

Legislative Council—No 105

As received from the House of Assembly and read a first time, 7 June 2011

South Australia

**Summary Offences (Tattooing, Body Piercing and
Body Modification) Amendment Bill 2011**

A BILL FOR

An Act to amend the *Summary Offences Act 1953* and to make a related amendment to the
Criminal Law Consolidation Act 1935.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Summary Offences (Tattooing, Body Piercing and Body Modification) Amendment Act 2011*.

5 2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Summary Offences Act 1953*

4—Substitution of Part 4

Part 4—delete the Part and substitute:

Part 4—Tattooing, body piercing and body modification

21A—Interpretation and application

(1) In this Part, unless the contrary intention appears—

body branding means the process by which a mark, symbol or pattern is, by burning or cauterizing, applied to a person's skin;

body implantation means the implanting of an object beneath the skin;

body modification procedure means—

- (a) tattooing; and
- (b) body branding; and
- (c) body implantation; and
- (d) earlobe stretching; and
- (e) tongue splitting; and
- (f) body scarification; and
- (g) any other procedure prescribed for the purposes of this paragraph;

body piercing means the piercing of part of a person's body to create 1 or more holes for the insertion of an object;

body scarification means the cutting of a person's skin to encourage the production of scar tissue;

dental practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the dental profession (including, if appropriate, a dental therapist, dental hygienist, dental prosthetist or oral health therapist but not including a student);

genitalia includes surgically constructed genitalia;

guardian, of a minor, means a parent or legal guardian of the minor;

intimate body piercing means the piercing of a person's genitalia, anal region, perineum, nipples or uvula;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

medical treatment means treatment or procedures administered or carried out by a medical practitioner, dental practitioner or nurse in the course of medical, surgical or dental practice or treatment;

nurse means a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a nurse (other than as a student).

- (2) This Part does not apply to a body piercing or body modification procedure performed on a person if the procedure is performed—
- (a) in the course of medical treatment; or
 - (b) for a medical or therapeutic purpose of a kind prescribed by the regulations.

21B—Performance of body modification procedures on intoxicated persons prohibited

- (1) A person must not perform a body piercing or body modification procedure on a person who is intoxicated (whether by alcohol or by any other substance or combination of substances).
Maximum penalty: \$5 000 or imprisonment for 12 months.
- (2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove that he or she believed on reasonable grounds that the person on whom the procedure was performed was not intoxicated.

21C—Performance of certain procedures on minors prohibited

- (1) A person must not perform a body modification procedure on a minor.
Maximum penalty: \$5 000 or imprisonment for 12 months.
- (2) A person must not perform—
- (a) an intimate body piercing on a minor; or
 - (b) any other body piercing (other than an earlobe piercing) on a minor—
 - (i) unless the minor is at least 16 years old; or
 - (ii) in any other case—without the consent of the minor's guardian given in accordance with section 21D.
- Maximum penalty: \$5 000 or imprisonment for 12 months.
- (3) It is a defence to a charge of an offence against this section to prove that—
- (a) the defendant, or some person acting on behalf of the defendant, required the minor, or another person, to produce evidence of a kind required by the regulations of—
 - (i) his or her age; or

- (ii) the consent of his or her guardian to the carrying out of the relevant procedure,

as the case requires; and

- (b) the minor, or another person, made a false statement, or produced false evidence in response to that requirement; and
- (c) in consequence, the defendant reasonably believed that—
 - (i) the minor was of or above the requisite age; or
 - (ii) the guardian consented to the carrying out of the relevant procedure,

as the case requires.

- (4) A person who seeks to rely on the defence in subsection (3) must, in order to rely on the defence, produce the identifying details, or a copy, of the evidence offered at the time of the alleged offence.

