

BILL ANALYSIS

Senate Research Center

S.B. 2038
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1986, Section 43 (Revision of Laws), Article III (Legislative Branch), Texas Constitution, was amended to require the legislature to provide for the revision of laws both civil and criminal. A new definition of "revision" was added to include "... a revision of the statutes on a particular subject and any enactment having the purpose, declared in the enactment, of codifying without substantive change statutes that individually relate to different subjects." The legislature has enacted Section 323.007 (Statutory Revision Program), Government Code, to accomplish this directive through studies and bill drafting performed by the Texas Legislative Council (TLC), and has passed numerous recodifications in an attempt to comply with the constitution.

However, in 1999, the Texas Supreme Court in *Flemming Foods of Texas Inc v. Rylander*, 6 S.W.3rd 278 (Tex. 1999), held that an intended nonsubstantive revision of the Tax Code actually had a substantive effect. The legislature, by a virtually unanimous vote, passed an amendment to the Code Construction Act in 2001 to override *Flemming Foods*, but the bill was vetoed. Since then, *Flemming Foods* has been cited many times in case law, attorney general opinions, and agency decisions, even though its holding complicates the legislature's express role under the state constitution.

This bill amends the statute that provides the Texas Supreme Court with jurisdiction to construe statutes in contested cases, as well as the Code Construction Act, to ensure that the high court, lower courts, executive branch agencies, and others construe nonsubstantive revisions of the Texas statutes such that no substantive effect is imparted to these revisions.

As proposed, S.B. 2038 requires that the codification or revision of a statute that is intended to be nonsubstantive be interpreted and applied as such, requiring the supreme court to give the statute the same meaning it would have been given before its codification or revision, notwithstanding the repeal of the prior statute and regardless of any omission or change that the supreme court would otherwise find to be direct, unambiguous, and irreconcilable with prior law.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 22.001(a), Government Code, to provide that the supreme court has appellate jurisdiction, except in criminal law matters, coextensive with the limits of the state and extending to all questions of law arising in certain cases when they have been brought to the courts of appeals from appealable judgment of the trial courts, including a case involving the construction or validity of a statute necessary to a determination of the case, subject to Section 22.0011.

SECTION 2. Amends Subchapter A, Chapter 22, Government Code, by adding Section 22.0011, as follows:

Sec. 22.0011. JURISDICTION REGARDING NONSUBSTANTIVE STATUTORY REVISIONS. (a) Provides that this section applies to the exercise by the supreme court of its jurisdiction under Section 22.001(a)(3) (relating to a case involving the construction or validity of a statute necessary to a determination of a case) in cases involving the

construction and validity of a codified or revised statute that was enacted by the legislature under the authority provided by Section 43 (Revision of Laws), Article III (Legislative Department), Texas Constitution, in an enactment having the purpose, declared by the legislature in the enactment, of codifying or revising, without substantive change, statutes that individually relate to different subjects; and was drafted by the Texas Legislative Council (TLC) under the continuing statutory revision program provided for by Section 323.007 (Statutory Revision Program).

(b) Provides that the codification or revision of a statute to which this section applies does not affect the meaning or effect of the statute. Requires the supreme court, in interpreting and applying a codified or revised statute to which this section applies, to give the statute the same effect and meaning that was or would have been given the statute before its codification or revision, notwithstanding the repeal of the prior statute and regardless of any omission or change that the supreme court would otherwise find to be direct, unambiguous, and irreconcilable with prior law. Requires that any such omission or change for which the court finds no direct evidence of legislative intent to change the sense, meaning, or effect of the statute be considered unintended and to be given no effect.

SECTION 3. Amends Subchapter C, Chapter 311, Government Code, by adding Section 311.033, as follows:

Sec. 311.033. INTERPRETATION AND APPLICATION OF NONSUBSTANTIVE STATUTORY REVISIONS. (a) Provides that this section applies to the interpretation or application by a court, executive branch agency, or other entity of a codified or revised statute that was enacted by the legislature under the authority provided by Section 43, Article III, Texas Constitution, in an enactment having the purpose, declared by the legislature in the enactment, of codifying or revising, without substantive change, statutes that individually relate to different subjects; and was drafted by TLC under the continuing statutory revision program provided for by Section 323.007.

(b) Provides that the codification or revision of a statute to which this section applies does not affect the meaning or effect of the statute. Requires a court, executive branch agency, or other entity, in interpreting and applying a codified or revised statute to which this section applies, to give the statute the same effect and meaning that was or would have been given the statute before its codification or revision, notwithstanding the repeal of the prior statute and regardless of any omission or change that the court, executive branch agency, or other entity would otherwise find to be direct, unambiguous, and irreconcilable with prior law. Requires that any such omission or change for which the court, executive branch agency, or other entity finds no direct evidence of legislative intent to change the sense, meaning, or effect of the statute be considered unintended and be given no effect.

SECTION 4. Effective date: upon passage or September 1, 2009.