

**(g) Exception**

Nothing in this section shall apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.

**(h) Policy regarding criminal justice system referral****(1) In general**

No funds shall be made available under any subchapter of this chapter to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.

**(2) Definition**

For the purpose of this subsection, the term “school” has the same meaning given to such term by section 921(a) of title 18.

(Pub. L. 89–10, title VIII, §8561, formerly title IV, §4141, as added Pub. L. 107–110, title IV, §401, Jan. 8, 2002, 115 Stat. 1762; renumbered title IX, §9551, renumbered title VIII, §8561, Pub. L. 114–95, title IV, §4001(a)(2)(A), (B), (D), title VIII, §8001(a)(8), Dec. 10, 2015, 129 Stat. 1966, 2088, 2089.)

## REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (c), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

## CODIFICATION

Section was classified to section 7151 of this title prior to renumbering by Pub. L. 114–95.

## SUBPART 5—ENVIRONMENTAL TOBACCO SMOKE

## CODIFICATION

Pub. L. 114–95, title IV, §4001(a)(4)(A)–(C)(i), title VIII, §8001(a), (b)(1), Dec. 10, 2015, 129 Stat. 1966, 2088, 2089, redesignated part C (§7181 et seq.) of subchapter IV of this chapter as subpart 5 of part F of this subchapter.

Similar provisions relating to environmental tobacco smoke are contained in part B (§6081 et seq.) of subchapter X of chapter 68 of this title.

**§ 7971. Short title**

This subpart<sup>1</sup> may be cited as the “Pro-Children Act of 2001”.

(Pub. L. 89–10, title VIII, §8571, formerly title IV, §4301, as added Pub. L. 107–110, title IV, §401, Jan. 8, 2002, 115 Stat. 1773; renumbered title IX, §9561, renumbered title VIII, §8571, Pub. L. 114–95, title IV, §4001(a)(4)(A), (B), (C)(ii), title VIII, §8001(a)(9), Dec. 10, 2015, 129 Stat. 1966, 2088, 2089.)

## REFERENCES IN TEXT

This subpart, referred to in text, was in the original “this part”, and was translated as reading “this subpart”, to reflect the probable intent of Congress. Pub. L. 114–95 redesignated part C of title IV of Pub. L. 89–10

<sup>1</sup> See References in Text note below.

as subpart 5 of part F of title VIII of Pub. L. 89–10, which is classified to this subpart.

## CODIFICATION

Section was classified to section 7181 of this title prior to renumbering by Pub. L. 114–95.

**§ 7972. Definitions**

As used in this subpart:<sup>1</sup>

**(1) Children**

The term “children” means individuals who have not attained the age of 18.

**(2) Children’s services**

The term “children’s services” means the provision on a routine or regular basis of health, day care, education, or library services—

(A) that are funded, after January 8, 2002, directly by the Federal Government or through State or local governments, by Federal grant, loan, loan guarantee, or contract programs—

(i) administered by either the Secretary of Health and Human Services or the Secretary of Education (other than services provided and funded solely under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.]); or

(ii) administered by the Secretary of Agriculture in the case of a clinic (as defined in part 246.2 of title 7, Code of Federal Regulations (or any corresponding similar regulation or ruling)) under section 17(b)(6) of the Child Nutrition Act of 1966 [42 U.S.C. 1786(b)(6)]; or

(B) that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds, as determined by the appropriate head of a Federal agency in any enforcement action carried out under this subpart,<sup>1</sup>

except that nothing in clause (ii) of subparagraph (A) is intended to include facilities (other than clinics) where coupons are redeemed under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

**(3) Indoor facility**

The term “indoor facility” means a building that is enclosed.

**(4) Person**

The term “person” means any State or local subdivision of a State, agency of such State or subdivision, corporation, or partnership that owns or operates or otherwise controls and provides children’s services or any individual who owns or operates or otherwise controls and provides such services.

