

The State of Texas
House of Representatives



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OPINION COMMITTEE

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El Paso • District 79

October 19, 2011

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The Honorable Greg Abbott
Texas Attorney General
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78711

FILE # ML-46852-11

I.D. # 46852

RQ-1014-GA

RE: Whether it is a Class C Misdemeanor not to Display Two License Plates on a Motor Vehicle.

Dear General Abbott:

In 1934, the 43rd Legislature, 2nd Called Session passed a statute making it a misdemeanor not to exceed \$200 to operate a motor vehicle on a public highway that does not display two license plates. The wording of the misdemeanor penalty has not changed since 1934. Tex. Transp. Code Ann., §502.404 (West 2007).

The current law, Transportation Code, §502.404, is attached as Exhibit A and includes this penalty for not displaying registration or license plates. This section of the Transportation Code was amended by House Bill 2357, 82nd Legislature, Regular Session, 2009, effective January 1, 2012, as part of a larger reorganization of the motor vehicle statutes.

Part of HB 2357 completed the separation of registration and license plates language into two different chapters of the Transportation Code: Chapters 502 and 504, respectively. Sections such as §502.404 that addressed both registration and license plates were divided and placed into their relevant chapters.

The portion of HB 2357 that separates license plates from registration did not specifically include the penalty language of the offense being a misdemeanor, punishable by a fine not to exceed \$200. Act of May 29, 2011, 82nd Leg., R.S. ch. 504 §221, 2011 Tex. Gen. Laws (to be codified at Tex. Transp. Code §504.943). (Exhibit B). A general penalty provision was meant to be added similar to those that appear in Chapter 502 at §502.401, Tex. Transp. Code Ann. (West 2007) (to be codified as Tex. Transp. Code §502.471 as amended by HB 2357) and Chapter 520 at §520.036, Tex.

Transp. Code Ann. (West 2007) (to be codified as Tex. Transp. Code §520.016 as amended by HB 2357), but was inadvertently left out of the bill.

The Code Construction Act provides that in construing a statute a court may consider, among other matters, the object sought to be attained, circumstances under which the statute was enacted, legislative history, common law or former statutory provisions (including laws on the same or similar subjects), consequences of a particular construction, administrative construction of the statute, title (caption), preamble, and emergency provision. Tex. Gov't Code Ann. §311.023 (West 2005), *Ex Parte S.C.*, 305 S.W.3d 258 (Tex. App.-Houston [14th Dist.] 2009, pet. dismissed) (order of expunction as modified). Furthermore, the Act provides that the presumption is that the entire statute is intended to be effective, a just and reasonable result is intended, and a result feasible of execution is intended. Tex. Gov't Code Ann. §311.021 (West 2005). The statute is to be read as a whole and every attempt made to harmonize its various provisions, *Sides v. Guevara*, (Tex. App.-El Paso [8th Dist.] 2007, pet. dismissed).

The Object Sought to be Attained

The purpose of HB 2357, as stated in the Senate Research Center Bill Analysis (Committee Report version) did not include a change to the penalties. The intent was set forth as:

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

"The purpose of this bill is to reorganize Chapters 501, 502, 504, and 520, of the Transportation Code (the motor vehicle statutes), including an update to reflect automation capability in systems and payment. The bill provides for the Texas Department of Motor Vehicles (TxDMV), with advice from the Department of Public Safety of the State of Texas, to conduct a study regarding recommendations for the consolidation of shared records and information to be completed by September 1, 2012. The bill allows TxDMV to establish standards for service quality and enter into an agreement to facilitate the processing of some aspects of registration and title transactions, and allows the cancellation or rescission of a title for a new vehicle when all parties agree by affidavit to rescind the sale of the vehicle.

The motor vehicle statutes were codified in 1995, but there has not been a complete reorganization of substance since before that time. This bill directly addresses the problem of the statutes being outdated in regard to automation and organization.

C.S.H.B. 2357 amends current law relating to motor vehicles and provides penalties."

Circumstances Under Which the Statute Was Enacted/ Legislative History

I was the sponsor of HB 2357 in the House of Representatives. One of the purposes of HB 2357 was to reorganize the placement of the offenses at the end of their relevant chapters for ease of reference purposes for law enforcement. The penalty was to be included in both chapter 502 and chapter 504. If I had intended to omit the penalty, I

would have specifically enumerated the changes in the bill analysis and brought attention to such changes during the committee and public hearings. In addition, I would have apprized law enforcement that they might be called as potential witnesses during the public hearing. A review of the House and Senate written and oral history will not reveal any intent to change the penalty of any offense in the bill.