21D—Pre-conditions to performing certain procedures

- (1) A person must not perform a body piercing (other than an earlobe piercing) or body modification procedure on another person unless—

- (a) the person who is to perform the procedure (the *service provider*) (or a person acting on behalf of the service provider) and the person on whom the procedure is to be performed (the *customer*) enter into a written agreement containing the prescribed information as to the nature of the procedure and the manner in which it is to be carried out; and

- (b) when the agreement is entered into—

- (i) the customer is given free of charge a copy of the agreement and the prescribed information; and
- (ii) if the customer is less than 16 years of age and the procedure is a body piercing to which section 21C(2)(b)(ii) applies—the consent of the customer's guardian to the procedure is given—
 - (A) in person; or
 - (B) in the prescribed form and verified by statutory declaration.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) A person cannot give consent under subsection (1)(b)(ii) if the person is intoxicated (whether by alcohol or by any other substance or combination of substances).

21E—Sale of body modification equipment to minors prohibited

- (1) A person must not—

- (a) sell body modification equipment to a minor; or

- (b) supply body modification equipment to a minor in connection with the sale, or possible sale, of goods.

Maximum penalty: \$2 500.

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

- (a) the defendant, or some person acting on behalf of the defendant, required the minor, or another person, to produce evidence of a kind required by the regulations of his or her age; and

- (b) the minor, or another person, made a false statement, or produced false evidence in response to that requirement; and

- (c) in consequence, the defendant reasonably believed that the minor was of or above the age of 18 years.

- (3) A person who seeks to rely on the defence in subsection (2) must, in order to rely on the defence, produce the identifying details, or a copy, of the evidence offered at the time of the alleged offence.

- (4) If a person is convicted of an offence against subsection (1), any body modification equipment seized as evidence of the offence may be retained by the Commissioner of Police and is forfeited to the Crown—

- (a) if an appeal has not been lodged within the period provided for lodging an appeal against the conviction—at the end of the period; or

- (b) if an appeal has been lodged within the period provided for lodging an appeal against the conviction—when the appeal lapses or is finally determined.

- (5) Equipment forfeited under subsection (4) may be dealt with and disposed of in such manner as the Commissioner of Police may direct.

- (6) In this section—

body modification equipment means equipment designed to be used for the purposes of body modification;

sell means—

- (a) sell, barter or exchange; or

- (b) offer or agree to sell, barter or exchange; or

- (c) expose for sale, barter or exchange; or

- (d) have in possession for sale, barter or exchange;

supply includes offer to supply.

21F—Display of information

A person who offers, for fee or reward, to perform body piercing or body modification procedures must display prescribed information at the premises where the procedures are offered.

Maximum penalty: \$1 250.

Expiation fee: \$160.

21G—Record keeping

- (1) A person must keep records in accordance with the regulations for the purposes of this Part.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (2) A record required to be kept by a person under this section must be kept for a period of 2 years.

Maximum penalty: \$1 250.

Expiation fee: \$160.

21H—Offence to make false statement or produce false evidence

A person must not make a false statement or produce false evidence to a person who offers body piercing or body modification procedures in respect of—

- (a) the age of a minor; or
- (b) the consent of a minor's guardian to the performance of a body piercing or body modification procedure.

Maximum penalty: \$2 500.

21I—Police powers

- (1) A police officer may, at any reasonable time—

- (a) enter premises at which tattooing, body piercing or body modification procedures are advertised, offered or performed; and
- (b) require a person who has possession of records produced or kept for the purposes of this Part, to produce those records for inspection.

- (2) A police officer may, when at any such premises, require a person at the premises reasonably believed to be a minor to—

- (a) state his or her name and address; and
- (b) produce evidence of age; and
- (c) state what procedures (if any) the person is seeking at the premises.

- (3) A police officer may—

- (a) examine records produced or retained under this Part; and

(b) make copies of, or take extracts from, any such records; and

(c) retain the records for the purposes of investigating an offence against this Part.

(4) A person must not—

(a) hinder or obstruct a police officer in the exercise of powers under this section; or

(b) fail, without reasonable excuse, to comply with a requirement of a police officer under this section.

Maximum penalty: \$1 250.

Schedule 1—Related amendment to *Criminal Law Consolidation Act 1935*

1—Amendment of section 144F—Application of Part

Section 144F(a)(i)—after "product" insert:

or service