

## **BILL ANALYSIS**

Senate Research Center  
81R23544 JSA-F

C.S.S.B. 2038  
By: Duncan  
State Affairs  
4/15/2009  
Committee Report (Substituted)

### **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.

C.S.S.B. 2038 amends current law relating to the construction of nonsubstantive codifications and revisions of statutes.

### **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, subject to Section 22.0011, a case involving the construction or validity of a statute necessary to a determination of the case.

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 of the supreme court's 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) if the statute at issue in the case was enacted by the legislature under the direction of Article III (Legislative Department), Section 43 (Revision of Laws), 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 the statute was prepared for the legislature's consideration by the Texas Legislative Council (TLC) under the authority granted to TLC 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.

(c) 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 in the codified or revised statute that the supreme court would otherwise find to be direct, unambiguous, and irreconcilable with the prior version of the statute. Requires that any omission or change in the codified or revised statute for which the court finds no direct express 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 REVISIONS. (a) Provides that this section applies to the interpretation or application by a court, executive branch agency, or other entity of a statute enacted by the legislature of this state if the statute at issue in the case was enacted by the legislature under the direction of Article III, Section 43, 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 the statute was prepared for the legislature's consideration by TLC under the authority granted to TLC 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.

(c) 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 in the codified or revised statute that the court, executive branch agency, or other entity would otherwise find to be direct, unambiguous, and irreconcilable with the prior version of the statute. Requires that any omission or change in the codified or revised statute for which the court, executive branch, or other entity finds no direct express 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.