

By: Dutton

H.B. No. 383

A BILL TO BE ENTITLED

AN ACT

relating to citation and arrest for a Class C misdemeanor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 543.004, Transportation Code, is amended to read as follows:

Sec. 543.004. NOTICE TO APPEAR REQUIRED[~~:- CERTAIN OFFENSES~~]. (a) Except as provided by Subsection (c), the issuance of a written notice to appear as provided by Section 543.003 is mandatory and an [An] officer shall issue a written notice to appear if:

(1) the offense charged is a misdemeanor punishable by fine only [speeding or a violation of the open container law, Section 49.03, Penal Code]; [and]

(2) the person displays an unexpired driver's license or permit issued to the person by the department or by another state or country; and

(3) the person makes a written promise to appear in court as provided by Section 543.005.

(b) If the person is a resident of or is operating a vehicle licensed in a state or country other than this state, Subsection (a) applies only as provided by Chapter 703.

(c) Subsection (a) does not require an officer to issue a written notice to appear if:

(1) the arresting officer believes that taking the

1 person before a magistrate is necessary to prevent imminent bodily
2 injury to the person or another;

3 (2) the offense was committed in the presence of the
4 arresting officer and the officer believes that because of the
5 commission of the offense a substantial risk of harm to the person
6 or another exists and will continue to exist unless the person is
7 taken before a magistrate;

8 (3) the arresting officer believes that the person has
9 insufficient ties to the jurisdiction to assure that the person
10 will comply with a written notice to appear in court issued under
11 Section 543.003 and that there is a substantial likelihood that the
12 person would fail or refuse to comply with a written notice to
13 appear in court; or

14 (4) the arresting officer believes that the person has
15 failed to appear without just cause in response to a written notice
16 to appear, a citation, a summons, or other legal process issued in
17 connection with an offense committed by the person, other than an
18 offense involving the parking of a motor vehicle. [~~The offenses~~
19 specified by Subsection (a) are the only offenses for which
20 issuance of a written notice to appear is mandatory.]

21 SECTION 2. Article 14.06, Code of Criminal Procedure, is
22 amended to read as follows:

23 Art. 14.06. MUST TAKE OFFENDER BEFORE
24 MAGISTRATE. (a) Except as provided by Subsections [~~Subsection~~
25 (b), (c), (d), and (e)], in each case enumerated in this Code, the
26 person making the arrest or the person having custody of the person
27 arrested shall take the person arrested or have the person [~~him~~]

1 taken without unnecessary delay, but not later than 48 hours after
2 the person is arrested, before the magistrate who may have ordered
3 the arrest, before some magistrate of the county where the arrest
4 was made without an order, or, if necessary to provide more
5 expeditiously to the person arrested the warnings described by
6 Article 15.17 of this Code, before a magistrate in a county
7 bordering the county in which the arrest was made. The magistrate
8 shall immediately perform the duties described in Article 15.17 of
9 this Code.

10 (b) A peace officer who is charging a person, including a
11 child, with committing an offense that is a Class C misdemeanor,
12 other than an offense under Section 49.02, Penal Code, or a traffic
13 offense, may, instead of taking the person before a magistrate,
14 issue a citation to the person that contains written notice of the
15 time and place the person must appear before a magistrate, the name
16 and address of the person charged, and the offense charged.

17 (c) A peace officer who is charging a person, including a
18 child, with committing a traffic offense that is a Class C
19 misdemeanor, including an offense under Section 49.031, Penal Code,
20 shall, instead of taking the person before a magistrate, issue a
21 citation to the person that contains written notice of the time and
22 place the person must appear before a magistrate, the name and
23 address of the person charged, and the offense charged, if the
24 person displays:

25 (1) an unexpired driver's license or permit issued to
26 the person by the Department of Public Safety or by another state or
27 country; or

1 (2) an unexpired personal identification certificate
2 issued to the person by the department.

3 (d) If a person charged as described by Subsection (c) is a
4 resident of or is operating a vehicle licensed in a state or country
5 other than this state, Subsection (c) applies only as provided by
6 Chapter 703, Transportation Code.

7 (e) Subsection (c) does not require a peace officer to issue
8 a citation if:

9 (1) the peace officer making the arrest believes that
10 taking the arrested person before a magistrate is necessary to
11 prevent imminent bodily injury to the arrested person or another;

12 (2) the offense was committed in the presence of the
13 peace officer making the arrest and the officer believes that
14 because of the commission of the offense a substantial risk of harm
15 to the arrested person or another exists and will continue to exist
16 unless the arrested person is taken before a magistrate as required
17 by Subsection (a);

18 (3) the peace officer making the arrest believes that
19 the arrested person has insufficient ties to the jurisdiction to
20 assure that the arrested person will comply with a citation that
21 contains a written notice to appear before a magistrate issued
22 under Subsection (b) and that there is a substantial likelihood
23 that the arrested person would fail or refuse to comply with the
24 written notice to appear before the magistrate; or

25 (4) the peace officer making the arrest believes that
26 the arrested person has failed to appear without just cause in
27 response to a written notice to appear, a citation, a summons, or

1 other legal process issued in connection with an offense committed
2 by the arrested person, other than an offense involving the parking
3 of a motor vehicle.

4 SECTION 3. (a) This Act takes effect September 1, 2003.

5 (b) The change in law made by this Act applies only to an
6 offense committed on or after the effective date of this Act. For
7 purposes of this section, an offense is committed before the
8 effective date of this Act if any element of the offense occurs
9 before that date.

10 (c) An offense committed before the effective date of this
11 Act is covered by the law in effect when the offense was committed,
12 and the former law is continued in effect for that purpose.