



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 9, 2021

The Honorable Eddie Arredondo
Burnet County Attorney
220 South Pierce
Burnet, Texas 78611

Opinion No. KP-0354

Re: Punishment for a violation of the maximum vehicle weight limit established by the executive director of the Texas Department of Transportation under Transportation Code section 621.102 (RQ-0373-KP)

Dear Mr. Arredondo:

You ask about the potential punishment for a violation of the maximum vehicle weight limit established by the executive director of the Texas Department of Transportation under Transportation Code section 621.102.¹ Your question concerns the interplay of section 621.102 with sections 621.101, 621.506, and 621.507 of the Transportation Code. Request Letter at 1–2. Section 621.101 specifies maximum weight limitations for vehicles operating over or on a public highway or certain ports-of-entry, while section 621.102 authorizes the executive director to set different limitations that do not exceed the maximum. TEX. TRANSP. CODE §§ 621.101, .102. Section 621.506 contains a graduated schedule of fines that increase according to the amount that a violating vehicle’s weight exceeds the applicable maximum, while section 621.507 provides a catch-all penalty for violating a provision for which an offense is not specified—beginning with \$200 for a first offense and otherwise generally less severe than the penalties on the graduated schedule. *Id.* §§ 621.506, .507. You ask, in essence, whether operation of a vehicle exceeding the limitations set by the executive director under section 621.102 is subject to the graduated schedule of penalties in section 621.506 or to the catch-all penalties in section 621.507. Request Letter at 1–2.

Courts construing a statute attempt to effectuate the Legislature’s intent as expressed in the words of the statute. *Sunstate Equip. Co., LLC v. Hegar*, 601 S.W.3d 685, 689–90 (Tex. 2020). To do so, courts start with a statute’s “text and the plain meaning of its words construed within the statute as a whole.” *Id.* They “presume the Legislature chose the statute’s language with care,

¹See Letter from Honorable Eddie Arredondo, Burnet Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 2 (Aug. 13, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0373KP.pdf> (“Request Letter”).

purposefully choosing each word, while purposefully omitting words not chosen.” *In re Commitment of Bluitt*, 605 S.W.3d 199, 203 (Tex. 2020).

Title 7, subtitle E of the Transportation Code governs vehicle size and weight. *See generally* TEX. TRANSP. CODE §§ 621.001–623.427 (subtitle E). In that subtitle, section 621.101 provides generally applicable maximum weight limitations:

- (a) A vehicle or combination of vehicles may not be operated over or on a public highway or at a port-of-entry between Texas and the United Mexican States if the vehicle or combination has:
 - (1) a single axle weight heavier than 20,000 pounds, including all enforcement tolerances;
 - (2) a tandem axle weight heavier than 34,000 pounds, including all enforcement tolerances; [or]
 - (3) an overall gross weight on a group of two or more consecutive axles heavier than the weight computed using [a specified] formula

Id. § 621.101(a)(1)–(3). Section 621.102 authorizes the executive director to set maximum weights for vehicles “that may be moved over a state highway or a farm or ranch road if the executive director finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge or culvert along the road,” provided that a “maximum weight set under this subsection may not exceed the maximum set by statute for that weight.” *Id.* § 621.102(a). Neither section 621.101 nor section 621.102 by themselves make operating a vehicle in excess of these maximums a criminal offense or provide for a penalty.

Section 621.502 contains a prohibition against operating a vehicle if “the vehicle’s single axle weight, tandem axle weight, or gross weight is greater than the applicable weight authorized for that vehicle by” statutes regulating size and weight. *Id.* § 621.502(a)(2). Section 621.506 states that a “person commits an offense if the person . . . operates a vehicle or combination of vehicles in violation of Section 621.101” or other specified statutes, but it does not include section 621.102. *Id.* § 621.506(a)(1). Section 621.506 further provides a graduated schedule of penalties that range from \$100 to \$10,000 and more under aggravating circumstances. *Id.* § 621.506(b)–(b-3). Section 621.507 is a catch-all provision containing penalties for a violation of a provision “for which an offense is not specified by another section.” *Id.* § 621.507(a), (b).

You argue that because section 621.102 does not specify a penalty, a violation of the statute is subject to the catch-all penalties in section 621.507. Request Letter at 2. You explain an alternative argument, that section 621.102 merely gives the executive director the authority to alter the maximum weights in section 621.101, and thus operating a vehicle exceeding the weights set by the executive director is essentially a violation of section 621.101, subject to the graduated schedule of penalties for violating that section. *Id.* You also suggest that because section 621.102 allows the executive director to set lower maximum weights to prevent the damage caused by heavier maximum weights, the purpose of that statute might be better served by the higher

graduated penalty schedule rather than the lower catch-all penalty. *Id.* However, the Legislature did not make that policy choice. Section 621.102 does not specify consequences for exceeding the maximum weights set by the executive director, and we must assume that section 621.506's failure to include section 621.102 was intentional. *See Bluitt*, 605 S.W.3d at 203. We "must take the Legislature at its word, respect its policy choices, and resist revising a statute under the guise of interpreting it." *Christus Health Gulf Coast v. Aetna, Inc.*, 397 S.W.3d 651, 654 (Tex. 2013). Because no statute specifies the penalty for operating a vehicle in excess of the maximum weight set by the executive director, a violation of section 621.102 is an offense "not specified by another section." *See* TEX. TRANSP. CODE § 621.507(a). Accordingly, operating a vehicle in excess of the maximum weight set by the executive director under section 621.102 is subject to the catch-all penalties of section 621.507.

S U M M A R Y

While section 621.101 of the Transportation Code specifies maximum weight limitations for vehicles operating over or on a public highway or certain ports-of-entry, section 621.102 authorizes the executive director of the Department of Transportation to set different limitations that do not exceed these maximums. Section 621.506 provides a graduated schedule of penalties for violating specified maximum weight statutes but does not include section 621.102. Because no statute specifies the penalty for violating section 621.102, operating a vehicle in excess of the maximum weight set by the executive director under that section is subject to the catch-all penalties in section 621.507.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Paxton".

K E N P A X T O N
Attorney General of Texas

BRENT E. WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff
Acting Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

WILLIAM A. HILL
Assistant Attorney General, Opinion Committee