Since registration is the validation of the license plates, a penalty for not displaying registration is meaningless without a penalty for not displaying the plates. HB 2357 specifically retained the penalty for not displaying registration insignia. The penalty falls under the existing general penalty provision of the chapter. Act of May 29, 2011 82nd Leg., R.S. ch.502 §155, sec. 502.401, 2011 Tex Gen. Laws (to be codified as Tex. Transp. Code Ann. §502.471). This is the same penalty, a misdemeanor punishable by a fine not to exceed \$200. Act of May 29, 2011 82nd Leg., R.S. ch.502 §557, sec. 502.404, 2011 Tex Gen. Laws (to be codified as Tex. Transp. Code Ann. §502.473) (Exhibit B).

Common Law or Former Statutory Provisions (including similar laws)

Transportation Code, §502.404 currently states that a person “commits an offense if the person operates on a public highway ...[a] motor vehicle that does not display two license plates, at the front and rear of the vehicle” and a “person commits an offense if the person operates on a public highway ...[a] motor vehicle... that does not properly display the registration insignia...” This language is repeated for a road tractor, motorcycle, trailer, or semitrailer that does not display a license plate. This section provides that the offense is a misdemeanor punishable by a fine not to exceed \$200. A court may dismiss a charge for not displaying license plates if the defendant remedies the defect and pays an administrative fee not to exceed \$10. A court may dismiss a charge for not displaying registration if the defendant shows the motor vehicle was registered at the time, attaches the registration to the windshield, pays an administrative fee not to exceed \$10. (See Exhibit A).

As previously stated, the penalty of a misdemeanor not to exceed \$200 had not changed since 1934 even though the statute has been amended eight times and codified once. This penalty is identical to the general penalty provided for in §542.301 and §542.401 for Subtitle C of the Transportation Code, Rules of the Road. Not displaying two license plates on a motor vehicle is extremely similar to the traffic laws contained in that subtitle.

The Office of the Attorney General has issued one opinion regarding the absence of penalties in a statute. The subject statute in Attorney General Opinion Number O-5176 (1943) was Penal Code, Article 1577. This Article required an employer to conspicuously post the County Judge issued permit for employment of a minor between the ages of 12 and 15. The OAG looked at the 1925 previous law for guidance and was not able to find a statute prescribing a penalty for the violation of not posting. The wording in the then current statute and its predecessors did not set forth that the

violation was an "offense," just that it was required. AG. Op. No. 0-5176 came before the passage of the Code Construction Act, which sets out the criteria to be considered. The result may have been different if the previous law had contained a penalty. In this same opinion, it was noted that a different Article of the Penal Code stated that a penalty had to be affixed to the law.

The current Penal Code does not state that a penalty has to be affixed to the law. It indicates that using the word "offense" is enough to satisfy the Code. Penal Code, §1.03, Effect of Code, states that conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioners court, or rule authorized by and lawfully adopted under a statute. This section of the Penal Code states that the provisions of the Penal Code apply to "offenses defined by other laws, unless the statute defining the offense provides otherwise; however, the punishment affixed to an offense defined outside this code shall be applicable unless the punishment is classified in accordance with this code." In summary, if the specific statute outside of the Code does not supply a penalty, then the punishment (penalty) is one that is listed in the Penal Code. Tex. Penal Code Ann. §1.03 (West 2011).

Offenses are classified as felonies or misdemeanors. Tex. Penal Code Ann. §12.02 (West 2011). Offenses outside of the Penal Code" are classified as follows:

- (1) "Felony of the third degree" if imprisonment in the Texas Department of Criminal Justice or another penitentiary is affixed to the offense as a possible punishment.
- (2) "Class B misdemeanor" if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment.
- (3) "Class C misdemeanor" if the offense is punishable by fine only.

There has never been any indication that confinement in jail was intended for failing to display license plates. The only remaining penalty it could fall within is that of a Class C misdemeanor. Tex. Penal Code Ann. §12.41 (West 2011).

