

# Legislative Tracking: State Preemption Laws

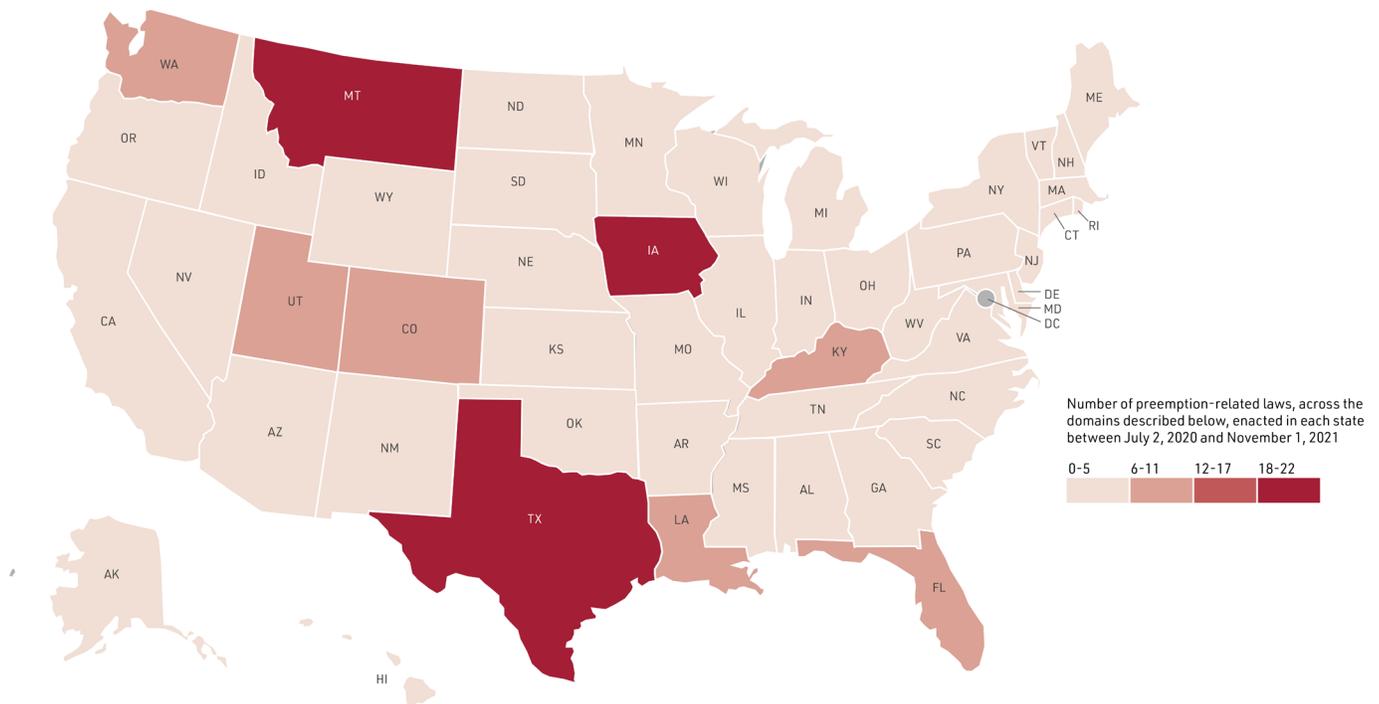
November 2021

Amy Cook, JD; Adam Herpolsheimer, JD; Alexandra Hess, JD; Caitlin Davie, JD; Lindsay K. Cloud, JD

Preemption — a legal doctrine that allows a higher level of government to limit or eliminate the regulatory authority of a lower level of government — can occur at multiple levels of government. Federal law can limit both state and local governments from passing new laws or amending existing laws related to a specific legal issue. States also have the authority to block or limit local governments from passing or changing local ordinances by statutory or constitutional law.

There are two primary types of preemption: express and implied. Express preemption occurs when a law explicitly limits or bans the lawmaking authority of a lower level of government through legislation. Implied preemption occurs when a government authority invalidates a lower level of government, even though explicit preemptory language is not included in the law itself.

