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# Curbing Teenage Vehicular Freedom: The Brady-Jared Teen Driver Safety Act of 1997

Laura M. Rojas

## Code Sections Affected

Education Code § 51226.6 (amended); Vehicle Code §§ 12507.1, 12509, 12514, 12660, 12814.6 (amended); §§ 12507, 12512, (repealed).  
SB 1329 (Leslie); 1997 STAT. Ch. 760

## I. INTRODUCTION

Traffic accidents are the leading cause of death among teenagers.<sup>1</sup> National statistics show that approximately 40 out of every 100 16-year-old drivers have an accident serious enough to involve the police.<sup>2</sup> In California, on average, nearly fifty teenagers are injured in automobile accidents daily, and one teen driver is killed every other day.<sup>3</sup> As the children of baby boomers become older, the number of 16-year-old drivers will continue to increase.<sup>4</sup> There is concern that if something is not done to combat the high accident rates of young drivers, the number of teenage deaths and injuries will rise dramatically.<sup>5</sup> It is against this backdrop that Chapter 760, also known as the Brady-Jared Teen Driver Safety Act of 1997, was enacted.<sup>6</sup>

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1. See *Terrible Teens? Young Drivers Raise Safety Questions*, BUS. WIRE (L.A.) May 20, 1997 (copy on file with the *McGeorge Law Review*) [hereinafter *Terrible Teens?*] (reporting motor vehicle crashes involving young drivers). In 1994, the number of fatalities involving 15-20 year old drivers was 6,226. *Id.* Although teenagers make up only 4% of the drivers on the road, they were involved in nearly 12% of the fatal car crashes. *Id.*

2. See *Teen Crash Deaths Will Rise Soon Predicts AAA Foundation For Traffic Safety*, PR NEWSWIRE (Wash.), Aug. 31, 1995 (copy on file with *McGeorge Law Review*) [hereinafter *Teen Crash*] (discussing teenage deaths and injuries in vehicular accidents); see also *Florida Considers Limiting Licenses For Teens*, REUTERS NORTH AMER. WIRE (Miami), Dec. 28, 1994 (copy on file with *McGeorge Law Review*) (stating that young teens are more likely to speed than drivers of any other age group, and that they have twice as many accidents as older teenage drivers).

3. See *Licensed for Safety: California's Graduated Driver Licensing Law*, CAL. STATE AUTO. ASSOC. TRAFFIC SAFETY BULLETIN, at 3 (copy on file with *McGeorge Law Review*) [hereinafter *Licensed for Safety*] (describing statistics which reveal the need for graduated driver licensing).

4. See *Teen Crash*, *supra* note 2, at 1 (noting the U.S. Bureau of Census population data shows that after years of decline, the number of 16-year-olds in the United States began rising in 1993, and will continue to rise each year, increasing 23% by 2010). In 1995, nearly 44% of all 16-year-olds in the United States had a driver's license. *Id.*

5. *Id.*

6. See Ken Leiser, *South Bay Teens Sound Off About Driver's License Restrictions*, COPLEY NEWS SER. (Sacramento), July 11, 1997 (copy on file with *McGeorge Law Review*) (discussing Chapter 760 and noting that it was named for Brady Grasinger, a 15-year-old Palos Verdes Peninsula girl, and Jared Cunningham, a 14-year-old San Luis Obispo boy, both of whom died in car accidents late at night).

## II. EXISTING LAW

Existing law distinguishes between several types of licenses.<sup>7</sup> An instruction permit is given to a person fifteen years and older who has completed, or is currently enrolled in, a driver education and driver training program.<sup>8</sup> The instruction permit authorizes the permit-holder to operate a motor vehicle, under certain restrictions, for up to twelve months.<sup>9</sup> The permit-holder may drive while taking driving instruction, while practicing driving, or when accompanied by a driver who is at least eighteen years old and holds a valid driver's license.<sup>10</sup> Thirty days after receiving an instruction permit, a person under eighteen years of age, who has completed a driver's training program, may apply for a provisional license.<sup>11</sup> A provisional license is a bridge between an instruction permit and a driver's license. The provisional license does not impose restrictions on driving, but contains provisions which allow suspension or restriction of the license for traffic violations.<sup>12</sup> If a person with a provisional license has a violation point count<sup>13</sup> of two or more points in twelve months, a thirty-day restriction is imposed; with a violation of three or more points in twelve months, a six month suspension is imposed.<sup>14</sup>

## III. NEW LAW

Chapter 760 places new requirements on holders of instruction permits. Chapter 760 increases the length of time a person must hold an instruction permit before applying for a provisional license from thirty days to not less than six months.<sup>15</sup> In addition, Chapter 760 establishes a new requirement of fifty hours of supervised

7. See CAL. VEH. CODE § 12509 (West Supp. 1997) (specifying requirements for instruction permits); see also *id.* § 12814.6 (West Supp. 1997) (setting forth requirements for provisional licenses); *id.* § 12514 (West Supp. 1997) (delineating requirements for a junior permit—a 6 month driving permit for a minor when necessity requires).

8. See *id.* § 12509(a) (West Supp. 1997) (describing requirements for an instruction permit).

9. See *id.* § 12509(b), (c) (West Supp. 1997) (explaining an instruction permit as entitling an applicant to operate a vehicle, for up to one year, "when accompanied by, and under the supervision of, a licensed California driver," 18 years of age or older whose driving privilege is not on probation, subject to the applicant completing approved driver education and driver training courses).

10. See *id.* § 12509(c) (West Supp. 1997) (requiring that at all times an accompanying licensed driver occupy a position within the driver's compartment that would enable the accompanying driver to assist the driver in controlling the vehicle if necessary, and to provide immediate guidance).

11. See *id.* § 12507 (West Supp. 1997) (outlining the requirements for licenses for persons under 18 years of age). Section 12507 requires successful completion of an examination and either: (1) Completion of approved courses in automobile driver education and driver training; or (2) satisfactory completion of six hours or more of behind-the-wheel instruction at a driving school or with an independent driving instructor. *Id.*

12. See *id.* § 12814.6 (West Supp. 1997) (specifying requirements for a provisional license).

13. See CAL. VEH. CODE § 12810 (West Supp. 1997) (describing traffic violation point counts and how they are allocated). For example, a failure to stop in the event of an accident is two points. *Id.* Reckless driving is two points. *Id.* A traffic violation involving the safe operation of a motor vehicle is one point. *Id.*

14. *Id.* § 12814.6(a)(6), (7) (West Supp. 1997).

