



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: September 1, 2011

TO: The Honorable Quinton Johnson, Delaware House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: H.B. 202 [Special License Plates & Placards]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 202 which is intended to reduce the instances of people fraudulently using “handicapped” placards in their vehicles. The bill makes it an offense to use a handicapped placard issued to another person unless that person is also in the vehicle. The bill creates a mandatory \$100 fine for violators and \$200 fine for subsequent offenses.

As background, under current law, an owner of a vehicle can obtain a special license plate if either the owner or a household member has a qualifying disability [Title 21 Del.C. §2134(a)]. This allows the vehicle with the special plate to park in accessible spaces if the person with the qualifying disability is either the driver or passenger:

(3) The person for whom a special license plate is issued under this section or under a similar statute of any other state or country must be the driver of or a passenger in the vehicle bearing the special plate whenever the vehicle parks in a parking space or zone restricted for use only by vehicles with a special license plate or placard for persons with disabilities which limit or impair their ability to walk.

Title 21 Del.C. §2134(f)(3).

Similarly, anyone can apply for a placard if the individual is 85 or older, has a qualifying disability, or there is a household member with a qualifying disability [Title 21 Del.C. §2135(a)]. Moreover, “an organization that regularly in its course of business transports persons with disabilities” may

apply for a placard. *Id.* Individuals are issued a blue (permanent) or red (temporary) placard [Title 21 Del.C. §2135(e)]. Organizations are issued a green placard. *Id.* A vehicle with a blue or red placard may park in accessible spaces if the person with the qualifying disability is either the driver or passenger [Title 21 Del.C. §2135(f)(3)].

The bill amends the existing enforcement statute [Title 21 Del.C. §4183(d)] by characterizing the following as an offense subject to fine:

- (5) Using a license plate or parking placard that has been issued to another person pursuant to §2134 or §2135 of this title, unless that person is present in the vehicle.

While well-intentioned, SCPD believes there are unintended consequences with this approach.

First, a special license plate can be issued to the owner of a vehicle with a household member who has a qualifying disability. The license is issued to the owner, not the household member. However, under the bill, unless the owner is in the vehicle, anyone driving or parking the vehicle with the household member with qualifying disability is guilty of an offense. For example, the father of a child with quadriplegia is issued a special license plate. The father asks his adult son or daughter to drive the specially plated car with the child with quadriplegia to a doctor's office where the car is parked in an accessible space. The adult son or daughter is guilty of an offense under the bill since the plate was issued to the father and he is not present in the vehicle.

Second, the term "using a license plate" is overbroad. The owner of a specially plated vehicle should be able to lend the vehicle to others, so long as they do not park in an accessible space. The bill ostensibly makes it illegal to drive the vehicle unless the owner issued the plate is in the vehicle. If a father (owner) is issued a special plate and lends the vehicle to an adult son or daughter to perform an errand, the son or daughter is guilty of an offense for simply driving the vehicle.

Third, the application of the bill to organizations with a green placard is unclear. Such placards are not person-specific. Suppose a driver of such a vehicle parks in an accessible space with no passenger for pick up or drop off. The driver is only authorized to park in an accessible space if "a person who is entitled to obtain a permanent or temporary placard is a passenger" [Title 21 Del.C. §4183(a)(2)]. Common sense suggests that an organizational driver parking in an accessible space without any passenger has committed an offense. However, the bill would not literally cover this scenario.

Fourth, the placard statute [Title 21 Del.C. §2135] appears to authorize issuance of a permit to an "applicant" based on the disability of a household member [Title 21 Del.C. §2135(b)]. Thus, a father could apply for a placard based on the disability of a minor child with quadriplegia. If another person (e.g. adult son or daughter) drove the child with quadriplegia to a doctor's office using the placard to park in an accessible space, an offense has been committed. The placard was issued to the father who is not in the vehicle.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Bethany Hall-Long
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

Hb 202 accessible parking 9-1-11