Consequences of a Particular Construction/ A Just and Reasonable Result Was Intended

The primary objective in statutory construction is to give effect to the legislature's intent. In deriving the legislature's intent, a court relies on the plain meaning of the statutory text, unless a different meaning is supplied by legislative definition or is apparent from context, or such construction leads to absurd results. *Texas Property and Casualty Insurance Guaranty Assoc. for Petrosurance Casualty Co. v. Brooks*, 269 S.W.3d 645 (Tex. App.-Austin [3rd Dist.] 2008, pet. granted on other grounds). In this case, Brooks was injured in a motor vehicle accident while transporting other employees home from the oil rig site. Both parties argued that the statute supported their argument as to the type of judgment that must be submitted to the Texas Department of Insurance Workers Compensation Division for approval. The Court interpreted the judgment language so

as to make sense, prevent collusion, to not place impractical procedural burdens on the trial court, and to not permit a party to avoid or delay entry of an adverse judgment.

To interpret new §504.943 as not having a penalty for failure to display results is an absurd result. The primary purpose of Transportation Code, §502.404 requiring display of license plates is to “facilitate the identification of a motor vehicle by its license plate number whether it is going toward or away from the viewer,” *United States of America v. Salinas*, 665 F. Supp.2d 717 (2009). If there is no penalty for not displaying two license plates then the primary purpose of the statute is defeated. There would be far reaching results for law enforcement and the general public if law enforcement had no way to identify vehicles transporting victims, drugs, and criminal suspects. There would be no just and reasonable result.

Administrative Construction of the Statute/ Title (caption)

The titles and captions make it clear §504.943 will carry a penalty on January 1, 2012.

“Offenses and Penalties” will be the title of Transportation Code, Chapter 504, Subchapter L which contains §504.943, and “Operation of Vehicle without License Plate” will be the caption of the section. Likewise, “Offenses and Penalties” will be the title of Transportation Code, Chapter 502, Subchapter K which contains Transportation Code, §504.473 (current §502.404), and “Operation of Vehicle without Registration Insignia” will be the caption of the section.

Entire Statute is intended to be effective/ Result Feasible of Execution Was Intended.

The court must presume that an entire statute is intended to be effective, *Coleman v. State of Texas*, 188 S. W.3d 708, (Tex. App.–Tyler [12th Dist.] 2005), pet. for discretionary review ref’d, cert. denied, 549 U.S. 999 (2006). If there is no penalty, then subsections (b) and (d) of §504.943 are not effective. Subsection (b) sets forth the offense and subsection (d) allows a court to dismiss a charge under certain circumstances. There is no reason to have an offense without a penalty. There must be a charge in order to dismiss it.

The Fourteenth Court of Appeals in interpreting a forfeiture of bond statute presumed that the rationale of the entire statute being effective also applied to an entire Senate bill amending several statutes, *Allegheny Mutual Casualty v. The State of Texas*, 710 S.W2d 139 (Tex. App. –Houston [14th Dist], 1986, pet. denied).

The section of HB 2357 regarding an offense for not displaying proper registration only makes sense in the context of the rest of the bill. If there are no license plates, then there is nothing for law enforcement to check registration against. Furthermore, it would not make sense in the context of the other offenses listed in the subchapter. Subchapter L also includes offenses regarding antique vehicle license plates, log loader license plates, operation of a vehicle with wrong license plate, and operation of a vehicle with a fictitious, altered or obscured license plates. If there is no penalty for not displaying two

plates, then these other offenses and penalties are rendered moot and ineffective. If the plate is not displayed, then there cannot be misuse of antique or log loader plates, and there cannot be a wrong fictitious, altered or obscured license plate.

We respectfully request your opinion on the following questions:

1. Whether it is a Class C Misdemeanor not to Display Two License Plates on a Motor Vehicle?

2. If the offense does have a penalty of a Class C Misdemeanor, is it a fine up to \$200 as in the previous statute and similar statutes, or the \$500 provided in the Penal Code.

If you have any questions regarding this request or need further information, please contact me at 512-463-0596.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe C. Pickett". The signature is stylized and cursive, with a large initial "J" and "P".

Joe C. Pickett
Chairman

EXHIBIT A-CURRENT §502.404

Sec. 502.404. OPERATION OF VEHICLE WITHOUT LICENSE PLATE OR REGISTRATION INSIGNIA. (a) A person commits an offense if the person operates on a public highway during a registration period a passenger car or commercial motor vehicle that **does not display two license plates, at the front and rear of the vehicle**, that have been:

(1) assigned by the department for the period; or

(2) validated by a registration insignia issued by the department that establishes that the vehicle is registered for the period.

