



PREEMPTION IN NEW MEXICO'S
TOBACCO PRODUCTS ACT

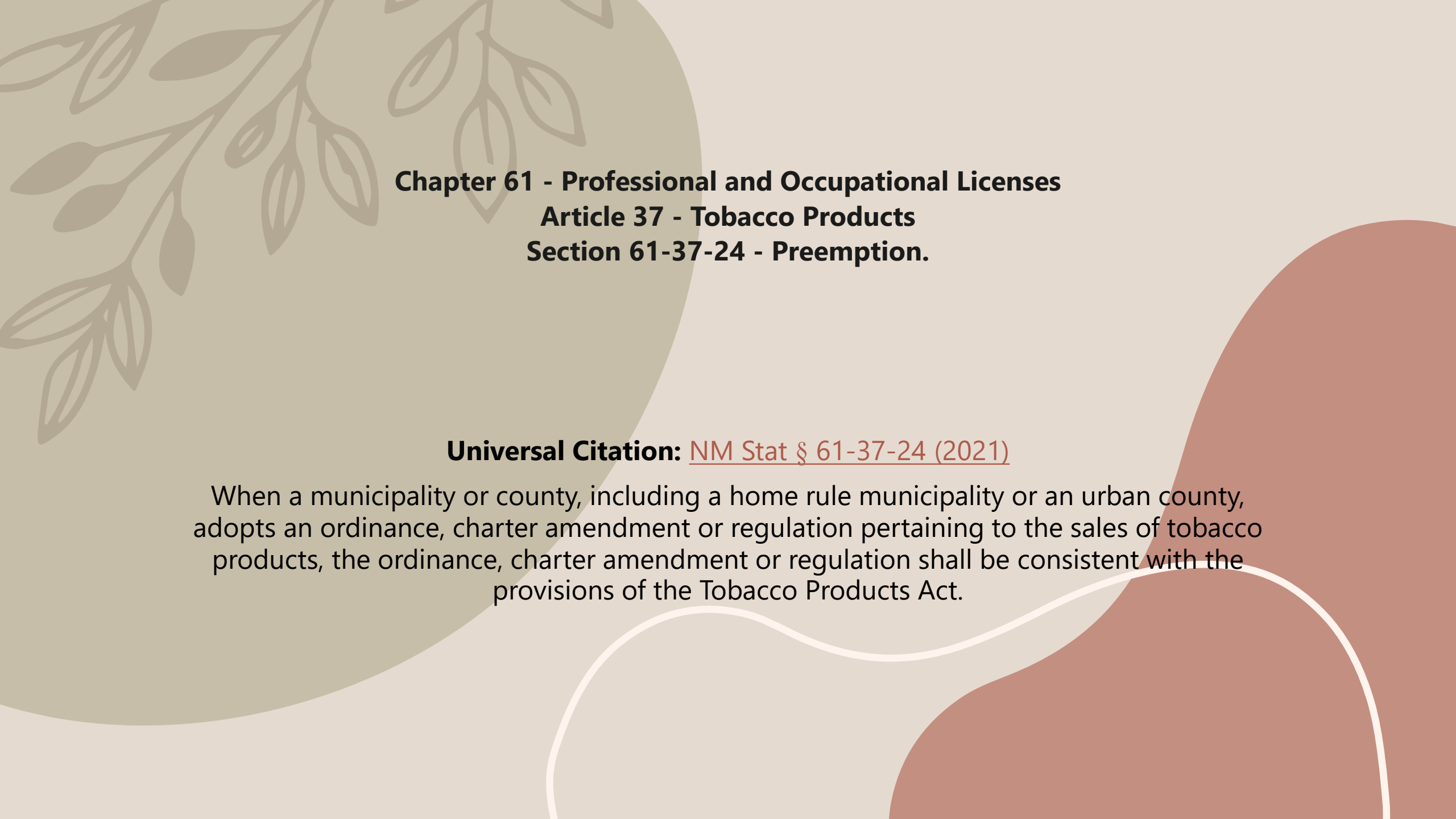
Act – effective 1/1/2021

NM now must issue licenses for the manufacture, distribution or retail sale of tobacco products.

Licenses shall not be issued if:

- A license has been revoked by another state;
- The location of the requested license is within 300 feet of a school (except those in existence prior to July 1, 2020);
- The location of the license would result in a violation of a zoning or other ordinance of a governing body in which the proposed location would exist.