15. See *id.* § 12814.6(a)(3) (amended by Chapter 760) (specifying that "a person shall hold an instruction permit for not less than six months prior to applying for a provisional driver's license").

driving practice prior to the issuance of a provisional driver's license, at least ten of those hours to include driving at night.<sup>16</sup>

Chapter 760 also places driving restrictions on holders of provisional licenses. For the first sixth months after issuance, Chapter 760 prohibits the holder of a provisional driver's license from driving between the hours of 12:00 a.m. and 5:00 a.m., and from transporting passengers who are under the age of twenty, unless accompanied by a licensed driver over twenty-five, authorized by the parent or guardian to supervise the provisional licensee.<sup>17</sup> During the second six months, the provisional licensee is authorized to transport passengers under the age of twenty between the hours of 5:00 a.m. and 12:00 a.m. without supervision, if the licensee's record shows no violation point count.<sup>18</sup> However, the provisional licensee is still prohibited from driving between the hours of 12:00 a.m. and 5:00 a.m.<sup>19</sup>

Chapter 760 also penalizes violation point counts on a provisional license. Chapter 760 requires the Department of Motor Vehicles to extend the restrictions prohibiting passengers and requiring the licensee to be accompanied by a licensed driver over twenty-five years old if the provisional licensee's record shows a violation point count.<sup>20</sup> A thirty-day restriction is imposed when a licensee's record shows a violation point count of two or more in a twelve month period.<sup>21</sup> Additionally, a sixth-month suspension of the driving privilege and a one-year term of probation is imposed whenever a licensee's record shows a violation point count of three or more in a twelve month period.<sup>22</sup> Any term of restriction or suspension of

16. See *id.* § 12814.6(a)(5) (amended by Chapter 760) (requiring 50 hours of supervised driving practice in addition to any other driving instruction currently required, with not less than 10 of the required hours of supervised driving include driving under darkness, as defined in § 280).

17. See *id.* § 12814.6(a)(8)(A)(i), (ii) (amended by Chapter 760) (providing that except for the special conditions outlined in subparagraph (C), for the first sixth months after receiving a provisional license, a licensee may not drive between the stated hours and may not transport specified passengers unless accompanied and supervised by a licensed driver who is at least 25 years old, or a licensed or certified driving instructor); see also *infra* notes 27-32 and accompanying text (describing the special conditions which allow for an exception to the driving restrictions imposed under Chapter 760).

18. See CAL. VEH. CODE § 12814.6(a)(8)(B) (amended by Chapter 760) (allowing transportation of passengers under the age of 20 years between the hours of 5:00 a.m. and 12:00 a.m. without supervision during the second six months after issuance of a provisional license). Chapter 760 also specifies that the driving time restriction of 5:00 a.m. to 12:00 a.m. shall not modify or alter any local ordinance that restricts or prohibits cruising during specified hours. *Id.*

19. See *id.* (requiring the prohibition on driving between the restricted hours to continue to apply during the second six months after issuance of a provisional driver's license).

20. See *id.* § 12814.6(a)(7) (amended by Chapter 760) (stating that when a driver's license shows a violation point count of two or more points in 12 months, the licensee is to be accompanied by a licensed parent, spouse, guardian, or other licensed driver 25 years of age or older with no additional passengers aboard).

21. See *id.* (imposing the driving restriction of being accompanied by a licensed parent, spouse, guardian, or other licensed driver 25 years of age or older with no passengers aboard for thirty days when a driver's license shows a violation point count of two or more in 12 months).

22. See *id.* § 12814.6(a)(9) (amended by Chapter 760) (mandating that a one-year probation, including a six-month suspension of driving privileges, be imposed whenever a licensee's record shows a violation point count of three or more within a 12 month period); see also *supra* note 13 and accompanying text (describing violation point counts as defined by § 12810 of the California Vehicle Code).

driving privileges is effective until the expiration of the term, even if the person becomes eighteen years old before the term ends.<sup>23</sup>

In addition to the driving restriction or suspension, if a provisional licensee violates the nighttime curfew, or transports passengers under twenty years of age during the first six months of the license, community service or a fine is required.<sup>24</sup> Chapter 760 authorizes a court to impose between eight and sixteen hours of community service for the first offense, and between sixteen and twenty-four hours of community service for a second or subsequent offense.<sup>25</sup> Alternatively, a \$35 fine may be imposed for a first offense and a \$50 fine may be imposed for a second offense.<sup>26</sup> However, Chapter 760 prohibits law enforcement from stopping a vehicle for the sole purpose of determining whether the driver is in violation of the restrictions.<sup>27</sup>

Chapter 760 contains exceptions to the driving restrictions it enacts. The midnight to 5:00 a.m. curfew and prohibition of driving without being accompanied by an authorized driver<sup>28</sup> do not apply if there is: (1) a medical necessity of the licensee or an immediate family member, and there is no other reasonable means of transportation;<sup>29</sup> (2) a school-authorized activity of the licensee, and there is no other reasonable means of transportation;<sup>30</sup> (3) an employment necessity of the licensee, and there is no other reasonable means of transportation;<sup>31</sup> (4) a family

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23. See CAL. VEH. CODE § 12814.6(b) (amended by Chapter 760) (declaring that a driving restriction or suspension remain in effect even though a person may turn 18 years old before the term ends).

24. *Id.* § 12814.6(g) (amended by Chapter 760); see *infra* notes 25-27 and accompanying text (listing the community service requirements or fines imposed during the first six months for a violation of the nighttime curfew or transportation of passengers under twenty).

25. See *id.* § 12814.6(g)(1)(A) (amended by Chapter 760) (stating that upon finding that a licensee has violated the prohibitions during the first six months, the court may impose 8-16 hours of community service for a first offense and 16-24 hours of community service for a second or subsequent offense).

26. See *id.* § 12814.6(g)(1)(B) (amended by Chapter 760) (indicating that upon finding that a licensee has violated the restrictive provisions, fines may be imposed).

