

MOTOR VEHICLES - Change in policy for vehicle registrations with license plate transfer;

STATUTORY CONSTRUCTION - Legislative intent determined from language of act, and proximate arrangement of sections within an act;

STATUTORY CONSTRUCTION - Preference for construction that gives effect over one that renders void;

MONTANA CODE ANNOTATED (2005) - Section 61-3-321, (8)(a), (b), (13), (14), (15), -501;

MONTANA CODE ANNOTATED - Titles 23, 61; sections 1-2-101, 1-3-223, 1-11-204(3), -103(6), 20-25-1002, 61-3-317, -321, (1)(m), (2), (3) (2003), (8), (b), (8) (2003), (12), -317, -332, -335, -501;

MONTANA CODE ANNOTATED (2003) - Section 61-3-321(3);

MONTANA LAWS OF 2005 - Chapter 542, sections 76-242 to -245, -2256 to -2261, 2260; chapter 596, sections 58, 89, 126, 127, 129 to 167, 148-2827 to -2831, -2837, 149.

- HELD:
1. Montana Code Annotated § 61-3-321 (2005), as codified, conflicts with 2005 Mont. Laws, ch. 596, §§ 148 and 149.
 2. The coordination instruction found in 2005 Mont. Laws, ch. 596, § 149, incorporated § 148's prescribed amendment of Mont. Code Ann. § 61-3-321, as further modified in § 149; accordingly, all registration fees imposed under § 61-3-321, as so amended, must be paid if the vehicle to which plates are transferred is not currently registered.
 3. Since the codified version of the bills conflicts with the enrolled bill, § 149 as interpreted herein must be given effect over the codified version of Mont. Code Ann. § 61-3-321 (2005).

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Mr. David Ewer
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Mr. David Ewer, Director
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Governor's Office
P.O. Box 200802
Helena, MT 59620-0802

Dear Director Ewer:

You have requested my opinion on the following question:

Were the amendments to Mont. Code Ann. § 61-3-321, enacted into law by the 2005 Legislature, concerning the payment of registration fees upon a transfer of license plates to a replacement vehicle, correctly codified in the 2005 edition of the Montana Code Annotated?

This question requires analysis of the coordination of two bills passed by the 2005 Legislature amending Mont. Code An. § 61-3-321. Both generally revised Montana's motor vehicle laws: 2005 Mont. Laws, ch. 596, House Bill No. 671 ("HB 671"), and 2005 Mont. Laws, ch. 542, Senate Bill No. 285 ("SB 285").

HB 671 was an act that generally revised motor vehicle law by, among other things, specifically "revising and clarifying business processes for registering and renewing the registration of certain vehicles" and "revising and clarifying certain provisions for issuance and transfer of license plates." 2005 Mont. Laws, ch. 596 at 2713. Section 58 of HB 671 amended Mont. Code Ann. § 61-3-321 to eliminate the current law practice of allowing certain registration fees to be avoided upon registration of a replacement vehicle with a license plate transfer. The amendment provided, in relevant part:

~~(8)(7)~~ The provisions of this section relating to ~~the payment of registration fees or~~ new ~~number~~ *standard license* plate fees do not apply when ~~number~~ *license* plates are transferred ~~to a replacement vehicle~~ under ~~61-3-317, 61-3-332, or~~ 61-3-335. *Registration fees must be paid if the vehicle to which plates are transferred was not previously registered.*

2005 Mont. Laws, ch. 596, § 58 at 2763. This amendment was expected to generate a general fund revenue increase of approximately \$ 700,000 in FY06 and \$1.4 million in FY07. See, Fiscal Note, HB0671, As Amended--House Transportation Committee, Assumptions 12-13, p. 2, <http://data.opi.state.mt.us/bills/2005/FNPDF/SB0285.pdf>.

SB 285 also extensively revised motor vehicle laws, but it had a narrower focus. In addition to reorganizing and recodifying definitions, SB 285 was designed to “revis[e] and clarify[] registration fees for watercraft, snowmobiles, and vehicles” and “combin[e] fees in lieu of tax and registration fees.” 2005 Mont. Laws, ch. 542 at 2181. The revision, clarification and combination of registration fees was basically accomplished by moving various sections throughout titles 23 and 61 concerning vehicle and vessel registration into Mont. Code Ann. § 61-3-321, and aggregating the fees associated with such registrations by vehicle or vessel type. See, 2005 Mont. Laws, ch. 542, § 76 at 2256-61.