Temple University's Center for Public Health Law Research (CPHLR), in partnership with the National League of Cities (NLC), tracks and analyzes preemption of local policies, particularly those that impact the social determinants of health, conditions in which people live, learn, work, and play. Researchers at CPHLR collected proposed bills, laws that were enacted or amended, and any case law and attorney general opinions that preempted local authority from July 1, 2020, to November 1, 2021, in all 50 states.



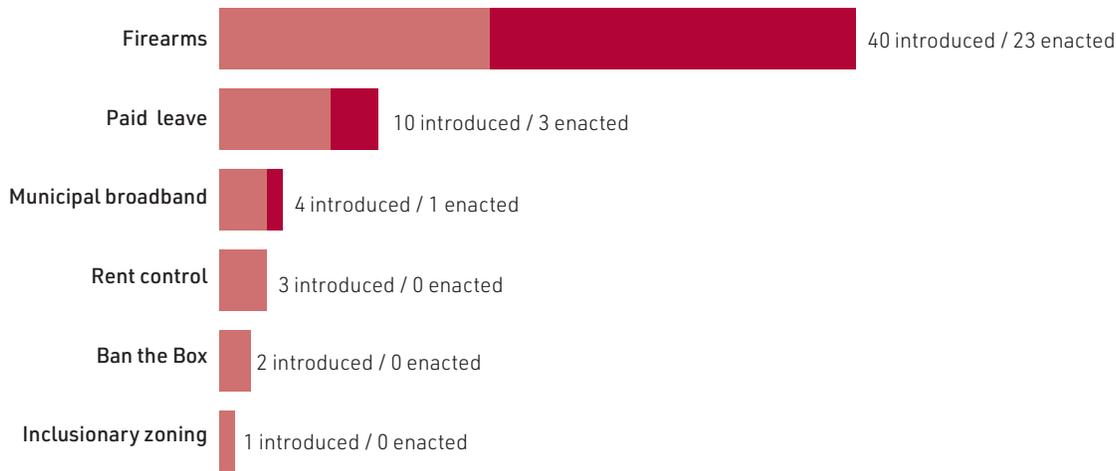
**Figure 1.** Preemption-related laws enacted related to firearms, paid leave, municipal broadband, rent control, Ban the Box, inclusionary zoning, and six types of tax and expenditure limits.

This report summarizes the key trends from this research across 12 domains: Ban the Box, firearms, mandatory inclusionary zoning, municipal broadband, mandatory paid leave, and rent control, as well as six domains related to tax and expenditure limits (TEs): general expenditure limits, full disclosure requirements, general revenue limits, property tax rate limits, tax assessment limits, and tax levy limits.

## State Preemption of Local Authority

Since 2020, state preemption of local governmental authority has taken hold in legislatures across the United States. Efforts to preempt local authority can occur through legislative action that substantively changes existing laws through amendments or by introducing and enacting new legislation that establishes or expands preemption of local authority. Between July 1, 2020, and November 1, 2021, 26 states (AL, AR, AZ, FL, ID, IA, LA, ME, MA, MN, MS, MO, MT, NH, ND, OH, OK, PA, SC, TN, TX, UT, VT, VA, WV, WI) introduced legislation that limited local authority across six of the domains captured in the Center’s research: Ban the Box, firearms, mandatory inclusionary zoning, municipal broadband, mandatory paid leave, and rent control.

Figure 2. Number of preemption-related bills and laws introduced and enacted between July 2, 2020, and November 1, 2021.



## State Expansion of Local Authority

While much of the movement in state-level preemption of local governments has been restrictive, states are also enacting legislation that removes preemptive barriers in favor of public health. This trend increases local government authority and autonomy by states repealing existing preemptive statutes and enacting new laws that grant local governments the express authority to regulate certain areas.