27. See *id.* § 12814.6(f) (amended by Chapter 760) (proscribing the behavior of law enforcement).

28. See *supra* note 21 and accompanying text (listing the type of persons who qualify as authorized drivers).

29. See CAL. VEH. CODE § 12814.6(a)(8)(C)(i) (amended by Chapter 760) (providing an exception to the nighttime curfew when there is a medical necessity of the licensee, reasonable transportation facilities are inadequate, and operation of a vehicle by a minor is necessary). The licensee must keep in his or her possession a signed statement from a physician familiar with the condition, containing a diagnosis and the probable date when sufficient recovery will have been made to terminate the necessity. *Id.*

30. See *id.* § 12814.6(a)(8)(C)(ii) (amended by Chapter 760) (providing an exception to the nighttime curfew for schooling or school-authorized activities of the licensee, when reasonable transportation facilities are inadequate, and operation of a vehicle by a minor is necessary). The licensee must keep in his or her possession a signed statement from the school principal, dean, or school staff member designated by the principal or dean, containing a probable date that the schooling or school-authorized activity will have been completed). *Id.*

31. See *id.* § 12814.6(a)(8)(C)(iii) (amended by Chapter 760) (providing an exception to the nighttime driving curfew for an employment necessity, when reasonable transportation facilities are inadequate, and operation of a vehicle by a minor is necessary). The licensee must keep in his or her possession a signed statement from the employer, verifying employment and containing a probable date that the employment will have been completed. *Id.*

necessity, and there is no other reasonable means of transportation;<sup>32</sup> or (5) the licensee is an emancipated minor.<sup>33</sup>

#### IV. PURPOSE OF CHAPTER 760

California's current provisional driver's license program has shown success in lowering accident rates among teenagers.<sup>34</sup> Chapter 760 is an attempt to reduce the accident rates even more.<sup>35</sup> Statistics show that many fatal accidents involving teens happen late at night.<sup>36</sup> By restricting driving during the hours of 12:00 a.m. to 5:00 a.m., the proponents of Chapter 760 hope to reduce accidents, like those involving Jared Cunningham and Brady Grasinger, which happen late at night.<sup>37</sup>

Chapter 760 also attempts to reduce the fatalities and injuries of accidents involving teens by limiting passengers. Many teens who die in car crashes are passengers in cars being driven by other teens.<sup>38</sup> By requiring six months of driving experience before a driver with a provisional license is authorized to transport passengers, Chapter 760 attempts to reduce the injuries and deaths of passengers that are caused by inexperience on the part of the teen driver.

32. See *id.* § 12814.6(a)(8)(C)(iv) (amended by Chapter 760) (providing an exception to the nighttime driving curfew and allowing transportation of an immediate family member for a necessity of the licensee or the licensee's immediate family member when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary to transport the licensee or the licensee's immediate family member). The licensee must keep in his or her possession a signed statement from a parent or legal guardian verifying the reason and containing a probable date that the necessity will have ceased. *Id.*

33. See *id.* § 12814.6(a)(8)(C)(v) (amended by Chapter 760) (providing an exception to the nighttime driving curfew and transportation of passengers under 20 years of age when the licensee is an emancipated minor). Emancipated minors are persons 14-17 years of age who live apart from their parents, with the consent of their parents, and who manage their own financial affairs. See CAL. FAM. CODE § 7120 (West Supp. 1997) (identifying the factors a minor must satisfy to petition for a declaration of emancipation). Emancipated minors are considered adults for many purposes. See *id.* § 7050 (West Supp. 1997) (detailing the purposes for which emancipated minors are treated as adults).

34. See Adriana Colindres, *With Sidebar Slugged Teenbar*, Copley News Serv. (Springfield), June 19, 1997 (copy on file with the *McGeorge Law Review*) (citing statistics from the National Highway Traffic Safety Administration showing that in 1982, before graduated licensing, California had 808 crash-related fatalities compared to 539 in 1995, after graduated licensing was adopted).

35. See Dorsey Griffith, *No Youthful Cheers for Teen-Driving Bill*, SACRAMENTO BEE, Sept. 12, 1997, at B1 (quoting the author of the bill as stating that "[t]he whole purpose of this bill is to save lives").

36. See Ken Leiser, *Senate Panel Hears Teen-Driving Measure*, Copley News Serv. (Sacramento), Apr. 15, 1997 (copy on file with *McGeorge Law Review*) (stating that teens make up a disproportionate share of fatalities that occur after midnight); see also Leiser, *supra* note 6 (noting that teens are more likely than adults to get into an accident and that most fatal accidents occur after midnight).

37. See Leiser, *supra* note 36 (noting that the midnight to 5:00 a.m. curfew required by Chapter 760 could reduce the number of nighttime fatalities of teens); see also Angela La Voie, *Drive, They Said, But More Safely*, SACRAMENTO BEE, Apr. 25, 1997, at SC8 (noting that the American Academy of Pediatrics reports that states with curfew laws banning teen driving at night have lower crash rates than other states); *Integrated Solution*, CAL. STATE AUTO. ASSOC. TRAFFIC SAFETY BULL., at 3 (copy on file with *McGeorge Law Review*) (citing statistics revealing that 43% of all teenage motor vehicle deaths occur between 9:00 p.m. and 6:00 a.m.).

38. See *Licensed for Safety*, *supra* note 3, at 3 (reporting that "two-thirds of teenage passengers killed or injured nationally are passengers in cars driven by other teens").

## V. PRACTICAL CONCERNS

There are many practical problems which may result from the enactment of Chapter 760. As can be expected, teens who are on the verge of receiving their driver's license are not in favor of Chapter 760. They argue that driving is a fundamental part of being a teenager<sup>39</sup> and that it is unrealistic to expect them to spend more time driving with their parents rather than driving with their friends.<sup>40</sup> Several teenagers call Chapter 760 a "move in the wrong direction."<sup>41</sup> They feel that it discourages teens from carpooling and using designated drivers after parties.<sup>42</sup>

However, it is not only teens who dislike the more stringent requirements. Some parents of teens are not supportive either. Some parents are critical of Chapter 760 because they feel the state is overstepping its bounds.<sup>43</sup> They feel that by implementing the restrictions required under Chapter 760, the state is performing a job that should be left to parents.<sup>44</sup> Also, after years of feeling like a taxi-driver, some parents are anxious to abdicate driving, and are frustrated that they will have to accompany their teens in the car for an additional fifty hours.<sup>45</sup> Additionally, there is a feeling by some adults that driving privileges should be tied to academic records, and that it is not fair to punish all teens because some are irresponsible.<sup>46</sup>

Other concerns relate to possible side effects of Chapter 760. Some people fear that teens will not abide by the new restrictions and continue to drive anyway,

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39. See *Teen Driving Bill is Discriminatory*, L.A. TIMES, June 15, 1997, at B6 (stating that teenagers feel that driving is one of the few privileges they have).