As introduced, SB 285 retained the current law text of Mont. Code Ann. § 61-3-321(8) (2003). State Internet/BBS Copy of SB 285, SB0285_1.wpd, p. 125, <http://data.opi.state.mt.us/bills/2005/SB0299>. However, the original fiscal note for SB 285 estimated a \$4.95 million general fund revenue loss over the FY 06-07 biennium if the fee exemption in subsection (8) of 61-3-321 was applied to SB 285’s merged registration fee structure. See, Fiscal Note, SB0285, As Introduced (February 2, 2005), p. 2 (assumptions 12 and 13). After that, the Senate Highway Committee amended section 76 of SB 285 to substitute the following in place of Mont. Code Ann. § 61-3-321(8) (2003):

~~(8)(14) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.~~
WHEN THE LICENSE PLATES FOR A REGISTERED MOTOR VEHICLE ARE TRANSFERRED TO A REPLACEMENT VEHICLE UNDER 61-3-317, 61-3-332, OR 61-3-335, THE OWNER OF THE MOTOR VEHICLE SHALL PAY A REGISTRATION FEE AS FOLLOWS:

(A) HEAVY TRUCKS, BUSES, AND LOGGING TRUCKS IN EXCESS OF 1 TON, 75 CENTS;

(B) LIGHT VEHICLES, TRUCKS AND BUSES UNDER 1 TON, AND LOGGING TRUCKS LESS THAN 1 TON:

(I) IF THE VEHICLE IS 4 YEARS OLD OR LESS, \$195.75;

(II) IF THE VEHICLE IS 5 YEARS OLD THROUGH 10 YEARS OLD, \$65.75; AND

(III) IF THE VEHICLE IS 11 YEARS OLD OR OLDER, \$6.75;

(C) MOTOR HOMES:

(I) LESS THAN 2 YEARS OLD, \$250.50;

(II) 2 YEARS OLD AND LESS THAN 5 YEARS OLD, \$192.25;

- (III) 5 YEARS OLD AND LESS THAN 8 YEARS OLD, \$100.50;
AND
(IV) 8 YEARS OLD AND OLDER, \$65.50;
(D) MOTORCYCLES AND QUADRICYLES REGISTERED FOR USE ON THE PUBLIC HIGHWAYS, \$42, AND MOTORCYCLES AND QUADRICYLES REGISTERED FOR BOTH OFF-ROAD USE AND FOR USE ON THE PUBLIC HIGHWAYS, \$103.25. THIS FEE IS A ONE-TIME FEE, EXCEPT UPON TRANSFER OF OWNERSHIP.
(E) TRAVEL TRAILERS UNDER 16 FEET IN LENGTH, \$50.50, AND TRAVEL TRAILERS 16 FEET IN LENGTH OR LONGER, \$130.50. THIS FEE IS A ONE-TIME FEE, EXCEPT UPON TRANSFER OF OWNERSHIP.
(F) TRAILERS, SEMITRAILERS, OR POLE TRAILERS WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS, \$52. THIS FEE IS A ONE-TIME FEE, EXCEPT UPON TRANSFER OF OWNERSHIP.
(G) TRAILERS, SEMITRAILERS, OR POLE TRAILERS WITH A DECLARED WEIGHT OF 6,000 POUNDS OR MORE, \$139. THIS FEE IS A ONE-TIME FEE, EXCEPT UPON TRANSFER OF OWNERSHIP.

See, State Internet/BBS Copy of SB 285, SB0285_2.wpd, p. 100-01, <http://data.opi.state.mt.us/bills/2005/SB0299>. This amendment was carried forward through passage and approval of SB 285. See, 2005 Mont. Laws, ch. 542, § 76 at 2260. In its final form, SB 285 was not expected to have a net fiscal impact on the state general fund. See, Fiscal Note, SB0285, As Amended in House Committee, <http://data.opi.state.mt.us/bills/2005/FNPDF/SB0285.pdf>.

Both SB 285 and HB 671, as passed and approved, contained coordination instructions. However, none of SB 285's coordination instructions--four in total--pertained to passage of HB 671 or amendment of Mont. Code Ann. § 61-3-321. 2005 Mont. Laws, ch. 542, §§ 242-245, pp. 2362-2363.

In contrast, HB 671 included forty coordination instructions, thirty-five of which were conditioned upon the passage and approval of both SB 285 and HB 671, either exclusively or in combination with other bills. 2005 Mont. Laws, ch. 596, §§ 126, 127, 129 through 167 at 2811-2814.

