

THE STATE OF LICENSE PLATE LAWS IN TEXAS

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Is it a crime not to display a license plate (or two) on a vehicle in Texas? Of course it is . . . isn't it? In light of recent legislation, perhaps it's not. Due to changes made by H.B. 2357, license plate laws have become quite blurred and distorted.

The State of the Plate

License plates serve a legitimate and important law enforcement purpose. Officers use plate numbers to identify vehicles involved in traffic offenses or for which no financial responsibility has been established. Be-on-the-lookout alerts give plate numbers to locate stolen vehicles or vehicles transporting missing persons. The average person jots down a plate number as a pertinent identifier to report a crime to the police. And their utility reaches far beyond the criminal justice realm. Businesses make big bucks on developing license plate recognition cameras and software. Toll road authorities rely on the existence of license plates in capturing photos to enforce payment of tolls. Cameras capture plate numbers of vehicles that run red lights. And people stimulate the economy by purchasing novelty or specialty plates to accessorize their vehicle. After all, one can barely commute to work without cracking a smile at some vanity plate with sayings such as "NVERLA8," "OKY DOKY," or "RN EM OVR."

Perhaps the main reason Texas drivers have always put license plates on their vehicles, though, is because since 1934, Texas law has required them. Section 502.404 of the Transportation Code, recodified but essentially unchanged since 1934, provides that a person commits an offense if the person operates a passenger car or commercial motor vehicle that does not display two license plates at the front and rear of the vehicle, or operates a road tractor, motorcycle, trailer, or semitrailer that does not display a license plate attached to the rear of the vehicle, both assigned for the registration period in effect.¹ The section also makes it an offense for a person to operate a passenger car or commercial motor vehicle that does not properly display the registration insignia (i.e., the registration sticker) establishing that the license plates have been validated for the registration period in effect.² Either of these offenses is a misdemeanor punishable by a fine not to exceed \$200.³

The law seems simple enough. Nevertheless, the past two years of case law updates have given readers interesting court opinions debating the requirement that a license plate be displayed at the front and rear of the vehicle. The Austin Court of Appeals held that Section 502.404 does not require that the front license plate be displayed on the front bumper, just that the plate be visible from the front of the vehicle.⁴ In contrast, the Amarillo Court of Appeals held that the front license plate must be displayed on the foremost area of the car.⁵ The Court of Criminal Appeals settled the disagreement in *Spence v. State*, 325 S.W.3d 646 (2010) when it agreed with the Amarillo Court of Appeals and held that the statute requires the license plate to be on the foremost area or beginning of the car, most commonly the front bumper.⁶ Judge Meyers, in a dissent joined by Judge Hervey, posited that if the front of the vehicle means the front bumper, then the rear of the vehicle should mean the back bumper; however, most often, rear plates are mounted on the vehicle's trunk and not the actual bumper. Judge Meyers opined that "[t]he only thing about this statute that is clear is that it is not well written."⁷

The Passage of H.B. 2357

The 82nd Regular Legislature, on May 29, 2011, the last day for the House to adopt and for the Senate to concur in conference committee reports, passed H.B. 2357, a 250-page bill that was intended to reorganize Chapters 501 (titling of vehicles), 502 (registration of vehicles), 504 (license plates), and 520 (miscellaneous provisions) of the Transportation Code. H.B. 2357, set to take effect January 1, 2012, will supersede the *Spence* case as far as the required placement of license plates, but it also amends the license plate law with unintended consequences.

Separating Registration Sticker and License Plate Offenses

According to the bill's author, Rep. Joe C. Pickett (District 79, El Paso), the motor vehicle statutes in Chapters 502 and 504 had not undergone a complete reorganization since 1995. H.B. 2357 attempted to separate out the registration requirements and offenses from the license plate requirements and offenses, and located them in two different chapters of the Transportation Code: Chapters 502 and 504, respectively.

It was reported in the Legislative Update issue of *The Recorder* (August 2011)⁸ that H.B. 2357 made non-substantive changes to the offenses for no license plates or registration insignia. That is partially correct—as it relates to registration insignia laws. The bill removed all references to license plates from Section 502.404, leaving the section to only criminalize not having a properly displayed registration insignia (i.e., sticker). The penalty provision was removed, and the statute was renumbered as Section 502.473, effective January 1, 2012. Chapter 502 contains a general penalty provision (in Section 502.401 until December 31, 2011 and renumbered to Section 502.471 effective January 1, 2012), providing a fine not to exceed \$200 for a violation of the chapter.

The license plate offense was re-created in Section 504.943 with a slight substantive change. The law, as amended, addresses Judge Meyers' dissent about the ambiguity of the placement of the front plate to instead provide that a person commits an offense if the person operates a motor vehicle that does not display two license plates, or a road tractor, motorcycle, trailer, or semitrailer that does not display one plate, in compliance with Texas Department of Motor Vehicle (DMV) rules regarding the placement. As with the registration insignia offense, the penalty provision was removed. And herein lies the problem: there is no general penalty in Chapter 504—the offense's new home—to substitute for the omission.

Unintended Consequence

Where does this leave the state of license plate laws in Texas, beginning January 1, 2012? The law, in Section 504.943, says that it is an offense to operate a vehicle without the required plates. A court may dismiss a charge against a defendant for driving a vehicle that does not display two license plates if the defendant remedies the defect before the defendant's first court appearance and pays an administrative fee not to exceed \$10.⁹ Clearly, the bill was intended to just renumber the offense. Unfortunately, it is now an offense for which there is no penalty. Is an offense without a penalty even an offense?