40. See *id.* (quoting a teenager as saying she might as well keep her driving permit and not even get a license if she has to drive with her parents).

41. See John M. Glionna, et al., *Teens Deride Bill to Restrict Licenses*, L.A. TIMES, June 7, 1997, at B1 (discussing the reactions of teenagers in Orange County).

42. See *id.* (explaining criticisms teenagers have concerning Chapter 760).

43. See Coll Metcalfe, *Teens Await New Rules on Getting the Car Keys*, L.A. TIMES, Sept. 16, 1997, at B1 (reporting a parent who thinks that the laws are already strict enough and that restrictions should be made by parents rather than the government).

44. *Id.*

45. See *id.* (noting Chapter 760 would put more stress on families that have two working parents by requiring them to be "driving around for the kids," rather than having their teenager help with the driving); see also Griffith, *supra* note 35, at B1 (describing a father who has been a "taxi driver" for 16 years and feels his daughter is ready for the independence of a driver's license); Mary Lynne Vellinga, *Stricter Teen Driving Law Wins Assembly Approval*, SACRAMENTO BEE, Sept. 11, 1997, at A1 (describing an Assemblyman's criticism of the 50-hour requirement of Chapter 760 as an "unrealistic amount of time to require many parents to spend driving with their teens"). The 50-hour requirement equates to approximately 8 trips between Sacramento and Southern California. *Id.*

46. See Griffith, *supra* note 35, at B1 (discussing an elementary school board member and college instructor who favors more controls over teen drivers, but believes the restrictions should be tied to high school academic performance); see also Solomon Moore, *Driven Mad*, L.A. TIMES, Oct. 11, 1997, at B1 (illustrating criticism that Chapter 760 places unnecessary restrictions on law-abiding youth). Chapter 760 is cited as a good example of young people being treated like second class citizens merely because of their age. *Id.*

adding to the problem of unlicensed drivers on the road.<sup>47</sup> On the other hand, if Chapter 760 works as is intended, preventing teens from having passengers for the first six months, there will be more cars on the road which may lead to problems with air pollution.<sup>48</sup> There is additional fear that getting a ticket will cause already expensive insurance rates to soar.<sup>49</sup> Together, these practical problems raise the perception that Chapter 760 is unfair, unenforceable, and unrealistic.

## VI. OTHER STATES WITH SIMILAR LAWS

California implemented graduated licensing in 1983,<sup>50</sup> and is not alone in requiring provisional or graduated driver's licenses for its teenagers. Currently, twenty states, as well as Canada and New Zealand, have some element of the graduated license.<sup>51</sup> Like California, statistics in those states and provinces have shown a decrease in car crashes and injuries among teenagers after enactment of the provisional license requirements.<sup>52</sup> However, the most common type of restriction on graduated licenses is ease of suspension or revocation, usually for being involved in serious accidents, speeding, or drinking and driving.<sup>53</sup> Because California

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47. See Leiser, *supra* note 6 (describing a teen driver who would not abide by the legislation); see also Glionna, *supra* note 41, at B1 (commenting that even though teens are aware of the seriousness of accidents, many high school students predict that Chapter 760 will be largely ignored by teenagers); Griffith, *supra* note 35, at B1 (noting that some teens feel that more teenagers will decide to drive without a license rather than abide by the restrictions of Chapter 760).

48. See Griffith, *supra* note 35, at B1 (noting that "at best, the law [Chapter 760] will increase air pollution because more kids will be driving alone").

49. See Leiser, *supra* note 6 (quoting a teenager who was concerned that if he got one ticket under Chapter 760 he would watch his already expensive insurance rates go up even further); see also *Terrible Teens?*, *supra* note 1 (noting that the premiums paid for a family automobile insurance policy often more than double when teenage children are added to the policy).

50. See *supra* notes 11-14 and accompanying text (highlighting the current requirements for a provisional driver's license).

51. See *Teen Crash*, *supra* note 2 (noting that New Zealand and the Canadian provinces of Nova Scotia and Ontario have enacted graduated licensing programs); see also *Governor to Sign Life-Saving Graduated Licensing Bill*, CAL. STATE AUTO. ASSOC. PRESS RELEASE, at 2 (copy on file with *McGeorge Law Review*) (noting that Chapter 760 is part of a nationwide plan to implement graduated licensing, with ten states currently having laws similar to Chapter 760). Hawaii is the only western state to have enacted a statute similar to Chapter 760. *Id.*

52. See Leiser, *supra* note 6 (commenting on Maryland's 5% drop in car crashes involving 16- and 17-year-old drivers, and Ontario, Canada's success in dropping the accident fatality rate among 16-year-old drivers by 55% since implementing its graduated licensing program); see also *AAA-Sponsored Teen Licensing Bill Passes the Assembly Transportation Committee*, PR NEWswire (Sacramento), July 11, 1997 (copy on file with *McGeorge Law Review*) (describing the early evaluations of Maryland and Oregon showing teen accident fatalities down by 5-16%); Jenifer Warren, *Legislature OKs Limits on Teen Drivers*, L.A. TIMES, Sept. 13, 1997, at A1 (noting that Pennsylvania experienced a 69% decline after passing a graduated licensing statute).

53. See ME. REV. STAT. ANN. tit. 29-A, § 2472 (West 1996) (requiring suspension of a juvenile provisional license for moving violations and operating a motor vehicle under the influence); see also MONT. CODE ANN. § 61-5-111 (1996) (providing that a provisional license may be suspended when the licensee has been found guilty of careless or negligent driving).



is also placing both nighttime driving restrictions and passenger prohibitions on the provisional licensee, California is again at the forefront of new legislation.<sup>54</sup>

## VII. CONCLUSION

Chapter 760 is an attempt to restrict driving during the most statistically dangerous times, and to allow teens to obtain more driving experience, without prohibiting teen driving altogether.<sup>55</sup> Statistics indicate that accidents and injuries happen most often to teenage drivers.<sup>56</sup> As the number of teen drivers continues to rise, the likelihood of more accidents increases.<sup>57</sup> There is concern that something should be done to prevent the serious injuries that are likely to occur.<sup>58</sup> The question is whether Chapter 760 is the right solution to the problem. While Chapter 760 has many potential practical problems,<sup>59</sup> it is a step toward decreasing the grim statistics of teen injuries and deaths in car accidents. It is uncertain, however, whether this potential decrease in accidents will outweigh the potential problems associated with Chapter 760. While Chapter 760 may not be the perfect solution, it may be the best solution available to address the problem of teenage automobile accidents. Because of the serious results which are likely to occur by failing to act, Chapter 760 seems to be a solution worth trying.

