

**SUBJECT:** Nonsubstantive recodification of the Estates and Guardianship Code

**COMMITTEE:** State Affairs — favorable, without amendment

**VOTE:** 12 ayes — Solomons, Menendez, Cook, Craddick, Farabee, Gallego, Harless, Lucio, Maldonado, Oliveira, Swinford, S. Turner

0 nays

3 absent — Geren, Hilderbran, Jones

**WITNESSES:** For — None

Against — Steve Bresnen

On — Jeff Archer, Texas Legislative Council; (*Registered, but did not testify*: Maria Breitschopf, Texas Legislative Council; Deborah Fulton, Texas Legislative Council)

**BACKGROUND:** Under Government Code, sec. 323.007, the Texas Legislative Council (TLC) must revise Texas statutes periodically to make them more accessible, understandable, and usable without altering their sense, meaning, or effect. As part of this process, the TLC reclassifies and rearranges statutes in a more logical order; employs a numbering system and format that will accommodate future expansion of the law; eliminates repealed, invalid, or duplicative provisions; and improves the draftsmanship of the law. The council periodically recommends shifting provisions of existing law into the statutory codes.

Art. 3, sec. 43 of the Texas Constitution provides for recodifying statutes that relate to different subjects without substantive change and for this purpose allows an exception to the requirement in Art. 3, sec. 35 that bills contain no more than one subject expressed in the title.

**DIGEST:** HB 2502 would make nonsubstantive additions and conforming changes to the Probate Code and would establish the Estates and Guardianships Code. HB 2502 would add new titles and would update and correct cross-references to the revised codes.

If a law enacted by the 81st Legislature affected a provision repealed or redesigned by HB 2502, the repealed provision or previous designation would remain in effect, and in cases of conflict, a law enacted by the current Legislature would control.

The bill would state as legislative intent that it would be enacted under Art. 3, sec. 43 of the Texas Constitution and that no substantive change in the law was intended.

The bill would take effect January 1, 2014.

**SUPPORTERS  
SAY:**

HB 2502 would enact the most recent installment of the recodification of state statutes, this one concerning probate, trusts, and estates law. This reorganization of existing law into statutory codes is an ongoing project of the TLC. This draft has been extensively reviewed and would make no substantive change in the law. It contains a statement of legislative intent to direct the judiciary to read the bill as nonsubstantive. HB 2502 would comply with the purpose of recodification, which is to make statutory laws more accessible, understandable, and usable without altering the sense, meaning, or effect of existing law. The bill would not take effect until January 1, 2014, in case current law under the existing statutes were amended by later sessions of the Legislature.

**OPPONENTS  
SAY:**

The Legislature should abandon the practice of approving large recodification bills because it can no longer rely on statements of legislative intent that no substantive change in the law was intended. The Supreme Court has made clear in the *Entergy*, *Fleming Foods*, and other cases that it does not view statements of legislative intent as controlling on the issue of whether or not recodification bills truly are non-substantive changes to the law. The courts have made clear that they will look to the plain language of the law before looking at legislative intent and can interpret recodification bills as making substantive changes, regardless of any legislative declaration

The Legislature instead should break these bills up into many smaller substantive bills, and pass them as it would any other bill. This would ensure an adequate vetting of the changes to better ensure the law truly says what the Legislature intends. The Legislature also could amend the Code Construction Act to give additional direction to the courts on recodification bills. Texas also could establish an official revisor of statutes. Many states have empowered a legislative agency that performs

the same functions as Texas' recodification bills in rearranging and streamlining the statutes. Most statutory revision consists of editorial "housekeeping" changes that could be accomplished by means other than legislation.

NOTES:

Rep. Hartnett plans to offer a floor amendment to shorten the name of the Estates and Guardianship Code to the Estates Code.

The identical companion bill, SB 2071 by Duncan, was reported favorably, without amendment, by the Senate Administration Committee on April 15 and recommended for the Local and Uncontested Calendar.

HB 4126 by Hartnett and SB 2038 by Duncan would alter the jurisdiction of the Texas Supreme Court and amend the Code Construction Act to direct the judiciary to find that a recodification bill does not affect the meaning or effect of a statute. HB 4126 was reported favorably, as substituted, by the Judiciary and Civil Jurisprudence Committee on April 15. SB 2038 was reported favorably, as substituted, by the Senate State Affairs Committee on April 16 and recommended for the Local and Uncontested Calendar.