Chapter 61 - Professional and Occupational Licenses
Article 37 - Tobacco Products
Section 61-37-24 - Preemption.

Universal Citation: [NM Stat § 61-37-24 \(2021\)](#)

When a municipality or county, including a home rule municipality or an urban county, adopts an ordinance, charter amendment or regulation pertaining to the sales of tobacco products, the ordinance, charter amendment or regulation shall be consistent with the provisions of the Tobacco Products Act.

A Top Tobacco Industry Priority

“While we’re not married to any particular form of preemption, we’re dead serious about achieving preemption at the local level.”

Tina Walls, Philip Morris

“(T)he...tobacco companies’ first priority has always been to preempt the field, preferably to put it all on the federal level, but if they can’t do that, at least on the state level, because the health advocates can’t compete with me on a state level.

Victor Crawford, former Tobacco Industry Lobbyist

Source : National Tobacco Prevention Partners

31 States’ laws include preemption language

Why Repeal Preemption?

- The National Academies of Medicine recommends that the federal government and states avoid preempting local public health policies through ‘ceiling preemption’ and instead should set minimum requirements that would allow states and localities to further protect the public’s health.
- Preemption threats exist across numerous policy areas, including firearm control, minimum wage, paid sick leave, housing, nutrition, and tobacco control.

Restricting Local Control

- The Centers for Disease Control and Prevention reports that multiple states are trying to control local governments' decision making on everything from tobacco retailer licensing to ads for cigarettes, e-cigarettes and other tobacco products.
- An online survey of mayors and health officials from 159 large cities in the U.S. found that the majority see preemption as an impediment to local policymaking — fewer than one-third of mayors and health officials implemented a local law when faced with preemption. Half of health officials and 40% of mayors sought legal advice when faced with preemption.

Restricting Tobacco Control

- A 2012 study found that state preemptive laws of local smoking restrictions were associated with fewer local ordinances restricting smoking, a reduced level of worker protection from secondhand smoke, and reduced support for smoke-free policies among current smokers, suggesting that state preemptive laws have several effects that could impede broader tobacco control efforts

Preemption & Public Health

- A 2017 editorial published in the American Journal of Public Health suggested preemption may, in part, explain diverging trends in mortality between states.
- For example, life expectancy at birth in New York and Mississippi differed by an average of 5.5 years in 2014, up from a 1.6-year difference in 1980. Mississippi has preempted health-promoting local laws related to paid sick days, a higher minimum wage, stricter firearm regulations, and requiring that calorie counts be posted, while New York has passed no preemption laws in these areas

Benefits of Repealing Preemption

- An American Heart Association commissioned survey conducted in December 2019 found 63 percent of registered voters in New Mexico support communities being able to regulate tobacco sales in their jurisdiction.
- Local control allows New Mexico cities and counties the opportunity to regulate the sales of all tobacco products, including e-cigarettes, in their communities.
- Local control allows local law enforcement agencies to conduct compliance checks against sales of tobacco products to minors in their communities.

Benefits of Repealing Preemption

- Cities and counties will also have an opportunity to establish guidelines that restrict the sale of tobacco products near schools, community centers, baseball fields, skateboard parks and other areas where underage children frequent within their communities.
- Local governments will also have an opportunity to adopt ordinances that restrict certain e-cigarette flavors – marketed to underage children – within their community.