Between July 1, 2020, and November 1, 2021, 23 states (AR, CA, CO, FL, GA, IL, IN, MI, MN, MO, MS, MT, NE, NC, OH, OK, OR, PA, TN, TX, VA, WA, WY) introduced legislation to expand local authority across six of the domains captured in the Center’s research: Ban the Box, firearms, mandatory inclusionary zoning, municipal broadband, mandatory paid leave, and rent control. Of those, only a small fraction enacted such legislation.

Expanding local authority is not always as clear cut as repealing or amending preemptive laws entirely, as there are often administrative and political barriers in place that create de facto or implied preemption. In municipal broadband specifically, Washington amended its law to remove the explicit preemptive language that limited municipalities from providing their citizens with telecommunication services, but, maintained barriers that make it challenging to actually implement broadband in local communities. Tax and expenditure limits are also unique — between July 2, 2020 and November 1, 2021, very few substantive changes were made to the limits across states. More specifically, the majority of these amendments updated rates and figures to reflect the current fiscal year budgets as a whole. The exact nature (and number) of changes related to TEs could not be confirmed for this publication. However, one notable example of

expanding local authority stood out in Kansas. In July 2021, Kansas repealed a law (Kan. Stat. 79-2925b.) to eliminate a tax levy limitation first enacted in 1999. This repeal gives taxing municipalities the direct authority to approve appropriations and budgets funded by increases in property taxes where formerly a public hearing and resolution were required in any instance where the increased property taxes exceeded those of the previous year.

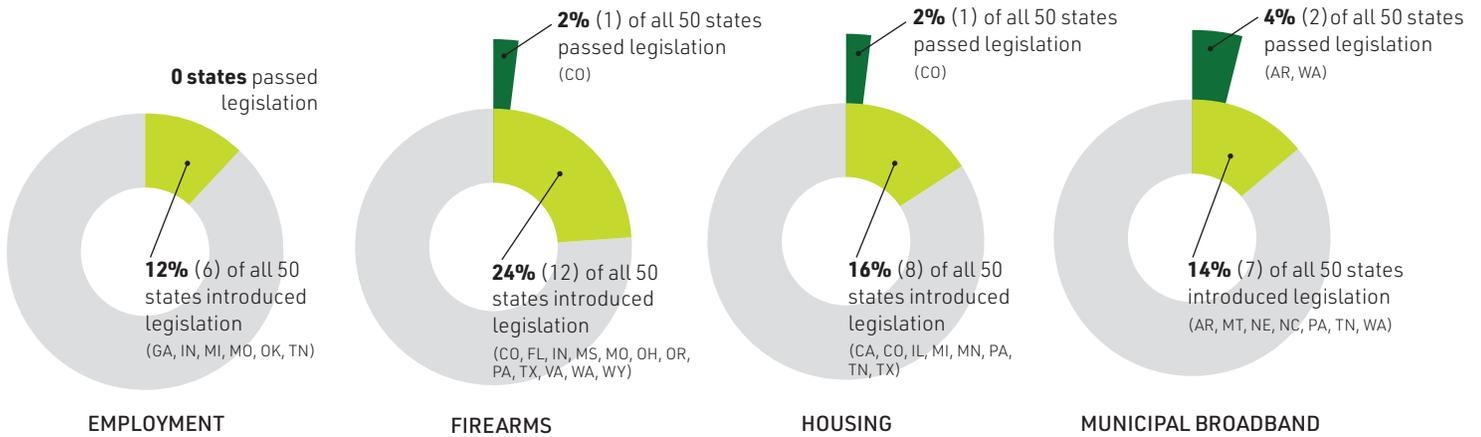
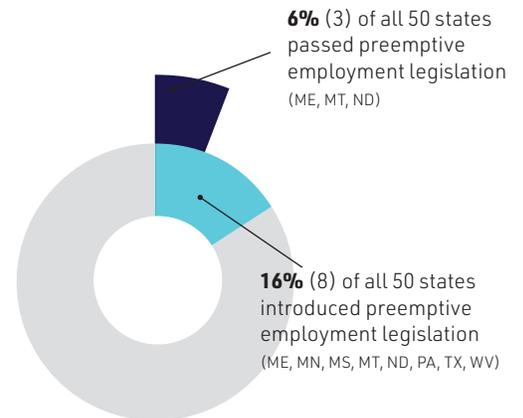


Figure 3. Between July 2020 and November 2021, 23 states introduced legislation to expand local authority related to employment (mandatory paid leave and Ban the Box), firearms, housing (mandatory inclusionary zoning and rent control), and municipal broadband. A small percentage of that legislation was enacted.