On October 19, 2011, Rep. Pickett requested an attorney general opinion to answer the following question: Whether it is a Class C misdemeanor not to display two license plates on a motor vehicle? The request asserts that "the portion of H.B. 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. A general penalty was meant to be added similar to those that appear in Chapter 502 . . . and Chapter 520 . . . but was inadvertently left out of the bill."¹⁰

The request cites the Code Construction Act,¹¹ specifically Section 311.023 of the Government Code, which provides that in construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the: (1) object sought to be attained; (2) circumstances under which the statute was enacted; (3) legislative history; (4) common law or former statutory provisions, including laws on the same or similar subjects; (5) consequences of a particular construction; (6) administrative construction of the statute; and (7) title (caption), preamble, and emergency provision. The request, received as RQ-1014-GA, and available on the Attorney General's website,¹² addresses each of the above considerations and essentially argues that the offense should be considered a misdemeanor offense punishable by a fine. However, the Texas Court of Criminal Appeals has repeatedly held that in discerning legislative intent or purpose, they focus on the literal text of the statute in question because "it is the only thing actually adopted by the legislators, probably through compromise, and submitted to the Governor for [his] signature."¹³ In *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991), the Court of Criminal Appeals wrote that "[a]lthough Section 311.023 of the Government Code

invites, but does not require, courts to consider extratextual factors when the statutes in question are not ambiguous, such an invitation should be declined.”¹⁴ Under this line of reasoning, the Court of Criminal Appeals will only look to the factors described by Section 311.023 if the statute in question is ambiguous.¹⁵

At this time, it is unclear what General Abbott will decide. Most times, opinions take 180 days to issue, but this law will take effect January 1st. Even with an attorney general opinion, that is only persuasive authority for a court, and the Texas Legislature will not reconvene to make any legislative corrections until January 2013, leaving Texas municipal and justice courts with a full year to debate this debacle.

What are the Issues?

Section 504.943 clearly says it is an offense, but is it enforceable? Can an officer affect a traffic stop on a vehicle displaying no (or only one) license plate? Would a court hold that an officer has reasonable suspicion or probable cause to stop such a vehicle?

If the law is enforceable, would the officer have to arrest the driver, or could the officer issue a citation in lieu of taking the offender before a magistrate? This would hinge on whether the offense was a Class C misdemeanor.¹⁶

As a related issue, to which court should the case go? As jurisdiction depends not only on where the offense occurs, but also on the penalty associated with the offense, of which there is no statutory guidance under Section 504.943, this is hard to answer.¹⁷ The Representative argues, in the request for an opinion, “there has never been any indication [from similar laws or this law prior to amendment] that confinement in jail was intended for failing to display license plates. [Thus,] the only remaining penalty it could fall within is that of a Class C misdemeanor.” The request cites Section 12.03(b) of the Penal Code, which states that an offense designated as a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor, and Section 12.41(3) of the Penal Code, which provides that any conviction not obtained from a prosecution under the Penal Code shall be classified as a Class C misdemeanor if the offense is punishable by fine only. Should the Attorney General find these statutes persuasive for an offense in the Transportation Code?

Would a court have to impose a fine at all or could a court just enter conviction and impose only court costs? This assumes that the case could even be filed in a court of limited jurisdiction when there is no indication that the offense is punishable by a fine only.

If the offense can be filed in a municipal or justice court and there is a conviction, what is the penalty? The last question in the Representative’s request for an opinion is whether the fine would be up to \$200, or up to \$500 as a Class C misdemeanor is defined under the Penal Code.

The Fate of the Plate

What will the Attorney General opine? Will law enforcement enforce the law against drivers without the required plates? Will prosecutors prosecute these cases? How will the courts adjudicate or even handle the filing of these cases? It will be interesting to see how events transpire after January 1st.

¹ Section 502.404(a) & (c), Transportation Code.

² Section 502.404(b), Transportation Code.

³ Section 502.404(e), Transportation Code.

⁴ *State v. Losoya*, 128 S.W.3d 413 (Tex. App.—Austin 2004).

⁵ *Spence v. State*, 296 S.W.3d 315 (Tex. App.—Amarillo 2009). Read the summary of *Spence* in the “Case Law and Attorney General Opinion Update,” *The Recorder* (December 2009), p. 9.

⁶ Read the summary of *Spence* in the “Case Law and Attorney General Opinion Update,” *The Recorder* (December 2010), pp. 13-14.

⁷ *Spence v. State*, 325 S.W.3d 646, 654 (Tex. Crim. App. 2010).

⁸ *The Recorder* (August 2011), pp. 69-70.

⁹ Section 504.943(d), Transportation Code.

¹⁰ RQ-1014-GA.

¹¹ Chapter 311, Government Code.

¹² Available at: https://www.oag.state.tx.us/opin/index_rq.shtml.

¹³ *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991).

¹⁴ *Id.* at 786.

¹⁵ See, e.g., *id.*; *Spence, supra*.

¹⁶ See Article 14.06, Code of Criminal Procedure.

¹⁷ Municipal and justice courts have jurisdiction over criminal cases punishable by **fine only** or a fine and sanction not consisting of confinement or imprisonment. Articles 4.11 and 4.14, Code of Criminal Procedure. County courts have jurisdiction of **misdemeanors** over which the justice courts do not have exclusive jurisdiction and where the **fine** exceeds \$500. Article 4.07, Code of Criminal Procedure. District courts have jurisdiction over criminal cases of the grade of **felony**, all misdemeanor cases involving official misconduct, and **misdemeanors** transferred to the district court and punishable by confinement. Article 4.05, Code of Criminal Procedure. Note that in Section 504.943 of the Transportation Code, the statute in question, there is no reference to whether the offense is a misdemeanor or a felony, or whether the offense is punishable by a fine.