One of HB 671's coordination instructions explicitly directed the proper amendment of 61-3-321, assuming the passage and approval of SB 285, HB 671, and Senate Bill No. 318 ("SB 318"), a bill revising the treatment of quadricycles under state law for vehicle registration and driving purposes. 2005 Mont. Laws, ch. 596, § 148 at 2837 ("If Senate

Bill No. 285, Senate Bill No. 318, and [this act] are all passed and approved, then [section 16] of Senate Bill No. 318, a coordination instruction, is void and 61-3-321 must be amended as follows: . . .”). A second instruction, section 149, assumed the failure of SB 318 and the passage of SB 285 and HB 671.

The coordination instruction contemplated by § 148 included a complete revision of § 61-3-321 that incorporated, with one exception, the policy changes of all three bills--SB 285, HB 671 and SB 318 - but that was substantially shorter than the version of 61-3-321 as amended in section 76 of SB 285. Compare, 2005 Mont. Laws, ch. 596, § 148 at 2827-2831 and 2005 Mont. Laws, ch. 542, § 76 at 2256-61. Section 148's abridgement of 61-3-321 eliminated provisions from section 76 of SB 285 that were redundant to other amendments in HB 671, such as the amendment of 61-3-501 to include a new generic provision for determining the age of a vehicle for registration purposes. 2005 Mont. Laws, ch. 596, § 89 at 2780-2781. Section 148's version of § 61-3-321 also collapsed language scattered throughout section 76 of SB 285 pertaining to titling and registration of vehicles otherwise subject to permanent registration by the new owner, into a single subsection--61-3-321(15). 2005 Mont. Laws, ch. 596, § 148 at 2830.

As to the subject of this opinion--vehicle registrations incident to license plate transfers, section 148 included HB 671's policy change and not the differentiated fee schedule from § 76 of SB 285, in subsection (13) of its version of 61-3-321. Subsection (13) of 61-3-321 as contained in Section 148 provides:

~~(4)(13)~~ A fee of \$5 for each set of new number plates must be collected when ~~number plates~~ a new set of standard license plates or a new single standard license plate provided for under ~~61-3-332(2)~~ are 61-3-332 is issued. The \$5 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

2005 Mont. Laws, ch. 596, § 148 at 2829.

Section 149 of HB 671 provided:

Section 149. Coordination instruction. If Senate Bill No. 318 is not passed and approved and Senate Bill No. 285 and [this act] are both passed and approved, then subsection (12) of 61-3-321 contained in [section 148 of this act] is void and internal references must be adjusted and

subsection (8) of 61-3-321 contained in [section 148 of this act] must read as follows:

“(8) (a) Except as provided in subsection (15), the one-time registration fee for motorcycles and quadricycles, ~~\$9.75 for a motoreyele or quadricycle with special license plates issued under 61-3-415 and, for a motoreyele or quadricycle under one-time registration, \$9.75 in calendar year 2004 and, in each subsequent year, \$11.25~~ registered for use on public highways is \$53.25 and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50. ~~This fee is a one time fee, except upon transfer of ownership of a motoreyele or quadricycle.~~

(b) An additional fee of \$16 must be collected for the registration of each motorcycle and quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.”

2005 Mont. Laws, ch. 596, § 149 at 2831.

Since SB 318 died in the House of Representatives, the coordination instruction found in section 148 of HB 671 did not take effect. However, the prerequisite for operation of section 149 was met: both HB 671 and SB 285 passed, and SB 318 did not. Accordingly, the coordination instruction contained in section 149 of HB 671 controlled. How section 149 is to be read is the matter of dispute.

Some, including staff within the Office of Budget and Programming Planning and the Department of Justice, view section 149 as compelling an incorporation of section 148’s prescribed amendment of § 61-3-321, subject to the changes spelled out in section 149. You explain that this interpretation upholds the policy change enacted in HB 671 regarding license plate transfers and also sustains the general fund revenue estimates attributed to the provision to “eliminate plate transfer registration fee exemption” as compiled by the Legislature’s Legislative Fiscal Division in its fiscal report for the 2007 biennium. See, Legislative Fiscal Report 2007 Biennium, June 2005, Legislative Fiscal Division, Vol. 2, at 51 (table designated “Fiscal Impacts of HB 671”).