## Domains at a Glance

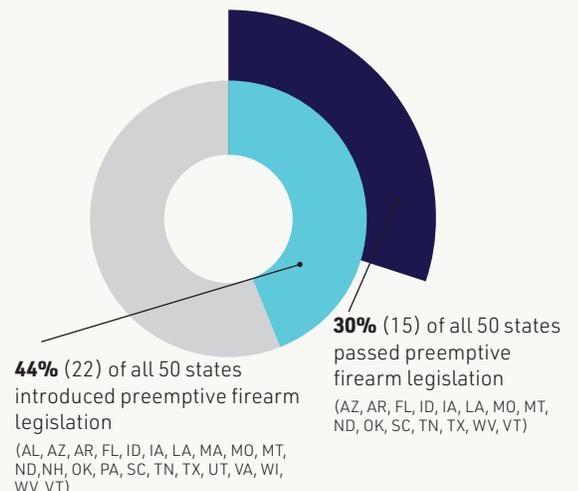
### Employment: Paid Leave and Ban the Box

Paid leave, which can include time off for sick or family medical care, is time taken off work with pay. Between July 2, 2020, and November 1, 2021, 10 bills in eight states (ME, MN, MT, MS, ND, PA, TX, WV) were introduced to limit local governments' ability to regulate paid leave for employees. Of these 10 bills, three passed into law in Maine, Montana, and North Dakota. Ban the Box laws can prohibit employers from asking about a job candidate's conviction or arrest history during the application process. Some states preempt local governments from passing laws to regulate employment hiring practices. Between July 2, 2020 and November 1, 2021, two states (WV and PA) introduced legislation restricting local governments from regulating hiring practices: West Virginia introduced a bill that would prohibit local governments from regulating information an employer could request on a job application; Pennsylvania's bill was broader and sought to ban local governments from regulating employer policies generally, including all of those related to hiring. Both of these bills failed.



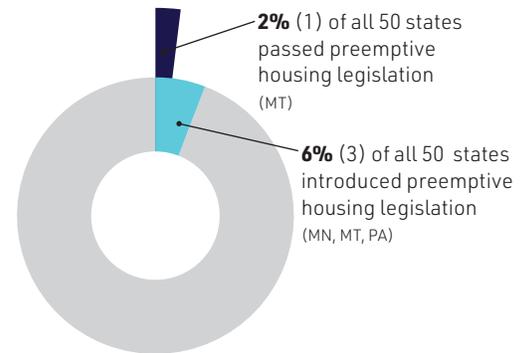
### Firearms

In March 2021, following a mass shooting in Boulder, Colorado, President Biden urged Congress to take action on gun control, and in June, he introduced a comprehensive strategy to combat gun violence. In response, there was a flurry of state action: 11 states (AZ, AR, ID, MO, MT, ND, OK, SC, TN, TX, WV) passed new laws or amended existing laws that expressly affirmed the state's intent to protect and preserve the right to bear arms. These new laws, sometimes called sanctuary laws, prohibit government entities, including local governments and officials, from enforcing federal firearm laws that are stricter than state law, with some going as far as to explicitly state that federal law is unenforceable within the state. Four states (AL, NH, UT, WI) also introduced bills proposing similar laws. In Wisconsin, the bill passed both the state House and Senate, though the governor vetoed the bill.