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54. See Dan Smith, *Rules of the Road Change for Teens*, SACRAMENTO BEE, Oct. 9, 1997, at A1 (discussing Chapter 760 and quoting the American Automobile Association as calling the new California law "the most comprehensive 'graduated licensing' law of the 20 that exist in the nation").

55. See Leiser, *supra* note 6 (quoting the author of Chapter 760 as acknowledging that obtaining a driver's license is probably the number one rite of passage for a teenager, and a rite of passage that he doesn't want to eliminate); see also AAA-Sponsored Teen Licensing Bill Passes the Assembly Transportation Committee, *supra* note 52 (explaining the purpose of Chapter 760 as creating a "graduated driver licensing (GDL) system that gives teens more experience as drivers while limiting their exposure to risky driving situations").

56. See *supra* notes 1-2 and accompanying text (describing the frequency with which accidents occur with teen drivers).

57. See *supra* note 3 and accompanying text (noting that the number of teenage drivers are increasing as the children of baby boomers become of driving age).

58. See *supra* note 5 and accompanying text (commenting on the likelihood of serious accidents as more teen drivers enter the road).

59. See *supra* notes 31-41 and accompanying text (highlighting the practical concerns of Chapter 760).

## Tattoos and Body Piercing: Can Regulations Prevent Health Risks?

Jeanine deGagne

### Code Sections Affected

Health and Safety Code §§ 119300, 119301, 119302, 119303, 119304, 119305, 119306, 119307, 119308, 119309 (new).

AB 186 (Brown); 1997 STAT. Ch. 742

Penal Code §§ 19.8, 652 (repealed and new).

AB 99 (Runner); 1997 STAT. Ch. 741

### I. INTRODUCTION

It seems that people have always foregone comfort for fashion. Now, in an age where it is not uncommon to see a teenager displaying a row of daisy's imprinted around her ankle, or a grown man sporting a gold hoop through his tongue, the price of fashion may be more than some slight discomfort. The health risks associated with the newest fashion trends, tattoos and body piercing, include anything from minor skin irritations, to the possibility of contracting an infectious disease like AIDS.<sup>1</sup>

Tattoos are created by depositing ink under the skin between the dermis and epidermis.<sup>2</sup> The ink is injected into the skin with a needle or pin.<sup>3</sup> This can be accomplished crudely with ink and a sewing needle, or on a more sophisticated level, with a tattoo gun containing colored tattoo inks.<sup>4</sup> The biggest danger in tattooing lies in the possibility of contamination.<sup>5</sup> Unchanged ink tubes and improperly sterilized needles can spread infectious diseases including Hepatitis, Tuberculosis, and AIDS.<sup>6</sup>

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1. See Ophelia Johnson, *Body Piercing 'is Basically Surgery,'* RICHMOND TIMES-DISPATCH, July 20, 1997, at G3 (identifying concerns expressed by a doctor of the potential problems in body piercing); see also *The Perils of Piercing*, USA TODAY, Feb. 1, 1996, at 15 (noting that infection, injuries and other problems can be caused by body piercing).

2. Gretchen McKay, *The Illustrating Man*, PITTSBURGH POST-GAZETTE, March 16, 1994, at N13.

3. *Id.*

4. Andrea Petersen, *Parents Spur Laws Against Tattoos for Kids*, WALL ST. J., Sept. 16, 1996, at B1.

5. See Regina McEnery, *The Needle and the Damage Done*, ASHBURY PARK PRESS (Neptune, NJ), Aug. 6, 1996, at D1 (explaining the importance of changing the dye after every tattoo).

6. See *id.* (noting that unchanged dye tubes can carry infectious disease); see also Trevor Dennie, *Tattoo Taboo?*, LEADER HERALD, April 12, 1992, at B1 (citing multiple cases of Hepatitis B linked to three New York city tattoo shops in 1990); McKay, *supra* note 2, at N13 (specifying Tuberculosis and Hepatitis B as some of the

Like tattooing, body piercing is also done with a needle.<sup>7</sup> According to a piercer in Manhattan, a surgical clamp is used to pinch off the area to be pierced and then a needle is inserted into the skin and pushed through to the other side.<sup>8</sup> Piercing poses the same potential danger of needle contamination as tattooing.<sup>9</sup>

Perhaps even a higher danger of infection exists with piercing due to the intrusive nature of the procedure and the sensitivity of the body parts people are choosing to pierce,<sup>10</sup> such as navels, genitalia, nipples, and eyebrows.<sup>11</sup> Dr. Hanzel, a pediatrician and member of the Richmond Pediatric Society, says the potential problems of infection, allergic reactions, and scarring resulting from piercing are real because the procedure is "basically surgery."<sup>12</sup>

The increasing popularity of body art and the public health risks associated with it have brought legislative attention to an industry nearly devoid of governmental regulation.<sup>13</sup> Chapters 742 and 741 are California's efforts to regulate tattooing and body piercing, respectively.

## II. CHAPTER 742: TATTOOING

Existing California law prohibits anyone from tattooing or offering to tattoo a person under the age of 18.<sup>14</sup> The offense is punishable as a criminal misdemeanor.<sup>15</sup> Broader California law makes it a crime to willfully cause harm or injury to a child.<sup>16</sup> Willfully causing harm or injury to a child is punishable as a felony and the offender may receive a sentence of up to six years in state prison.<sup>17</sup>

Although the state did not regulate the operation of tattoo parlors before the enactment of Chapter 742, except the limited prohibition against the tattooing of minors as described above, existing law provides for the establishment of a con-

diseases transferable through tattooing needles); McEnery, *supra* note 5, at D1 (explaining how tattoos and body piercing create pathways to disease).

7. Stanley Mises, *The Cutting Edge: Is Body Piercing the New Tatoo? The Last Outrage? Here's the Holy Truth—in Parts*, *NEWSDAY*, Aug. 21, 1991, at 50; *see id.* (describing different types of body piercings and the various procedures of piercers).

8. *Id.*

9. *See The Perils of Piercing*, *supra* note 1, at 15 (noting that infection, injuries and other problems can be caused by body piercing); *see also* McEnery, *supra* note 5, at D1 (quoting Dr. Joseph John, director of infectious diseases in a New Jersey Hospital, who emphasizes the importance of not re-using needles because he says, "very few particles of Hepatitis can cause an infection").

