

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 262
Judiciary

(Delegate Kullen, *et al.*)

Tattooing, Branding, and Body Piercing - Parental Consent

This bill prohibits the tattooing, branding, or body piercing of a minor without the prior written consent of a parent or legal guardian. Written consent must take place in the presence of the person, or his or her employee, intending to tattoo, brand, or pierce the minor. A violator is subject to civil penalties ranging from \$300 for a first offense and \$3,000 for multiple violations. Ear piercing is excluded from the scope of the bill.

Fiscal Summary

State Effect: Minimal increase in general fund revenues due to the bill's penalty provisions. No effect on expenditures. Enforcement can be handled with existing resources.

Local Effect: None. Enforcement can be handled with existing resources.

Small Business Effect: Minimal impact on tattoo parlors who are penalized for violations.

Analysis

Current Law: Tattooing and body piercing are regulated under Code of Maryland Regulations (COMAR) provisions applicable to the Department of Health and Mental Hygiene (DHMH).

An individual who performs a skin-penetrating body adornment procedure must disclose the risks of the procedure, obtain the client's written consent for the performance of the procedure, and retain the consent on file for three years. In the case of a minor, the

consent of a parent or guardian is required. The COMAR provisions do not establish any penalties for individuals who perform a skin-penetrating body adornment procedure upon a minor.

The Public Local Laws of Worcester County establish more rigorous requirements for individuals who perform body adornment procedures in the county. To work as a tattoo artist in Worcester County, a person must be licensed by the county and operate under the supervision of a physician or osteopath. Minors may not be tattooed in the county but are permitted to undergo body piercing with direct parental supervision and consent. Violation of the statute is a misdemeanor, subject to maximum penalties of imprisonment for 180 days and/or a \$500 fine. Neither the State COMAR provisions nor the Public Local Laws of Worcester County apply to the piercing of an ear lobe using a properly disinfected ear piercing gun.

The tattooing of a minor is a misdemeanor in Baltimore City, subject to a maximum fine of \$1,000. In Baltimore County, the tattooing or body piercing of a minor without parental consent is a misdemeanor, subject to maximum penalties of 90 days imprisonment and/or a \$500 fine.

Background: According to the National Conference of State Legislatures, 39 states have statutes similar to the proposed legislation. All 39 states prohibit body piercing of minors without parental or guardian consent; 28 of these states prohibit the tattooing of minors without parental or guardian consent; and 11 of the states forbid the tattooing of minors (regardless of parental consent). Most state laws establish monetary penalties, prison time, or both for violators. The 11 other states without related statutes require parental consent by regulation.

According to DHMH, no recourse can be taken when a minor undergoes a body adornment procedure without parental consent. DHMH can only send an inspector to ensure that health regulations are followed at the site. State law does not require individuals in this industry to be licensed.

Without adhering to proper precautions as specified in COMAR, infection or illness can result from skin-penetrating body adornment procedures. However, DHMH reports that compliance with these procedures is widespread, so no significant public health concerns result from these practices within the State.

The Department of Labor, Licensing, and Regulation advises that it has no jurisdiction over tattooing, except to prohibit licensees from performing cosmetic tattooing (*e.g.*, permanent make-up).

Additional Information

Prior Introductions: HB 45 of 2009 was passed by the House and received a hearing in the Senate Judicial Proceedings Committee, where no further action was taken. Several similar bills were introduced in the 1997 and 1998 sessions.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; National Conference of State Legislatures, Department of Legislative Services

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mlm/kdm

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