The compiler’s comments to Mont. Code Ann. § 61-3-321 (2005) show that the Code Commissioner’s interpretation of sections 148 and 149 was quite different. The code commissioner concluded that the “apparent intent of secs. 148 and 149 of [HB 671]” was to “include[] quadricycles as subject to the \$16 fee” used to maintain the state motorcycle safety training program. Compiler’s Comments, Mont. Code Ann. § 61-3-321 (2005). The comments further explain that the “current text [of § 61-3-321] establishing registration fees for motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and

pole trailers” came from “[s]ection 76, Ch. 542 [SB 285].” Id. Certain changes to the 2005 version of § 61-3-321 are credited to section 58 of chapter 596 (HB 671), but several amendments from section 58 were “rendered void by [SB 285] amendment[s].” Id. Among the voided amendments was the “second sentence concerning payment of fees if vehicle was not previously registered” in subparagraph (7) of § 61-3-321, as amended in section 58 of HB 671. Id. “The code commissioner [did not codify] the second sentence in (7) [of 61-3-321 as amended in section 58, HB 671] because the sentence was rendered meaningless by the changes made in Ch. 542. The sentence read: ‘Registration fees must be paid if the vehicle to which plates are transferred was not previously registered.’” Id.

Thus, the 2005 codification of Mont. Code Ann. § 61-3-321 does not reflect any change in policy regarding vehicle registrations with license plate transfers. Instead, in subsection (14) of Mont. Code Ann. § 61-3-321 (2005), the status quo of registration fee exemptions, as replicated in SB 285’s differential fee schedule for vehicle registrations with license plate transfers, is codified.

When interpreting a statute, I must declare what is in terms or substance contained in the statute, without inserting what has been omitted or omitting what has been inserted. Mont. Code Ann. §§ 1-2-101. Additionally, I must presume that the Legislature would not pass meaningless legislation. Mont. Code Ann. § 1-3-223. If a construction can be found that will give effect, I may not consider a word in a statute to be meaningless. State v. Heath, 2004 MT 126, 321 Mont. 280, ¶ 31, 90 P.3d 426, ¶ 31 (2004). I must recognize “the natural and most obvious import of the language” and “the natural significance of the words employed in the order of grammatical arrangement in which they are placed.” State ex rel. Daly v. Montana Kennel Club, 144 Mont. 377, 381, 396 P.2d 605, 607 (1964). I may also consider the proximate arrangement of sections within an act as indicative of a legislative intent that the sections be construed together. Bryant Dev. Ass’n v. Dage, 166 Mont. 252, 258, 531 P.2d 1320, 1324 (1975).

Applying these rules to section 149 of 2005 Mont. Laws, ch. 596, I concur with your interpretation of section 149.

Upon the failure of SB 318 and the passage and approval of HB 671 and SB 285, section 149’s directive was threefold. First, it directed that “subsection (12) of 61-3-321 contained in [section 148 of this act] is void.” Second, it provided that “internal references must be adjusted.” And finally, it prescribed how “subsection (8) of 61-3-321 contained in [section 148 of this act] must read.”

Mindful of the tenet to find meaning rather than meaninglessness, each directive must be examined to derive from its wording legislative intent.

Section 149 first instructs that subsection (12) of § 61-3-321 contained in section 148 is void. Subsection (12) of § 61-3-321 contained in section 148 refers to one-time registration fees for quadricycles of \$59.25. This subsection incorporated the fee contained in section 9 of SB 318 (specifically as subsection (1)(m) of § 61-3-321). However, section 148 took effect only if SB 318 passed. Section 149 took effect if SB 318 did not pass. Therefore, there was no reason in section 149 to void subsection (12) of § 61-3-321 as contained in section 148 unless something else was intended. That broader intent becomes more evident upon examination of the second directive.

Section 149's second instruction was that "internal references must be adjusted." The adjustment of internal references necessarily refers to the other subsections of § 61-3-321 contained in section 148 of HB 671 that must be renumbered when subsection (12) of § 61-3-321 is voided. There is no other meaning to give this language. Again, no purpose would be achieved if a section that took effect only if SB 318 died (section 149) adjusted internal references in a section that took effect only if SB 318 passed (section 148) unless the import, considering the substance of both directives, was, in fact, to amend § 61-3-321 contained in section 148, as further modified in section 149.

Third, section 149 directs that subsection (8) of § 61-3-321 contained in section 148 must read as set forth in section 149. Again, there was no reason for section 149 to refer to subsection (8) of § 61-3-321 contained in section 148 unless the Legislature intended section 148 to be alive and well, as further modified in section 149. Indeed, there was simply no need in section 149 to refer to section 148 whatsoever, unless the amendments to § 61-3-321 found in section 148 were intended to serve as a starting point to the further modifications in section 149.

