

House of Assembly—No 55

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South Australia

**Summary Offences (Tattooing and Piercing)
Amendment Bill 2002**

A BILL FOR

An Act to amend the *Summary Offences Act 1953*.

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The Parliament of South Australia enacts as follows:

1—Short title

- (1) This Act may be cited as the *Summary Offences (Tattooing and Piercing) Amendment Act 2002*.
- (2) The *Summary Offences Act 1953* is referred to in this Act as "the principal Act".

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Substitution of heading

The heading immediately before section 21A of the principal Act is amended by striking out "*Tattooing of Minors*" and substituting "*Tattooing and Piercing*".

10 4—Amendment of section 21A—Tattooing of minors

Section 21A of the principal Act is amended—

- (a) by striking out from subsection (1) "\$1 250" and substituting "\$2 500";
- (b) by striking out subsection (2) and substituting the following subsection:

- 15 (2) It is a defence to a charge of an offence against subsection (1) to prove that—
 - 20 (a) the defendant, or a person acting on behalf of the defendant, required the person tattooed to produce evidence of age; and
 - (b) the person tattooed produced false evidence in response to that requirement; and
 - (c) in consequence the defendant reasonably believed that, at the time the tattooing was performed, the person tattooed was of or over the age of 18 years.

5—Insertion of sections 21B and 21C

The following sections are inserted after section 21A of the principal Act:

21B—Piercing of Minors

- 5 (1) A person must not pierce any part of the body of a minor unless the minor is accompanied by a parent or guardian and the parent or guardian consents, in writing, to the piercing of that part of the minor's body.

Maximum penalty: \$2 500.

- 10 (2) A person who pierces a part of the body of a minor must record the particulars required by the regulations and must verify those particulars in accordance with the regulations.

Maximum penalty: \$750.

- 15 (3) A record required to be kept by a person under this section in relation to a piercing must be kept for a period of two years after the date of the piercing and must be produced for inspection at the request of a police officer.

Maximum penalty: \$750.

- (4) This section does not apply in relation to a piercing performed for a medical or therapeutic purpose.

- 20 (5) It is a defence to a charge of an offence against subsection (1) to prove that—

- (a) the defendant, or a person acting on behalf of the defendant, required the person pierced to produce evidence of age; and
25 (b) the person pierced produced false evidence in response to that requirement; and
(c) in consequence the defendant reasonably believed that, at the time the piercing was performed, the person pierced was of or over the age of 16 or 18 years, as the case may require.

- 30 (6) In this section—

minor means—

- (a) in the case of a genital piercing—a person under the age of 18 years; or
(b) in all other cases—a person under the age of 16 years;

piercing does not include piercing of the earlobes.

35 21C—Cooling off period to apply

- (1) A person must not tattoo another person unless—

- (a) a written agreement has been signed by the person who is to tattoo the customer, or a person acting on behalf of the person who is to tattoo the customer, and the customer; and
40 (b) the written agreement—

(i) provides that the agreement is binding only on written confirmation by the customer after the end of 3 days from the signing of the agreement (the *cooling-off period*) that the customer wishes to proceed with the tattooing; and

(ii) specifies the design of the tattoo and the part of the body that is to be tattooed; and

(c) the person who is to tattoo the customer, or a person acting on behalf of the person who is to tattoo the customer, has provided to the customer a written document that contains the information referred to in paragraph (b); and

(d) the cooling-off period has ended.

Maximum penalty: \$2 500 or imprisonment for 3 months.

(2) If the customer wishes to substitute the design or the part of the body to be tattooed specified in an agreement under subsection (1) for another design or part, then—

(a) a new agreement must be signed under subsection (1); and

(b) subsection (1) applies to that agreement.

(3) A person must not require—

(a) any form of deposit in relation to the tattooing of another person; or

(b) any payment, or compliance with any other condition, if a customer elects not to proceed with the tattooing.

Maximum penalty: \$2 500.

(4) This section does not apply where the tattooing referred to in subsection (1) is the completion of a tattoo that has been partially completed.

(5) This section does not apply in relation to a tattooing performed for a medical or therapeutic purpose.

(6) In this section—

customer means the person who is to be tattooed.

21D—Code of practice

(1) The Minister must, after consultation with at least one body that represents the interests of tattooists and body piercers in South Australia, establish a code of practice for tattooists and body piercers.

(2) The Minister must publish the code of practice in the Gazette.

(3) The Minister may vary or revoke the code of practice by notice in the Gazette.

- (4) A tattooist or body piercer who contravenes the code of practice is guilty of an offence.

Maximum penalty: \$1 250.

21E—Disciplinary action

- 5 (1) There is proper cause for disciplinary action against a person conducting, or formerly conducting, the business of tattooing or body piercing if—
- (a) the person has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
- 10 (b) the person or any other person has acted contrary to section 21A, 21B, 21C or 21D or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, that business.
- 15 (2) Disciplinary action may be taken against each director of a body corporate that is conducting, or formerly conducted, the business of tattooing or body piercing if there is proper cause for disciplinary action against the body corporate.
- (3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented that act or default.
- 20 (4) The Commissioner or any other person may lodge with the Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this section.
- 25 (5) On the lodging of a complaint, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this section.
- 30 (6) Without limiting the usual powers of the Court, the Court may during the hearing—
- (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
- 35 (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.
- (7) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:
- 40 (a) reprimand the person;
- (b) impose a fine not exceeding \$2 500 on the person;

(c) prohibit the person from conducting, or being employed or otherwise engaged in, the business of tattooing or body piercing;

(d) prohibit the person from being a director of a body corporate that conducts the business of tattooing or body piercing.

(8) The Court may—

(a) stipulate that a prohibition is to apply—

(i) for a specified period (not exceeding 7 years); or

(ii) until the fulfilment of stipulated conditions; and

(b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

(9) If—

(a) a person has been found guilty of an offence; and

(b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under subsection (7) in respect of conduct giving rise to the offence.

(10) If a person contravenes or fails to comply with a condition imposed by the Court as to the conduct of the person or the person's business, the person is guilty of an offence.

Maximum penalty: \$35 000 or imprisonment for 6 months.

(11) If a person—

(a) conducts, or is employed or otherwise engaged in, the business of tattooing or body piercing; or

(b) becomes a director of a body corporate that conducts the business of tattooing or body piercing,

in contravention of an order of the Court, the person is guilty of an offence.

Maximum penalty: \$35 000 or imprisonment for 6 months.

(12) In this section—

Court means the Administrative and Disciplinary Division of the District Court;

Director of a body corporate includes—

(a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act.