10. *See Mises*, *supra* note 7, at 50 (noting that nose-piercing can be highly dangerous because of its close proximity to the brain).

11. *See id.* (describing the various types of piercing and including explanations of the variety of available piercings for each body part, such as the "ampallang," a genital piercing done by inserting a barbell-like stud through the base of the penis head and through the urethra).

12. Johnson, *supra* note 1, at G3.

13. *See id.* (noting that there is no requirement for tattoo or piercing parlors to get an official health permit).

14. CAL. PENAL CODE § 653 (West 1988).

15. *Id.*

16. *Id.* § 273a (West 1988).

17. *Id.*

ference to make recommendations on matters affecting health.<sup>18</sup> This conference is called the California Conference of Local Health Officers, and it consults and advises the Department of Health.<sup>19</sup>

Chapter 742 directs the California Conference of Local Health Officers ("Conference") to establish sterilization, sanitation, and safety standards for persons engaged in the business of tattooing, body piercing, or permanent cosmetics.<sup>20</sup> The Conference must, under Chapter 742, consult and adopt, when appropriate, the Blood borne Pathogen Standard of the Department of Industrial Relations.<sup>21</sup>

Chapter 742 requires practitioners of tattooing, body piercing, and permanent cosmetics to register with the county in which they practice, to obtain a copy of the Department of Health standards (as created by the Conference), and to comply with these standards.<sup>22</sup> The practitioners must also provide the county health department with a business address and pay registration and inspection fees.<sup>23</sup> Chapter 742 requires local health departments to make annual inspections of locations where tattooing, body piercing, and permanent cosmetic procedures are performed.<sup>24</sup> Counties may adopt any regulation that is not in conflict with, or is more comprehensive than Chapter 742.<sup>25</sup> In addition, Chapter 742 establishes a task force with participation from members of the tattooing, body piercing and permanent cosmetics community to recommend legislation regarding regulation of these businesses. The task force is required to report back to the Legislature with its recommendations by January 1, 1999.<sup>26</sup>

#### A. *The Right of the State to Regulate*

The United States Constitution has been interpreted to allow states to regulate businesses for the purpose of ensuring the health, safety, and welfare of the people within its boundaries.<sup>27</sup> However, if the regulation denies an owner of an economically viable use of her property, it may amount to a taking.<sup>28</sup> If the court finds

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18. CAL. HEALTH & SAFETY CODE § 100925 (West 1996).

19. *Id.*

20. *See* CAL. HEALTH & SAFETY CODE § 119301 (enacted by Chapter 742).

21. *Id.*

22. *See id.* § 119303(a) (enacted by Chapter 742).

23. *See id.* § 119303(a)(2)-(3) (enacted by Chapter 742).

24. *See id.* § 119304 (enacted by Chapter 742).

25. *See id.* § 119305(a) (enacted by Chapter 742).

26. *See id.* § 119308 (enacted by Chapter 742).

27. U.S. CONST. amend. XIV, § 1; U.S. CONST. amend. X (conferring police power to the states); *Moore v. East Cleveland*, 431 U.S. 494, 514 (1977) (Steven, J., concurring) (quoting *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926)) (holding that a zoning ordinance will be invalid only if it is not within the state's police power, the power to impose restrictions reasonable to the health, safety, morals and general welfare).

28. *See First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 319 (1987) (explaining that the Compensation Clause of the United States Constitution requires the government to compensate a landowner when the government burdens the land's economic value of the land).

that property has been taken, compensation must be paid.<sup>29</sup> A regulation is not considered a taking if the state regulates the property in a manner consistent with its police power.<sup>30</sup> In order for a regulation to not be considered a taking, it must have the purpose of securing a public benefit.<sup>31</sup>

The purpose of Chapter 742, controlling infectious diseases, would likely be considered in the interest of securing a public benefit.<sup>32</sup> Because tattooing, body piercing and permanent cosmetics are invasive procedures, there is a danger in spreading infectious diseases through the use of unsterilized equipment.<sup>33</sup> The regulation of tattoo parlors for the purpose of ensuring a sterile environment advances the state's interest in preventing infectious diseases. Therefore, Chapter 742 would not, as a government regulatory activity, be considered a taking and would likely pass any constitutional challenge raising this claim.

Of course, those who are bearing the burden of the costs for this presumptive public benefit, may see the regulations of Chapter 742 as an arbitrary imposition on the right to use their property. It could be argued that the laws are just another way to raise more state revenue, through the imposition of registration and inspection fees. It could also be said that although there is a potential for infection and spread of disease with all of these procedures, the actual occurrence of infection from body piercing and tattooing in legitimate parlors is rare.<sup>34</sup> Further, the regulations may be unnecessary as these businesses are self-policing, and already take the necessary steps to avoid the spread of disease and risk of infection.<sup>35</sup> Despite these arguments, the regulations are likely not a taking because although they may impose some costs on owners of tattoo and piercing parlors, the regulations are meant to secure a public benefit, stopping the spread of disease, and the costs imposed do not deny property owners an economically viable use of their land.

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29. *Id.* at 315 (stating that a government action that works a taking implicates the "constitutional obligation to pay just compensation").

30. See *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) (holding that property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking).

31. See *Hadachek v. Sebastian*, 239 U.S. 394, 411 (1915) (illustrating the broad discretion of the legislature in regulating land use that effects the health and comfort of a community).

32. See CAL. HEALTH & SAFETY CODE §§ 119300-119309 (enacted by Chapter 742) (setting forth provisions regulating piercing that will help control the spread of infectious disease).

33. See *supra* notes 6-10 and accompanying text (noting various medical concerns).

34. See *McEnery*, *supra* note 5, at D1 (stating that the two cases of Hepatitis B in 1996 believed to have been transmitted through piercing occasions where the piercing was not done by a professional, but by an inexperienced friend).

35. See *Johnson*, *supra* note 1 at G3 (quoting Edward Payne, manager of Division of Environmental Health Programs in Richmond, Virginia, as stating, "It seems like most people in the business know what they're doing, so there's a lot self-policing. They know the requirements and generally do them.").

