsmoking area, this
area will not be required to have a
separate HVAC system. After 1 hour of
air mixing, the average concentration of
ETS will be approximately the same in
the smoking and nonsmoking areas.13·15
Twenty-two percent will be guaranteed
partial protection. Although smoking ar-
eas in their work sites will be required
to have separate HVAC systems, these
areas could be work areas that must be
frequented by nonsmokers. Furthermore,
even properly maintained systems that
meet strict ventilation standards
have been shown to leak ETS, as evi-
denced by ambient nicotine levels in non-
smoking areas.16·17 The only regulations
that provide complete protection are
those that ban smoking in all work ar-
eas. Given this criterion, no private em-
ployees will be guaranteed complete pro-
tection from work site ETS by the year
2000.

Although HB 957 appears to have
prompted many communities to adopt
smoking control regulations for the first
time, the 3-month deadline created an
unnatural time frame for communities to
organize, debate, and adopt restrictions
for the indefinite future. The adoption
of smoking control laws is normally an
incremental process with increasingly pro-
tective measures being adopted over
time; rarely does a community adopt a
comprehensive measure as its first law.
In North Carolina, preemption is now in
effect and local regulatory boards cannot
take further steps to protect employees
from work site ETS. Although HB 957
could be repealed, efforts to repeal pre-
eemptive smoking control legislation in
other states have not been successful
(Centers for Disease Control and Pre-
vention, Office on Smoking and Health,
unpublished data, 1994).

The impact of preemption on public
health goes beyond its impact on the
number and protectiveness of local regu-
lations. Local smoking regulations gen-
erate public debate and community or-
ganization around the issue of ETS.
Through this process, the public is edu-
cated and the social norms regarding
tobacco use may change. By preventing
new regulations from being adopted, pre-
eemption blocks an effective means of
educating the public.

Rather than a victory for tobacco con-
rol, HB 957 has been a setback for pub-
lic health in North Carolina.

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