

By: Burrows

H.B. No. 2139

A BILL TO BE ENTITLED

AN ACT

relating to the construction of codes, laws, and statutes.

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

SECTION 1. Section 311.016, Government Code, is amended by amending Subdivisions (2) and (3) to read as follows:

(2) "Shall" imposes a duty and is synonymous with "must."

(3) "Must" imposes a duty and is synonymous with "shall." [~~creates or recognizes a condition precedent.~~]

SECTION 2. Section 311.021, Government Code, is amended to read as follows:

Sec. 311.021. INTENTIONALISM PROHIBITED [~~INTENTION IN ENACTMENT OF STATUTES~~]. (a) When interpreting a statute, a court is not to inquire into what members of the legislature intended or hoped to accomplish, but 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. See, e.g., Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417, 419 (1899) ("We do not inquire what the legislature meant; we ask only what the statute means.") [~~In enacting a statute, it is presumed that:~~

~~(1) compliance with the constitutions of this state and the United States is intended,~~

~~(2) the entire statute is intended to be effective,~~

1 ~~(3) a just and reasonable result is intended;~~
2 ~~(4) a result feasible of execution is intended; and~~
3 ~~(5) public interest is favored over any private~~
4 ~~interest].~~

5 SECTION 3. Section 311.023, Government Code, is amended to
6 read as follows:

7 Sec. 311.023. RELIANCE ON LEGISLATIVE HISTORY PROHIBITED
8 ~~[STATUTE CONSTRUCTION AIDS]~~. (a) In construing a statute~~[,~~
9 ~~whether or not the statute is considered ambiguous on its face]~~, a
10 court may not under any circumstance consider consult, cite, rely
11 upon, or give any weight to ~~[among other matters the]:~~

12 (1) statements from individual legislators, including
13 bill authors and sponsors ~~[object sought to be attained];~~

14 (2) committee reports of any type ~~[circumstances under~~
15 ~~which the statute was enacted];~~

16 (3) statements made in legislative hearings or floor
17 debates ~~[legislative history]; or~~

18 (4) signing statements ~~[common law or former statutory~~
19 ~~provisions, including laws on the same or similar subjects,~~

20 ~~(5) consequences of a particular construction;~~

21 ~~(6) administrative construction of the statute; and~~

22 ~~(7) title (caption), preamble, and emergency~~
23 ~~provision].~~

24 SECTION 4. Section 311.025, Government Code, is amended by
25 amending Subsection (c) to read as follows:

26 Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS.

27 (c) In determining whether amendments are irreconcilable,

1 text that is reenacted because of the requirement of Article III,
2 Section 36, of the Texas Constitution is not considered to be
3 irreconcilable with additions or omissions in the same text made by
4 another amendment. Unless clearly indicated to the contrary, an
5 amendment that reenacts text in compliance with that constitutional
6 requirement does not mean [~~indicate legislative intent~~] that the
7 reenacted text prevails [~~prevail~~] over changes in the same text
8 made by another amendment, regardless of the relative dates of
9 enactment.

10 SECTION 5. Section 311.026, Government Code, is amended by
11 amending Subsection (b) to read as follows:

12 (b) If the conflict between the general provision and the
13 special or local provision is irreconcilable, the special or local
14 provision prevails as an exception to the general provision, unless
15 the general provision is the later enactment and clearly and
16 unambiguously supersedes the special or local provision [~~the~~
17 ~~manifest intent is that the general provision prevail~~].

18 SECTION 6. Section 311.028, Government Code, is amended to
19 read as follows:

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

24 SECTION 7. Section 311.032, Government Code, is amended by
25 amending Subsections (a), (b), and (c) and adding Subsection (d) to
26 read as follows:

27 Sec. 311.032. SEVERABILITY OF STATUTES AND SAVING

1 CONSTRUCTIONS. (a) Unless a statute expressly includes a
2 nonseverability clause, every provision, section, subsection,
3 sentence, clause, phrase, and word of a statute, and every discrete
4 application of a statutory provision, section, subsection,
5 sentence, clause, phrase, or word to any person, group of persons,
6 or circumstances, shall be severable from each other [~~If any~~
7 ~~statute contains a provision for severability, that provision~~
8 ~~prevails in interpreting that statute~~].

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 circumstances is found by any court to be invalid,
12 preeempted, or unconstitutional, for any reason whatsoever, then
13 all remaining applications of that statutory provision, section,
14 subsection, sentence, clause, phrase, or word to all other persons
15 and circumstances shall be severed and preserved, and shall remain
16 in effect. All valid, non-preeempted, and constitutional
17 applications of any enacted statute shall be severed from any
18 applications that a court finds to be invalid, preeempted, or
19 unconstitutional, because it is the legislature's intent and
20 priority that every valid, non-preeempted, and constitutional
21 application of its statutory enactments be allowed to stand alone
22 and remain enforceable [~~statute contains a provision for~~
23 ~~nonseverability, that provision prevails in interpreting that~~
24 ~~statute~~].