## B. Practical Effect

Although regulating tattoo parlors can be seen as substantially furthering the legitimate state interest of preventing infectious diseases, there is some doubt as to whether regulation will be effective in preventing health risks. While technically Chapter 742 applies to everyone, there is a group called "scratchers" who are unlikely to comply. Scratchers are people who tattoo from their own home.<sup>36</sup> Most infections and other health problems are caused by scratchers.<sup>37</sup> There are large numbers of scratchers due to the lower cost of operating a business from the home and the availability of inexpensive tattoo supplies.<sup>38</sup> Supplies for making crude homemade tattoos can be purchased at the local art store, or a tattoo gun can be purchased from a magazine advertisement.<sup>39</sup> It is difficult to predict the effect Chapter 742 will have on scratchers. Considering the low overhead and higher profit margin for scratchers, it is doubtful that the \$500 penalty for violation of the provisions of Chapter 742 will make them comply.

Tattoo parlors that have already been operating "above the board" by using sterilization and sanitation procedures accepted in the tattooing community will be hindered by the new costs imposed on licensing. If the parlors raise prices to compensate for the new costs, they may lose customers to scratchers. This loss of customers could result in closed businesses and more tattoo artists practicing their trade underground in order to avoid the new regulations. Of course, since the tattooing association promoted Chapter 742, leading to greater public awareness of the dangers of tattooing, the clean parlors may end up booming and scratchers may slowly disappear.

## III. CHAPTER 741: BODY PIERCING

Chapter 741, the first law in California regulating body piercing, prohibits any person from performing or offering to perform body piercing upon a minor under the age of 18 without consent of the minor's parent or guardian.<sup>40</sup> Chapter 741 provides that the offense is an infraction punishable by a fine not exceeding \$250.<sup>41</sup> The definition of body piercing, as used in this chapter, excludes ear piercing.<sup>42</sup>

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36. Dennie, *supra* note 6, at B1.

37. *Id.*

38. See Petersen, *supra* note 4, at B1 (explaining that while professional tattoo guns can be obtained at a cost of \$200, the job can be done with "[a] sewing needle and bottle of India ink . . . in a pinch").

39. *Id.*

40. CAL. PENAL CODE § 652(a) (enacted by Chapter 741).

41. *Id.* § 19.8 (amended by Chapter 741).

42. *Id.* § 652(c) (enacted by Chapter 741).

A. *Piercing as a Fundamental Right?*

Fundamental rights are those rights that are explicitly or implicitly guaranteed by the Constitution.<sup>43</sup> Such rights have been recognized because they are either implicit in the concept of ordered liberty,<sup>44</sup> or deeply rooted in this nation's history and tradition.<sup>45</sup> Within the realm of fundamental rights under the concept of liberty are those guaranteeing the right to privacy.<sup>46</sup> The Supreme Court has determined that the right to privacy includes the right to marry, to use contraception, and to have an abortion.<sup>47</sup> If a right is found to be fundamental, the constitutionality of denying or inhibiting that right will be analyzed using strict scrutiny.<sup>48</sup>

It can be argued that body piercing is a fundamental right because in some ways it is analogous to the right to have an abortion or use contraception; it is a private decision based on personal autonomy. As such, a state may not impair that right without a compelling interest. For an interest to be compelling it must be a paramount concern.<sup>49</sup> For instance, in *Roe v. Wade*,<sup>50</sup> it was undisputed that protecting the health of the mother was a legitimate state interest. But, the Court did not find that legitimate interest to be a compelling interest until after the first trimester, when the abortion related dangers outweighed the live birth dangers.<sup>51</sup> Chapter 741 arguably furthers a compelling state interest, the public health and safety.

The argument regarding whether or not body piercing is a fundamental right is premised on the idea that body piercing is analogous to the right to have an abortion or use contraceptives. Neither the right to have an abortion nor the right to use contraceptives are rights that have been traditionally recognized,<sup>52</sup> but they are rights implicit in the concept of ordered liberty<sup>53</sup> because they are based on the concept of personal autonomy. Respect for personal autonomy is consistent throughout judicial history. In 1958, the Court stated that our nation "has thrived on the

43. *Plyler v. Doe*, 457 U.S. 202, 230 (1982).

44. *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

45. *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977).

46. See *Griswold v. Connecticut*, 381 U.S. 479 (1965) (recognizing a penumbra of protected privacy rights).

47. See *Zablocki v. Redhail*, 434 U.S. 374, 376-78 (1978) (invalidating a Wisconsin statute that made it illegal for a person in arrears with child support payments to marry); *Roe v. Wade*, 410 U.S. 113 (1973) (protecting a woman's right to have an abortion); *Eisenstadt v. Baird*, 405 U.S. 438, 453-54 (1972) (establishing the right to use contraception).

48. See *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (holding laws abrogating fundamental rights are analysed using strict scrutiny).

49. See *Sherbert v. Verner*, 374 U.S. 398, 406 (1963) (defining "compelling interest" as a state interest of paramount concern).

50. 410 U.S. 113 (1973).

51. *Roe v. Wade*, 410 U.S. 113, 154 (1973).

52. Note, *The Evolution of The Right to Privacy After Roe v. Wade*, 13 AM. J.L. & MED. 365, 370 (1987) (outlining the history of abortion regulation from the first state statute, legislated in Connecticut in 1821, to the present).

53. See *Union Pac. R.R. Co. v. Botsford*, 141 U.S. 250, 251 (1891) (commenting that the most sacred right is the right to be in control of one's own person and free from restraint by others).

principle that, outside areas of harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases."<sup>54</sup> This idea reflects the proper balance between the individual and society which gives meaning to the American Constitution.

Unfortunately, personal autonomy does not only encompass those rights that we as a society cherish, it also encompasses anything that a person might want to do with his body, including unprotected and illegal acts such as injecting drugs or committing suicide. In order for body piercing to be elevated to fundamental right status it must fall within the niche of accepted personal autonomy rights.<sup>55</sup>

For instance, the right to an abortion allows a woman to freely decide whether to bear the burdens of pregnancy and its aftermath,<sup>56</sup> while the right to use contraceptives allows people to be free to pursue intimate relationships in a manner they decide without the fear of government intrusion.<sup>57</sup> Both of these rights are consistent with the idea that people should make their own decisions as to what they may or may not do with their bodies. Inherent in these fundamental rights is the belief that certain aspects of our lives are private and should be controlled by personal free choice. In the case of body piercing, an argument can be made that a minor's choice to decorate his body in a manner he desires should be a private matter governed only by his own decision as to whether he chooses to pierce or not. Any mandated control over this right to decide may be a deprivation of his autonomy.

