

By: Burrows, Cain

H.B. No. 2139

Substitute the following for H.B. No. 2139:

By: Slawson

C.S.H.B. No. 2139

A BILL TO BE ENTITLED

AN ACT

relating to statutory construction.

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

SECTION 1. Sections 311.016(2) and (3), Government Code, are amended to read as follows:

(2) "Shall" imposes a duty. The use of "shall" does not indicate that an action is discretionary.

(3) "Must" imposes a requirement and either creates a duty or creates or recognizes a condition precedent.

SECTION 2. Subchapter C, Chapter 311, Government Code, is amended by adding Sections 311.0211 and 311.0212 to read as follows:

Sec. 311.0211. INTENTIONALISM PROHIBITED. When interpreting a statute, a court:

(1) may not inquire into what members of the legislature intended to accomplish by enacting the statute; and

(2) shall enforce the statutory text as written and in accordance with the meaning that the words of the statute would have to an ordinary speaker of the English language.

Sec. 311.0212. USE OF LEGISLATURE HISTORY PROHIBITED. When interpreting a statute, a court may not consider, consult, cite, rely on, or give any weight to:

(1) any statement from an individual legislator, including a statement by the author or sponsor of the bill that

1 enacted the statute or a statement made during a committee hearing
2 or debate of the bill on the floor of a house of the legislature;

3 (2) a committee report; or

4 (3) a statement of a presiding officer or the governor
5 made on the signing of the bill.

6 SECTION 3. Section 311.025(c), Government Code, is amended
7 to read as follows:

8 (c) In determining whether amendments are irreconcilable,
9 text that is reenacted because of the requirement of Article III,
10 Section 36, of the Texas Constitution is not considered to be
11 irreconcilable with additions or omissions in the same text made by
12 another amendment. Unless clearly indicated to the contrary, an
13 amendment that reenacts text in compliance with that constitutional
14 requirement does not mean [~~indicate legislative intent~~] that the
15 reenacted text prevails [~~prevail~~] over changes in the same text
16 made by another amendment, regardless of the relative dates of
17 enactment.

18 SECTION 4. Section 311.026(b), Government Code, is amended
19 to read as follows:

20 (b) If the conflict between the general provision and the
21 special or local provision is irreconcilable, the special or local
22 provision prevails as an exception to the general provision, unless
23 the general provision is the later enactment and clearly and
24 unambiguously supersedes the special or local provision [~~the~~
25 ~~manifest intent is that the general provision prevail~~].

26 SECTION 5. Section 311.028, Government Code, is amended to
27 read as follows:

1 Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A
2 uniform act included in a code shall be construed, when possible,
3 ~~[to effect its general purpose]~~ to make uniform the law of those
4 states that enact it.

5 SECTION 6. Subchapter C, Chapter 311, Government Code, is
6 amended by adding Section 311.0311 to read as follows:

7 Sec. 311.0311. SEVERABILITY AND SAVING CONSTRUCTIONS. (a)
8 Unless a statute contains a provision expressly providing for
9 nonseverability, every provision, section, subsection, sentence,
10 clause, phrase, and word of the statute, including every discrete
11 application of the provision, section, subsection, sentence,
12 clause, phrase, or word to any person, group of persons, or
13 circumstance, is severable.

14 (b) If any application of any statutory provision, section,
15 subsection, sentence, clause, phrase, or word to any person, group
16 of persons, or circumstance is determined by a court to be invalid,
17 preempted, or unconstitutional, regardless of the reason, all
18 remaining applications of that statutory provision, section,
19 subsection, sentence, clause, phrase, or word to any other person,
20 group of persons, or circumstance shall be severed and preserved
21 and remain in effect.

22 (c) It is the intent of the legislature that every valid,
23 non-preempted, and constitutional application of its statutory
24 enactments be allowed to stand alone and remain enforceable.

25 (d) A court may not decline to enforce the severability
26 requirements of this section on the grounds that the severance
27 would rewrite the statute or involve the court in legislative or

1 lawmaking activity. A court that declines to enforce, or that
2 enjoins a state official from enforcing, wholly or partly, a
3 statute is not considered to be rewriting a statute or engaging in
4 legislative or lawmaking activity because the statute continues to
5 contain the same words as before the court's decision. A judicial
6 injunction or declaration of unconstitutionality:

7 (1) is only an edict prohibiting enforcement of the
8 disputed statute against the parties to that lawsuit and may
9 subsequently be vacated by a higher court based on a different
10 understanding of the law;

11 (2) is not a formal amendment of the language in a
12 statute; and

13 (3) does not rewrite the statute any more than a
14 decision by the executive not to enforce a duly enacted statute in a
15 limited and defined set of circumstances.

16 (e) If a court, in violation of this section, declares or
17 finds any statutory provision, section, subsection, sentence,
18 clause, phrase, or word to be facially or totally invalid,
19 preempted, or unconstitutional, when there are discrete
20 applications of that statutory provision, section, subsection,
21 sentence, clause, phrase, or word that could be enforced against a
22 person, group of persons, or circumstance without violating federal
23 law or the federal or state constitutions, then that statutory
24 provision, section, subsection, sentence, clause, phrase, or word
25 shall be interpreted, as a matter of state law, as if the
26 legislature had explicitly limited its application to the person,
27 group of persons, or circumstance for which its application will

1 not violate federal law or the federal or state constitutions, and
2 every court shall adopt and apply this saving construction until
3 the court ruling declaring the statutory provision, section,
4 subsection, sentence, clause, phrase, or word facially or totally
5 invalid, preempted, or unconstitutional is vacated or overturned.

