

ACT 87

H.B. NO. 2871

A Bill for an Act Relating to Tobacco.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that students may be influenced by the sight of school employees and other adults smoking on school grounds and at school functions. Secondhand smoke is also detrimental to the health and well-being of students as well as other school employees. The legislature recognizes that a complete ban on smoking by adults whether parents, supporters, employees on the school campus, or others attending school functions may impose restrictions on prior rights of public employees and reduce participation by parents and supporters at school functions. Furthermore, public employees have a constitutional right to collectively bargain over mandatory subjects, including terms and conditions of employment.

The federal Pro-Children Act provides a clear mandate restricting certain use of tobacco on public school campuses that must be complied with in Hawaii.

The purpose of this Act is to balance the need for a safe and healthy school environment, comply with the federal Pro-Children Act, and recognize the right of public employees to collective bargaining in all permissive areas not controlled by the federal law.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Smoking prohibited; exception. (a) All public schools within the State, from kindergarten through grade twelve, shall prohibit the use of tobacco at public schools or at public school functions.

(b) The department shall provide affected public employees with breaks throughout the work day during which they may smoke at locations off-campus. The number and duration of such breaks shall be subject to collective bargaining.

(c) The department shall provide a smoking cessation program for public employees who are interested in participating; provided that issues relating to the costs of the program shall be subject to collective bargaining.

(d) This section shall not be subject to part II of chapter 328K.”

SECTION 3. Section 89-20, Hawaii Revised Statutes, is amended to read as follows:

“[~~§89-20~~] Chapter inoperative, when. (a) If any provision of this chapter jeopardizes the receipt by the State or any county of any federal grant-in-aid or other federal allotment of money, the provision shall, insofar as the fund is jeopardized, be deemed to be inoperative.

(b) The federal Pro-Children Act, as it relates to smoking at public school indoor facilities, shall preempt this chapter to the extent the federal act imposes mandatory restrictions on smoking in the workplace.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 25, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.