On the other side of this argument is the fact that the Supreme Court has yet to interpret the constitution as granting an unlimited right to do what one will with one's own body.<sup>58</sup> In fact, the court has been restrictive in its expansion of the scope of fundamental rights. It has denied the right to homosexuals to engage in sodomy,<sup>59</sup> and denied the right to anyone to fornicate.<sup>60</sup> The Court has further refused to consider fundamental rights relating to personal appearance, such as the right to wear any type of hairstyle.<sup>61</sup> Body piercing, like one's choice in partner, whether male, female, or married, or one's hairstyle, whether spiked, mohawked, or dyed, is a matter of personal taste and preference. So far, no fundamental rights have been

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54. *Kent v. Dulles*, 357 U.S. 116, 126 (1957).

55. *See Bowers v. Harwick*, 478 U.S. 186, 194 (1986) (indicating that the court is reluctant to establish new fundamental rights).

56. *See Roe*, 410 U.S. at 120-23 (describing the physical burdens of pregnancy as well as the financial and psychological burdens of keeping an unwanted child or putting that child up for adoption).

57. *See Griswold*, 381 U.S. at 485 (explaining how outlawing contraception could lead to unacceptable police invasion of the marital bedroom).

58. *See Roe*, 410 U.S. at 154 (reiterating the rules developed in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (vaccination), and *Buck v. Bell*, 274 U.S. 200 (1927) (sterilization), upholding statutes that involve governmental invasions of personal autonomy).

59. *See Bowers*, 478 U.S. at 194 (holding that there is no fundamental right for homosexuals to engage in sodomy).

60. *See Hollenbaugh v. Carnegie Free Library*, 436 F. Supp. 1328, 1333 (W.D. Pa. 1977) (validating the discharge of two library employees for engaging in adultery).

61. *See Olff v. East Side Union High Sch. Dist.*, 404 U.S. 1042, 1042 (1972) (denying certiorari on the issue of the constitutionality of a school's restrictions on student hairstyles).



defined based on matters of taste and preference. In light of the Court's reluctance to expand the scope of fundamental rights, and the lack of recognition of body piercing in history or tradition, it is unlikely that regulations on a minor's right to have her body pierced will be enveloped within this constitutional protection.

### B. Practical Effect

The author of Chapter 741 purports that the law is necessary as a means to protect the health of minors.<sup>62</sup> Chapter 741 may be inadequate in furthering this interest in two ways. First, it explicitly excludes ear piercing from the parental consent requirement while ear piercing carries the same dangers as do the other forms of body piercing covered by Chapter 741.<sup>63</sup> Second, it does not take into account the ability of teenagers to obtain these procedures through other, unregulated means.

It is difficult to surmise why the legislature created an exemption for ear piercing when the dangers of this type of piercing are just as serious as other forms. Further, the popularity of ear piercing, especially of the upper ear, makes it particularly harmful because the likelihood of infection increases as the number of piercings increase.

Infections from piercing the upper ear are common because the cartilage receives less blood than the earlobe and blood is vital to the healing process.<sup>64</sup> The risk of infection is further heightened by the fact that piercers must make the upper ear hole large so that it will not close over time; the larger hole takes longer to heal—increasing the chances of infection even more.<sup>65</sup> A case study cited by the American Academy of Pediatrics described an upper ear piercing performed on a sixteen year old girl that caused a serious infection requiring treatment with intravenous antibiotics and surgery, and resulted in permanent cartilage deformity.<sup>66</sup>

The other potential problem of Chapter 741 is its failure to address the rebellious nature of children in their teens. Teens may be unwilling to ask for parental permission before getting pierced.<sup>67</sup> They may attempt to pierce themselves, ask their friends to do it, or go to shady, unlicensed piercers.<sup>68</sup> Like abortionists before

62. See ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 99, at 1-2 (Apr. 22, 1997) (stating that piercing is dangerous to teenagers whose bodies are still developing).

63. See CAL. PENAL CODE § 652(c) (enacted by Chapter 741) (providing that "'body piercing' does not include the piercing of an ear").

64. *Adornments: The Perils of Piercing*, BEING WELL, Fall 1997, at 5.

65. See *id.*

66. See Ronna Staley et al., *Auricular Infections Caused by High Ear Piercing in Adolescents*, 99 PEDIATRICS 610, 611 (1997) (using case studies to explain the problems associated with piercing, including the risk of infection with pseudomonas and staphylococcus and resulting deformities of the ear).

67. See Chris Moran, *Hole Sale Changes; So, you want to get a nose ring? Well now you have to get mom's or dad's permission first, if you're under 18*, SAN DIEGO UNION-TRIB., Jan. 17, 1998, at E-1 (reporting a case where a 15-year-old girl chose not to wait for her mother's approval for her piercing, and instead had someone pose as her mother while she had a tiny barbell inserted in her tongue).

68. See *id.* (identifying a 20-year-old man who began piercing himself at age 14).

*Roe v. Wade*, piercers will be available through furtive, subterranean avenues.<sup>69</sup> The end result could be many children suffering from infections and other ailments including scarring, split earlobes, speech impairments, skin allergies, and keloids (tumor-like distortions).<sup>70</sup>

#### IV. CONCLUSION

The health risks associated with body piercing and tattooing, along with their increasing popularity and emergence into the mainstream make the issue ripe for concern. As with any other industry that poses a potential threat to society's health and safety, minimum standards for sanitation and licensing are a necessity. However, Chapters 741 and 742 may go far beyond their intended purpose, and may ultimately be considered unconstitutional altogether. Further, Chapter 741 fails to address the problems associated with ear piercing, leaving this potentially dangerous procedure available to children of all ages, with or without parental permission. Unfortunately, no matter what the law, scratchers will still practice their trade in trailers and kitchens and teenagers will still riddle themselves with skin art and studs. If the deficiencies of these Chapters remain unchanged, our children will be left wearing the scars of their generation's fashion craze.

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69. See ELLEN MESSER & KATHRYN MAY, BACK ROOMS 208-212 (1989) (retelling stories of Bill Baird, an abortion activist, who saw the many underground abortion "clinics" and scams of the 1960's, as well as the results of botched illegal procedures).

70. See Johnson, *supra* note 1, at G3 (identifying concerns expressed by a doctor of the potential for problems in body piercing); see also *Pain Just One of the Possible Pitfalls of Oral Piercings*, CHARLESTON DAILY MAIL, July 7, 1997, at A2 (describing possible health risks of having oral piercing, including the serious risk of swallowing a piece of oral jewelry and having it lodged in a lung, requiring surgery); see also *The Perils of Piercing*, *supra* note 1, at 15 (reporting that some infections of the upper ear caused by piercing are serious enough to require intravenous antibiotics).