**(5) Secretary**

The term “Secretary” means the Secretary of Health and Human Services.

(Pub. L. 89–10, title VIII, §8572, formerly title IV, §4302, as added Pub. L. 107–110, title IV, §401, Jan. 8, 2002, 115 Stat. 1773; renumbered title IX, §9562, renumbered title VIII, §8572, Pub. L.

<sup>1</sup> See References in Text note below.

114-95, title IV, §4001(a)(4)(A), (B), (C)(ii), title VIII, §8001(a)(9), Dec. 10, 2015, 129 Stat. 1966, 2088, 2089.)

#### REFERENCES IN TEXT

This subpart, referred to in text, was in the original “this part”, and was translated as reading “this subpart”, to reflect the probable intent of Congress. Pub. L. 114-95 redesignated part C of title IV of Pub. L. 89-10 as subpart 5 of part F of title VIII of Pub. L. 89-10, which is classified to this subpart.

The Child Nutrition Act of 1966, referred to in par. (2), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

The Social Security Act, referred to in par. (2)(A)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### CODIFICATION

Section was classified to section 7182 of this title prior to renumbering by Pub. L. 114-95.

### § 7973. Nonsmoking policy for children’s services

#### (a) Prohibition

After January 8, 2002, no person shall permit smoking within any indoor facility owned or leased or contracted for, and utilized, by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

#### (b) Additional prohibition

##### (1) In general

After January 8, 2002, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted for, and utilized by, such person for the provision of regular or routine health care or day care or early childhood education programs.

##### (2) Exception

Paragraph (1) shall not apply to—

(A) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(B) any private residence.

#### (c) Federal agencies

##### (1) Kindergarten, elementary, or secondary education or library services

After January 8, 2002, no Federal agency shall permit smoking within any indoor facility in the United States operated by such agency, directly or by contract, to provide routine or regular kindergarten, elementary, or secondary education or library services to children.

##### (2) Health or day care or early childhood education programs

###### (A) In general

After January 8, 2002, no Federal agency shall permit smoking within any indoor facility (or portion of such facility) operated

by such agency, directly or by contract, to provide routine or regular health or day care or early childhood education programs to children.

##### (B) Exception

Subparagraph (A) shall not apply to—

(i) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(ii) any private residence.

#### (3) Application of provisions

The provisions of paragraph (2) shall also apply to the provision of such routine or regular kindergarten, elementary or secondary education or library services in the facilities described in paragraph (2) not subject to paragraph (1).

#### (d) Notice

The prohibitions in subsections (a) through (c) of this section shall be published in a notice in the Federal Register by the Secretary (in consultation with the heads of other affected agencies) and by such agency heads in funding arrangements involving the provision of children’s services administered by such heads. Such prohibitions shall be effective 90 days after such notice is published, or 270 days after January 8, 2002, whichever occurs first.

#### (e) Civil penalties

##### (1) In general

Any failure to comply with a prohibition in this section shall be considered to be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed \$1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary. Each day a violation continues shall constitute a separate violation. In the case of any civil penalty assessed under this section, the total amount shall not exceed 50 percent of the amount of Federal funds received under any subchapter of this chapter by such person for the fiscal year in which the continuing violation occurred. For the purpose of the prohibition in subsection (c) of this section, the term “person”, as used in this paragraph, shall mean the head of the applicable Federal agency or the contractor of such agency providing the services to children.

##### (2) Administrative proceeding

A civil penalty may be assessed in a written notice, or an administrative compliance order may be issued under paragraph (1), by the Secretary only after an opportunity for a hearing in accordance with section 554 of title 5. Before making such assessment or issuing such order, or both, the Secretary shall give written notice of the assessment or order to such person by certified mail with return receipt and provide information in the notice of an opportunity to request in writing, not later than 30 days after the date of receipt of such notice, such hearing. The notice shall reasonably describe the violation and be accompanied with