25 (c) No court may decline to enforce the severability
26 requirements of Subsections (a) and (b) on the ground that
27 severance would "rewrite" the statute or involve the court in

1 legislative or lawmaking activity. A court that declines to
2 enforce or enjoins a state official from enforcing a statutory
3 enactment, in whole or in part, is never rewriting a statute or
4 engaging in legislative or lawmaking activity, as the statute
5 continues to contain the same words as before the court's decision.

6 A judicial injunction or declaration of unconstitutionality:

7 (1) is nothing more than an edict prohibiting
8 enforcement of the disputed statute against the named parties to
9 that lawsuit, which may subsequently be vacated by a later court if
10 that court has a different understanding of the law;

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

13 (3) no more rewrites a statute than a decision by the
14 executive not to enforce a duly enacted statute in a limited and
15 defined set of circumstances [~~In a statute that does not contain a~~
16 ~~provision for severability or nonseverability, if any provision of~~
17 ~~the statute or its application to any person or circumstance is held~~
18 ~~invalid, the invalidity does not affect other provisions or~~
19 ~~applications of the statute that can be given effect without the~~
20 ~~invalid provision or application, and to this end the provisions of~~
21 ~~the statute are severable].~~

22 (d) If any state or federal court disregards any of the
23 severability requirements in Subsections (a), (b), or (c), and
24 declares or finds any statutory provision, section, subsection,
25 sentence, clause, phrase, or word to be facially or totally
26 invalid, preempted, or unconstitutional, when there are discrete
27 applications of that statutory provision, section, subsection,

1 sentence, clause, phrase, or word that could be enforced against a
2 person, group of persons, or circumstances without violating
3 federal law or the federal or state constitutions, then that
4 statutory provision, section, subsection, sentence, clause,
5 phrase, or word shall be interpreted, as a matter of state law, as
6 if the legislature had explicitly limited its application to the
7 persons, group of persons, or circumstances for which its
8 application will not violate federal law or the federal or state
9 constitutions, and every court shall adopt and apply this saving
10 construction until the court ruling that pronounced the statutory
11 provision, section, subsection, sentence, clause, phrase, or word
12 facially or totally invalid, preempted, or unconstitutional is
13 vacated or overruled.

14 SECTION 8. Section [311.034](#), Government Code, is amended to
15 read as follows:

16 Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY; JURISDICTIONAL
17 REQUIREMENTS. (a) In order to preserve the legislature's interest
18 in managing state fiscal matters through the appropriations
19 process, a statute shall not be construed as a waiver of sovereign
20 immunity unless the waiver is effected by clear and unambiguous
21 language.

22 (b) In a statute, the use of "person," as defined by Section
23 [311.005](#) to include governmental entities, does not [~~indicate~~
24 ~~legislative intent to~~] waive sovereign immunity unless the context
25 of the statute indicates no other reasonable construction.

26 (c) Statutory prerequisites to a suit, including the
27 provision of notice, are jurisdictional requirements in all suits

1 against a governmental entity.

2 SECTION 9. Subchapter C, Chapter 311, Government Code, is
3 amended by adding Section 311.037 to read as follows:

4 Sec. 311.037. GRAMMATICAL AND SCRIVENER'S ERROR. (a) A
5 grammatical or scrivener's error does not vitiate a law. If a
6 statute contains a grammatical or scrivener's error that would be
7 apparent to an ordinary reader of the English language, then the
8 Court may interpret the statute in the way that an ordinary reader
9 of the English language would understand the statute in light of the
10 grammatical or scrivener's error.

11 SECTION 9. Section 312.005, Government Code, is amended to
12 read as follows:

13 Sec. 312.005. INTENTIONALISM PROHIBITED [~~LEGISLATIVE~~
14 ~~INTENT~~]. When [In] interpreting a statute, a court is not to
15 inquire into what members of the legislature intended or hoped to
16 accomplish, but shall enforce the statutory text as written and in
17 accordance with the meaning that the words of the statute would have
18 to an ordinary speaker of the English language. See, e.g., Oliver
19 Wendell Holmes, *The Theory of Legal Interpretation*, 12 Harv. L.
20 Rev. 417, 419 (1899) ("We do not inquire what the legislature meant;
21 we ask only what the statute means.") [~~shall diligently attempt to~~
22 ~~ascertain legislative intent and shall consider at all times the~~
23 ~~old law, the evil, and the remedy].~~

24 SECTION 10. Section 312.006, Government Code, is amended to
25 read as follows:

26 Sec. 312.006. RELIANCE ON LEGISLATIVE HISTORY PROHIBITED
27 [~~LIBERAL CONSTRUCTION~~]. (a) In construing a statute, a court may

1 not under any circumstance consider, consult, cite, rely upon, or
2 give any weight to:

3 (1) statements from individual legislators, including
4 bill authors and sponsors;

5 (2) committee reports of any type;

6 (3) statements made in legislative hearings or floor
7 debates; or

8 (4) signing statements [~~The Revised Statutes are the~~
9 ~~law of this state and shall be liberally construed to achieve their~~
10 ~~purpose and to promote justice].~~

