

104TH CONGRESS
2D SESSION

S. 1679

To clarify the application of Federal preemption of State and local laws,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 1996

Mr. LEVIN introduced the following bill; which was read twice and referred
to the Committee on Governmental Affairs

A BILL

To clarify the application of Federal preemption of State
and local laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preemption Clarifica-
5 tion and Information Act of 1996”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the United States Constitution created a
9 strong Federal system, reserving to the States all

1 powers not expressly delegated to the Federal Gov-
2 ernment;

3 (2) on numerous occasions, the Congress has
4 enacted statutes that explicitly preempt State and
5 local government powers and describe the scope of
6 the preemption;

7 (3) in addition to statutes that explicitly pre-
8 empt State and local government powers, many
9 other statutes that lack an explicit statement by
10 Congress of its intent to preempt and a clear de-
11 scription of the scope of the preemption have been
12 construed by the courts and Federal agencies to pre-
13 empt State and local government powers; and

14 (4) without an explicit statement of Congress'
15 intent to preempt State and local government pow-
16 ers and a clear description of the scope of preemp-
17 tion, preemptive statutes—

18 (A) provide too little guidance and leave
19 too much discretion to Federal agencies which
20 are required to promulgate and enforce regula-
21 tions pursuant to statutes;

22 (B) create too great an uncertainty for
23 State and local governments; and

24 (C) leave the presence or scope of preemp-
25 tion to be litigated and determined by the Fed-

1 eral judiciary, producing results sometimes con-
2 trary to or beyond the intent of Congress.

3 **SEC. 3. PURPOSE.**

4 The purposes of this Act are to—

5 (1) promote and preserve the integrity and ef-
6 fectiveness of the Federal system;

7 (2) set forth principles governing the interpreta-
8 tion of congressional intent regarding preemption
9 of State and local government powers by Federal
10 laws and regulations; and

11 (3) establish an information collection system
12 designed to monitor the incidence of Federal statu-
13 tory and regulatory preemption.

14 **SEC. 4. DEFINITIONS.**

15 As used in this Act, the term—

16 (1) “local government” means a county, city,
17 town, borough, township, village, school district, spe-
18 cial district, or other political subdivision of a State;

19 (2) “State” means a State of the United States
20 and an agency or instrumentality of a State, but
21 does not include a local government of a State; and

22 (3) “State and local government powers” means
23 powers reserved under the ninth and tenth amend-
24 ments of the United States Constitution to States or
25 delegated to local governments by States.

1 **SEC. 5. RULE OF CONSTRUCTION.**

2 No statute, or rule promulgated under such statute,
3 shall preempt, in whole or in part, any State or local gov-
4 ernment law, ordinance, or regulation, unless the statute
5 explicitly states that such preemption is intended or unless
6 there is a direct conflict between such statute and a State
7 or local law, ordinance, or regulation so the two cannot
8 be reconciled or consistently stand together.

9 **SEC. 6. ANNUAL REPORT ON STATUTORY PREEMPTION.**

10 (a) REPORT.—Within 90 days after each Congress
11 adjourns sine die, the Congressional Research Service
12 shall prepare and make available to the public a report
13 on the extent of Federal statutory preemption of State and
14 local government powers enacted into law during the pre-
15 ceding Congress or adopted through judicial interpretation
16 of Federal statutes.

17 (b) CONTENTS.—The report shall contain—

18 (1) a cumulative list of the Federal statutes
19 preempting, in whole or in part, State and local gov-
20 ernment powers;

21 (2) a summary of Federal legislation enacted
22 during the previous Congress preempting, in whole
23 or in part, State and local government powers;

24 (3) an overview of recent court cases addressing
25 Federal preemption issues; and

1 (4) other information the Director of the Con-
2 gressional Research Service determines appropriate.

3 (c) TRANSMITTAL.—Copies of the report shall be sent
4 to the President and the chairman of the appropriate com-
5 mittees in the Senate and House of Representatives.

6 **SEC. 7. EFFECTIVE DATE.**

7 This Act shall take effect on January 1, 1997. The
8 requirements of section 5 shall apply only to statutes en-
9 acted or final regulations which become effective on or
10 after January 1, 1997.

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