(b) A person commits an offense if the person operates on a public highway during a registration period a passenger car or commercial motor vehicle, other than a vehicle assigned license plates for the registration period, **that does not properly display the registration insignia issued** by the department that establishes that the license plates have been validated for the period.

(c) A person commits an offense if the person operates on a public highway during a registration period a road tractor, motorcycle, trailer, or semitrailer that does not display a license plate, attached to the rear of the vehicle, that has been:

(1) assigned by the department for the period; or

(2) validated by a registration insignia issued by the department that establishes that the vehicle is registered for the period.

(d) Subsections (a) and (b) do not apply to a dealer operating a vehicle as provided by law.

(e) An offense under this section is a misdemeanor punishable by a fine not to exceed \$200.

(f) A court may dismiss a charge brought under Subsection (a) if the defendant:

(1) remedies the defect before the defendant's first court appearance; and

(2) pays an administrative fee not to exceed \$10.

(g) A court may dismiss a charge brought under Subsection (b) if the defendant:

(1) shows that:

(A) the passenger car or commercial motor vehicle was issued a registration insignia by the department that establishes that the vehicle was registered for the period during which the offense was committed; and

(B) the registration insignia described in Paragraph (A) was attached to the passenger car or commercial motor vehicle before the defendant's first court appearance; and

(2) pays an administrative fee not to exceed \$10. (emphasis added)

**EXHIBIT B-HB 2357 AMENDMENTS TO §502.404
EFFECTIVE JANUARY 1, 2012**

Sec. ~~502.473~~ [502.404]. OPERATION OF VEHICLE WITHOUT [LICENSE PLATE OR] REGISTRATION INSIGNIA. (a) ~~[A person commits an offense if the person operates on a public highway during a registration period a passenger car or commercial motor vehicle that does not display two license plates, at the front and rear of the vehicle, that have been:~~

~~[(1) assigned by the department for the period; or~~

~~[(2) validated by a registration insignia issued by the department that establishes that the vehicle is registered for the period.~~

~~[(b)] A person commits an offense if the person operates on a public highway during a registration period a [passenger car or commercial] motor vehicle[, other than a vehicle assigned license plates for the registration period,] that does not properly display the registration insignia issued by the department that establishes that the license plates have been validated for the period.~~

~~(b) [(e)] A person commits an offense if the person operates on a public highway during a registration period a road tractor, motorcycle, trailer, or semitrailer that does not display [a license plate, attached to the rear of the vehicle, that has been:~~

~~[(1) assigned by the department for the period; or~~

~~[(2) validated by] a registration insignia issued by the department that establishes that the vehicle is registered for the period.~~

~~(c) This section does [(d) Subsections (a) and (b) de] not apply to a dealer operating a vehicle as provided by law.~~

~~(d) [(e) An offense under this section is a misdemeanor punishable by a fine not to exceed \$200.~~

~~[(f) A court may dismiss a charge brought under Subsection (a) if the defendant:~~

~~[(1) remedies the defect before the defendant's first court appearance;~~

and

~~[(2) pays an administrative fee not to exceed \$10.~~

~~[(g)] A court may dismiss a charge brought under Subsection (a) [(b)] if the defendant:~~

(1) shows that[:

~~[(A)] the [passenger car or commercial] motor vehicle was issued a registration insignia by the department that was attached to the motor vehicle, establishing that [establishes that] the vehicle was registered for the period during which the offense was committed; and~~

~~[(B) the registration insignia described in Paragraph (A) was attached to the passenger car or commercial motor vehicle before the defendant's first court appearance; and]~~

(2) pays an administrative fee not to exceed \$10.

EXHIBIT B CONTINUED

Sec. 504.943. OPERATION OF VEHICLE WITHOUT LICENSE PLATE. (a) Except as provided by Subsection (b), a person commits an offense if the person operates on a public highway, during a registration period, a motor vehicle that does not display two license plates that:

- (1) have been assigned by the department for the period; and
- (2) comply with department rules regarding the placement of license

plates.

(b) A person commits an offense if the person operates on a public highway during a registration period a road tractor, motorcycle, trailer, or semitrailer that does not display a license plate that:

- (1) has been assigned by the department for the period; and
- (2) complies with department rules regarding the placement of license

plates.

(c) This section does not apply to a dealer operating a vehicle as provided by law.

(d) A court may dismiss a charge brought under Subsection (a)(1) if the defendant:

- (1) remedies the defect before the defendant's first court appearance; and
- (2) pays an administrative fee not to exceed \$10.