11 SECTION 11. Section 312.012, Government Code, is amended to
12 read as follows:

13 Sec. 312.012. GRAMMATICAL AND SCRIVENER'S ERROR [~~GRAMMAR~~
14 ~~AND PUNCTUATION~~]. [~~(a)~~] A grammatical or scrivener's error does
15 not vitiate a law. If a statute contains a grammatical or
16 scrivener's error that would be apparent to an ordinary reader of
17 the English language, then the Court may interpret the statute in
18 the way that an ordinary reader of the English language would
19 understand the statute in light of the grammatical or scrivener's
20 error [~~the sentence or clause is meaningless because of the~~
21 ~~grammatical error, words and clauses may be transposed to give the~~
22 ~~law meaning.~~

23 [~~(b) Punctuation of a law does not control or affect~~
24 ~~legislative intent in enacting the law].~~

25 SECTION 12. Section 312.013, Government Code, is amended by
26 amending subsection (a) and (b) and adding Subsections (c) and (d)
27 to read as follows:

1 Sec. 312.013. SEVERABILITY OF STATUTES AND SAVING
2 CONSTRUCTIONS. (a) Unless a statute expressly includes a
3 nonseverability clause, every provision, section, subsection,
4 sentence, clause, phrase, and word of a statute, and every discrete
5 application of a statutory provision, section, subsection,
6 sentence, clause, phrase, or word to any person, group of persons,
7 or circumstances, shall be severable from each other [~~expressly~~
8 ~~provided otherwise, if any provision of a statute or its~~
9 ~~application to any person or circumstance is held invalid, the~~
10 ~~invalidity does not affect other provisions or applications of the~~
11 ~~statute that can be given effect without the invalid provision or~~
12 ~~application, and to this end the provisions of the statute are~~
13 ~~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 circumstances is found by any court to be invalid,
17 preeempted, or unconstitutional, for any reason whatsoever, then
18 all remaining applications of that statutory provision, section,
19 subsection, sentence, clause, phrase, or word to all other persons
20 and circumstances shall be severed and preserved, and shall remain
21 in effect. All valid, non-preeempted, and constitutional
22 applications of any enacted statute shall be severed from any
23 applications that a court finds to be invalid, preeempted, or
24 unconstitutional, because it is the legislature's intent and
25 priority that every valid, non-preeempted, and constitutional
26 application of its statutory enactments be allowed to stand alone
27 and remain enforceable [~~This section does not affect the power or~~

1 ~~duty of a court to ascertain and give effect to legislative intent~~
2 ~~concerning severability of a statute].~~

3 (c) No court may decline to enforce the severability
4 requirements of Subsections (a) and (b) on the ground that
5 severance would "rewrite" the statute or involve the court in
6 legislative or lawmaking activity. A court that declines to
7 enforce or enjoins a state official from enforcing a statutory
8 enactment, in whole or in part, is never rewriting a statute or
9 engaging in legislative or lawmaking activity, as the statute
10 continues to contain the same words as before the court's decision.

11 A judicial injunction or declaration of unconstitutionality:

12 (1) is nothing more than an edict prohibiting
13 enforcement of the disputed statute against the named parties to
14 that lawsuit, which may subsequently be vacated by a later court if
15 that court has a different understanding of the law;

16 (2) is not a formal amendment of the language in a
17 statute; and

18 (3) no more rewrites a statute than a decision by the
19 executive not to enforce a duly enacted statute in a limited and
20 defined set of circumstances.

21 (d) If any state or federal court disregards any of the
22 severability requirements in Subsections (a), (b), or (c), and
23 declares or finds any statutory provision, section, subsection,
24 sentence, clause, phrase, or word to be facially or totally
25 invalid, preempted, or unconstitutional, when there are discrete
26 applications of that statutory provision, section, subsection,
27 sentence, clause, phrase, or word that could be enforced against a

1 person, group of persons, or circumstances without violating
2 federal law or the federal or state constitutions, then that
3 statutory provision, section, subsection, sentence, clause,
4 phrase, or word shall be interpreted, as a matter of state law, as
5 if the legislature had explicitly limited its application to the
6 persons, group of persons, or circumstances for which its
7 application will not violate federal law or the federal or state
8 constitutions, and every court shall adopt and apply this saving
9 construction until the court ruling that pronounced the statutory
10 provision, section, subsection, sentence, clause, phrase, or word
11 facially or totally invalid, preempted, or unconstitutional is
12 vacated or overruled.

13 SECTION 13. The following provisions of the Government Code
14 are repealed:

15 (1) Section 312.006(b); and

16 (2) Section 312.012(b).

17 SECTION 14. This Act takes effect immediately if it
18 receives a vote of two-thirds of all the members elected to each
19 house, as provided by Section 39, Article III, Texas Constitution.
20 If this Act does not receive the vote necessary for immediate
21 effect, this Act takes effect September 1, 2023.