Benefits con't

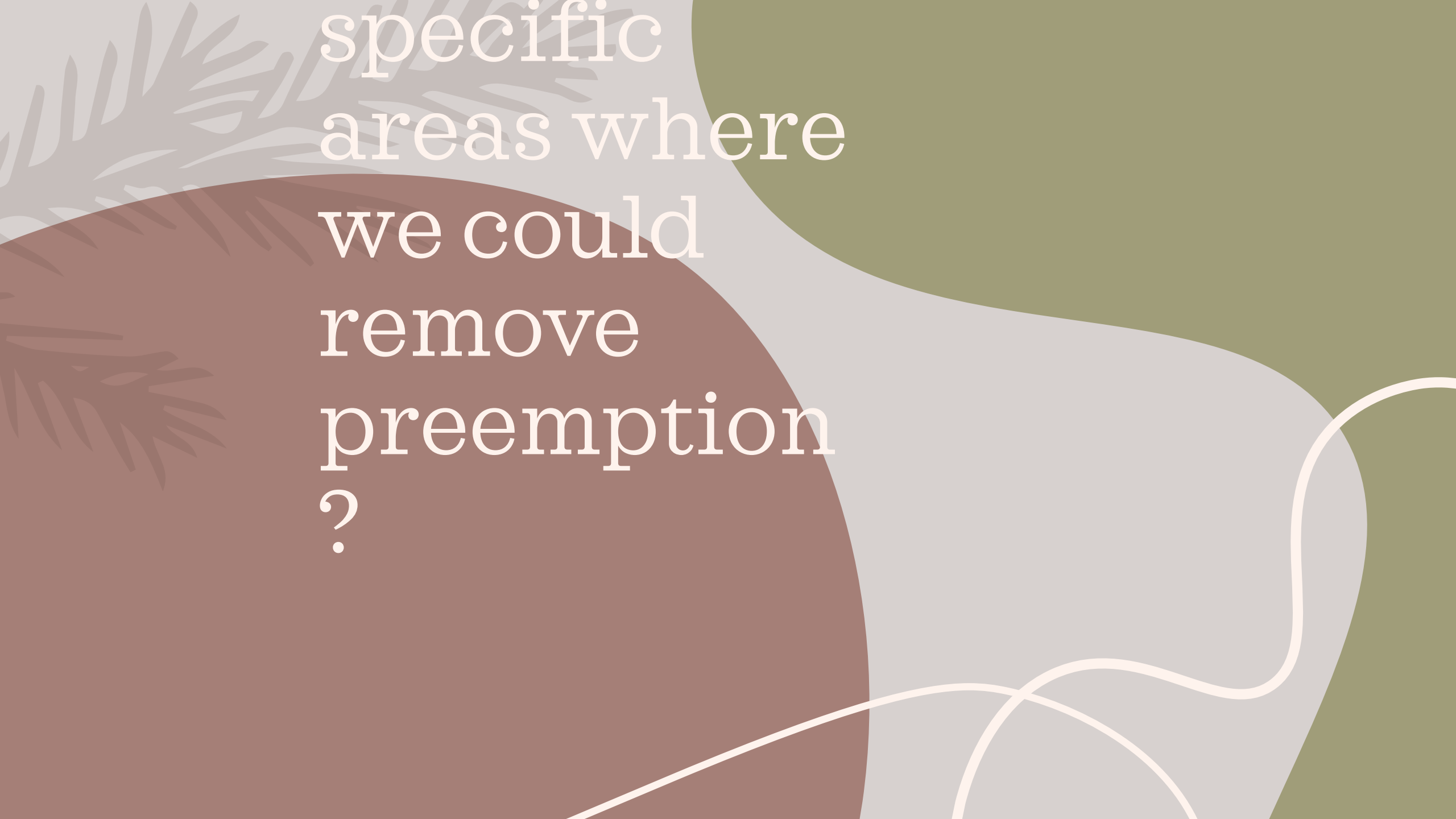
- Businesses are used to meeting different requirements under different local laws. This “patchwork” is the norm and does not create an undue burden for businesses.

Supporters of The Repeal

- The New Mexico Municipal League
- City Council of Albuquerque (Unanimously approved a resolution to repeal the tobacco preemption)
- City Council of Las Cruces (Unanimously approved a resolution to repeal the tobacco preemption)
- City Council of Santa Fe (Unanimously approved a resolution to repeal the tobacco preemption)
- City of Las Vegas (Unanimously approved a resolution to repeal the tobacco preemption)
- City of Espanola (Unanimously approved a resolution to repeal the tobacco preemption)
- Bernalillo County Commission (Unanimously approved a resolution to repeal the tobacco preemption) Albuquerque Public Schools Board of Education (Unanimously approved a resolution to repeal the tobacco preemption)
- Rio Arriba County Commission

Supporters of The Repeal

- Greater Albuquerque Medical Association (GAMA)
- New Mexico Chronic Disease Prevention Council
- Evolvement
- Health Equity Alliance for LGBTQ+ New Mexicans (HEAL+ NM)
- Southwest Tribal Tobacco Coalition
- New Mexico Public Health Association
- New Mexico Pharmacist Association
- New Mexico Hospital Association
- American Heart Association
- American Cancer Society Cancer Action Network
- American Lung Association



specific
areas where
we could
remove
preemption
?

Time, Place & Manner

- Flavors
- Displays
- Proximity to schools
- Hours of operations
- Additional licensing
- Others





thank you

Linda Siegle – ACS CAN

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