There was no circumstance by which sections 148 and 149, contradictory in terms of their operational effect, could both prevail, yet section 149 affirmatively prescribed changes to "61-3-321 contained in" section 148. The juxtaposition of section 149's twelve-line, three-part directive with the immediately precedent, four-plus page, comprehensive rendition of 61-3-321 in section 148 lends credence to an interpretation that section 149 incorporated, by implication and subject to precise modification, the version of "61-3-321 contained in" section 148. Section 149's instruction on how to change "61-3-321 contained in" section 148 reasonably subsumes the rendition "of 61-3-321 contained in [section 148]", except for subsection (12), which was to be voided, subsection (8), which was to be revised as described, and the renumbering of subsections due to the elimination of subsection (12).

The construction of section 149 as requiring Mont. Code Ann. § 61-3-321 to be amended as provided in section 148, and as further modified in section 149, eliminates any ambiguity as to legislative intent regarding the payment of registration fees upon transfer of license plates to a replacement vehicle. The version of Mont. Code Ann. § 61-3-321, as amended in section 148 and further modified in section 149 of HB 671, retains, albeit in a slightly rephrased manner, the policy change originally proposed in section 58 of HB 671, while the new differential fee schedule from section 76 of SB 285 for vehicles registered with a plate transfer is omitted. This interpretation, unlike that of the Code Commissioner, observes the clear legislative preference for HB 671's approach to vehicle registrations with license plate transfers over that within SB 285, as evidenced in section 148, intended to operate if HB 671, SB 285 and SB 318 were all passed and approved, and adheres to the directive of section 149, whose effect depended on the failure of SB 318, a bill that had nothing to do with the license plate transfer issue.

Finally, section 149 served no purpose if construed simply to "include[] quadricycles as subject to the \$16 fee." Pursuant to Mont. Code Ann. § 61-3-321(3) (2003), quadricycles were already subject to the \$16 motorcycle safety fee, and the amendments to § 61-3-321 in section 76 of SB 285 and section 58 of HB 671 both retained this requirement in a manner that did not require coordination, the former in a different subsection--subsection (8)(b) of § 61-3-321 and the latter as renumbered, but otherwise unchanged, subsection (2) of § 61-3-321. See, 2005 Mont. Laws, ch. 542 at 2258 and 2005 Mont. Laws, ch. 596 at 2763.

By ascribing meaning to the language of section 149 in its entirety, two major bills amending Mont. Code Ann. § 61-3-321 are harmonized and the revenue estimate for HB 671 as reported by the Legislative Fiscal Division is validated. Section 149's express and implied references to "61-3-321 contained in [section 148]," combined with the proximate arrangement of sections 148 and 149 in HB 671, reveal a legislative intent that Mont. Code Ann. § 61-3-321 be amended as prescribed in section 148, subject to the additional changes as directed in section 149, and that the resulting rendition supercede other amendments of § 61-3-321 contained in HB 671 and SB 285.

Codification of the statutes enacted in each legislative session is a legislative responsibility assigned by law to the code commissioner. Mont. Code Ann. § 1-11-204(3). As an executive branch officer, the Attorney General should not interfere in that process. However, when through omission or otherwise an inconsistency arises between the Montana Code Annotated and the corresponding portion of an official enrolled bill, Mont. Code Ann. § 1-11-103(6) requires that the official enrolled bill be given effect. The conflict between the codified version of these bills and the enrolled bills identified above, and the question of which version controls, present questions of law upon which

the Attorney General may give an opinion without encroachment on the legislature's functions.

THEREFORE, IT IS MY OPINION:

1. Montana Code Annotated § 61-3-321 (2005), as codified, conflicts with 2005 Mont. Laws, ch. 596, §§ 148 and 149.
2. The coordination instruction found in 2005 Mont. Laws, ch. 596, § 149, incorporated § 148's prescribed amendment of Mont. Code Ann. 61-3-321, as further modified in § 149; accordingly, all registration fees imposed under § 61-3-321, as so amended, must be paid if the vehicle to which plates are transferred is not currently registered.
3. Since the codified version of the bills conflicts with the enrolled bill, § 149 as interpreted herein must be given effect over the codified version of Mont. Code Ann. § 61-3-321 (2005).

Very truly yours,

MIKE McGRATH
Attorney General

mm/bgn/jym