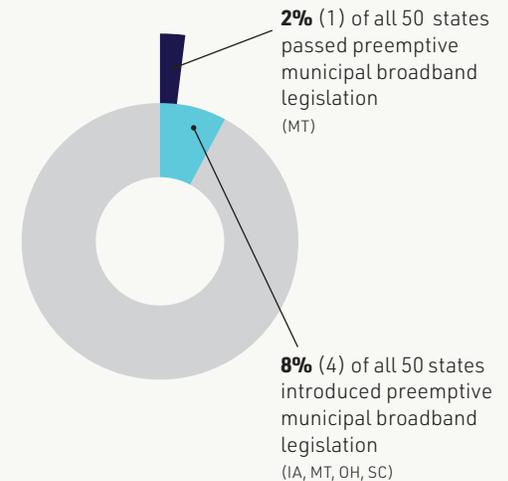
## Housing: Rent Control and Inclusionary Zoning

Many states moved, unsuccessfully, on efforts to permit affordable housing. Four states (MN, PA, TN, TX) introduced bills that would permit local inclusionary zoning, and five introduced bills that would permit local rent control (CO, CA, IL, MI, TN). Among the flurry of activity, one state saw success — Colorado. A new Colorado law took effect in September 2021 that expressly allows local governments to require developers to build affordable housing. In the other states, California introduced a constitutional proposition that would have allowed local rent control; while bills introduced in Illinois, Michigan, and Tennessee would have repealed existing statutes that limit local housing authority. Notably, Pennsylvania introduced a bill that would both preempt local rent control but permit local inclusionary zoning. Of the three states (MN, MT, PA) that introduced laws preempting local affordable housing, Minnesota passed a law prohibiting local governments from implementing inclusionary zoning.



## Municipal Broadband

The COVID-19 pandemic has further exposed the digital divide in the United States, as many continue to lack access to high-speed internet, especially low-income and BIPOC individuals, and those living in rural and tribal communities. These structural inequities are worsened by state barriers or outright preemption bans of municipal broadband networks. Ten states (AR, IA, MT, NE, NC, OH, PA, SC, TN, WA) proposed 16 bills related to municipal broadband from July 2, 2020, to November 1, 2021. Of those 10 states, seven states (AR, WA, MT, NE, NC, PA, TN) introduced bills to expand local authority. Four states (IA, MT, OH, SC) introduced bills to limit local authority through preemption. Only two of those bills passed: on July 25, 2021, Washington amended its law to remove the explicit preemption limiting municipalities from providing their citizens with telecommunication services but maintained a few barriers making it challenging to do so. This transition from express to implied preemption is a step in the right direction, but the barriers that remain still encroach on the local authority of Washington municipalities. Arkansas took a similar step in February 2021, removing a few of the barriers already in place, and providing more exceptions to the general preemptive statute. Conversely, four states without limitations regarding municipal broadband have recognized other challenges and have worked to increase coverage and access for those most vulnerable. Three of these states (CA, LA, MI) responded through budget considerations for developing ways to expand internet access in areas where municipal broadband was possible. The fourth state, New Jersey, established a committee tasked with discerning where community broadband networks would suit the state best. At the federal level, The Accessible, Affordable Internet for All Act (H.R. 1783), introduced by Rep. James Clyburn (SC), would invest \$100 billion to build high-speed broadband infrastructure across the country that would specifically target unserved and underserved areas.



### Acknowledgments

Data for this report were created by the Center for Public Health Law Research at Temple University's Beasley School of Law in collaboration with the National League of Cities and made possible by support from the Robert Wood Johnson Foundation. These data supplement a policy surveillance dataset available on LawAtlas.org that captures key features of state-level preemption laws in 50 states, from August 1, 2019, to November 1, 2021. The authors gratefully acknowledge Bethany R. Saxon, MS, and Hope M. Holroyd, MA, from the Center for Public Health Law Research for their contributions to the design of this report.

The Center for Public Health Law Research at the Temple University Beasley School of Law supports the widespread adoption of scientific tools and methods for mapping and evaluating the impact of law on health. Learn more at <http://phlr.org>.