6 SECTION 7. Section 311.034, Government Code, is amended to
7 read as follows:

8 Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY; JURISDICTIONAL
9 REQUIREMENTS. In order to preserve the legislature's interest in
10 managing state fiscal matters through the appropriations process, a
11 statute shall not be construed as a waiver of sovereign immunity
12 unless the waiver is effected by clear and unambiguous language. In
13 a statute, the use of "person," as defined by Section 311.005 to
14 include governmental entities, does not [~~indicate legislative~~
15 ~~intent to~~] waive sovereign immunity unless the context of the
16 statute indicates no other reasonable construction. Statutory
17 prerequisites to a suit, including the provision of notice, are
18 jurisdictional requirements in all suits against a governmental
19 entity.

20 SECTION 8. Subchapter C, Chapter 311, Government Code, is
21 amended by adding Section 311.037 to read as follows:

22 Sec. 311.037. GRAMMATICAL OR SCRIVENER'S ERROR. A
23 grammatical or scrivener's error does not vitiate a law. A court
24 construing a statute that contains a grammatical or scrivener's
25 error that would be apparent to an ordinary reader of the English
26 language may interpret the statute consistent with the
27 understanding of the statute by an ordinary reader of the English

1 language.

2 SECTION 9. Subchapter A, Chapter 312, Government Code, is
3 amended by adding Sections 312.0051, 312.0052, 312.0081, and
4 312.0082 to read as follows:

5 Sec. 312.0051. INTENTIONALISM PROHIBITED. When
6 interpreting a statute, a court:

7 (1) may not inquire into what members of the
8 legislature intended to accomplish by enacting the statute; and

9 (2) shall enforce the statutory text as written and in
10 accordance with the meaning that the words of the statute would have
11 to an ordinary speaker of the English language.

12 Sec. 312.0052. USE OF LEGISLATURE HISTORY PROHIBITED. When
13 interpreting a statute, a court may not consider, consult, cite,
14 rely on, or give any weight to:

15 (1) any statement from an individual legislator,
16 including a statement by the author or sponsor of the bill that
17 enacted the statute or a statement made during a committee hearing
18 or debate of the bill on the floor of a house of the legislature;

19 (2) a committee report; or

20 (3) a statement of a presiding officer or the governor
21 made on the signing of the bill.

22 Sec. 312.0081. GRAMMATICAL OR SCRIVENER'S ERROR. A
23 grammatical or scrivener's error does not vitiate a law. A court
24 construing a statute that contains a grammatical or scrivener's
25 error that would be apparent to an ordinary reader of the English
26 language may interpret the statute consistent with the
27 understanding of the statute by an ordinary reader of the English

1 language.

2 Sec. 312.0082. SEVERABILITY AND SAVING CONSTRUCTIONS. (a)
3 Unless a statute contains a provision expressly providing for
4 nonseverability, every provision, section, subsection, sentence,
5 clause, phrase, and word of the statute, including every discrete
6 application of the provision, section, subsection, sentence,
7 clause, phrase, or word to any person, group of persons, or
8 circumstance, is severable.

9 (b) If any application of any statutory provision, section,
10 subsection, sentence, clause, phrase, or word to any person, group
11 of persons, or circumstance is determined by a court to be invalid,
12 preempted, or unconstitutional, regardless of the reason, all
13 remaining applications of that statutory provision, section,
14 subsection, sentence, clause, phrase, or word to any other person,
15 group of persons, or circumstance shall be severed and preserved
16 and remain in effect.

17 (c) It is the intent of the legislature that every valid,
18 non-preempted, and constitutional application of its statutory
19 enactments be allowed to stand alone and remain enforceable.

20 (d) A court may not decline to enforce the severability
21 requirements of this section on the grounds that the severance
22 would rewrite the statute or involve the court in legislative or
23 lawmaking activity. A court that declines to enforce, or that
24 enjoins a state official from enforcing, wholly or partly, a
25 statute is not considered to be rewriting a statute or engaging in
26 legislative or lawmaking activity because the statute continues to
27 contain the same words as before the court's decision. A judicial

1 injunction or declaration of unconstitutionality:

2 (1) is only an edict prohibiting enforcement of the
3 disputed statute against the parties to that lawsuit and may
4 subsequently be vacated by a higher court based on a different
5 understanding of the law;

6 (2) is not a formal amendment of the language in a
7 statute; and

8 (3) does not rewrite the statute any more than a
9 decision by the executive not to enforce a duly enacted statute in a
10 limited and defined set of circumstances.

11 (e) If a court, in violation of this section, declares or
12 finds any statutory provision, section, subsection, sentence,
13 clause, phrase, or word to be facially or totally invalid,
14 preempted, or unconstitutional, when there are discrete
15 applications of that statutory provision, section, subsection,
16 sentence, clause, phrase, or word that could be enforced against a
17 person, group of persons, or circumstance without violating federal
18 law or the federal or state constitutions, then that statutory
19 provision, section, subsection, sentence, clause, phrase, or word
20 shall be interpreted, as a matter of state law, as if the
21 legislature had explicitly limited its application to the person,
22 group of persons, or circumstance for which its application will
23 not violate federal law or the federal or state constitutions, and
24 every court shall adopt and apply this saving construction until
25 the court ruling declaring the statutory provision, section,
26 subsection, sentence, clause, phrase, or word facially or totally
27 invalid, preempted, or unconstitutional is vacated or overturned.

1 SECTION 10. Sections 311.021, 311.023, 311.032, 312.005,
2 312.006, 312.012, and 312.013, Government Code, are repealed.

3 SECTION 11. This Act takes effect September 1, 2023.