

SUBJECT: Interpretation and application of nonsubstantive recodification bills

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Hunter, Alonzo, Branch, Hartnett, Lewis, Martinez, Woolley
0 nays
4 absent — Hughes, Jackson, Leibowitz, Madden

WITNESSES: For — Steve Bresnen
Against — None
On — (*Registered, but did not testify:* Jeff Archer, Paulette Barwinkle, 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more logical order; employs a numbering system and format that will accommodate future expansion of the law; eliminates repealed, invalid, or duplicative provisions; and improves the draftsmanship of the law.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: CSHB 4126 would amend the Government Code, ch. 22, to add sec. 22.0011, which would regulate the Supreme Court’s jurisdiction regarding nonsubstantive revisions. CSHB 4126 also would amend the Code Construction Act, ch. 311 of the Government Code, to regulate the interpretation and application of nonsubstantive revisions of the law by a court, executive branch agency, or other entity.

Under CSHB 4126, the codification or revision of a statute would not affect the meaning or effect of the statute if the statute at issue in the case was enacted by the Legislature under the direction of Art. 3, sec. 43 of the Texas Constitution, in an enactment having the purpose, declared by the Legislature in the enactment, of codifying or revising statutes without substantive change that was prepared for the Legislature's consideration by the TLC.

In interpreting and applying a codified or revised statute, the Supreme Court, other courts, executive branch agencies, or other entities would have 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, other courts, executive branch agencies, or other entities would otherwise find to be direct, unambiguous, and irreconcilable with the prior version of the statute. Any omission or change in the codified or revised statute for which the Supreme Court, other courts, executive branch agencies, or other entities found no direct express evidence of legislative intent to change the sense, meaning, or effect of the statute would be considered to be unintended and would be given no effect.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 4126 would ensure that the Supreme Court interpreted future recodification bills as nonsubstantive changes to the law by altering the Supreme's Court jurisdiction and amending the Code Construction Act. The Legislature's current approach to the recodification process is to place statements of legislative intent in recodification statutes. However, the Supreme Court has made clear in the *Entergy*, *Fleming Foods*, and other cases that it does not view these 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.

CSHB 4126 would address this issue by directing the Supreme Court, other courts, executive branch agencies, and other entities to interpret the

Legislature's statements of legislative intent that the nonsubstantive recodification bills are nonsubstantive. CSHB 4126 would allow the Legislature to continue to employ the valuable and efficient recodification system.

Arguments that CSHB 4126 would tie the hands of courts to read the law based on its plain language are overblown. The recodification bills are drafted and vetted by experts to ensure the revisions are nonsubstantive. The statements of legislative intent verify and reinforce that fact. Further, this bill would amend the jurisdiction of the Supreme Court and alter the Code Construction Act in a limited and specific way that applies only to one kind of nonsubstantive bill. Under CSHB 4126 the courts would remain free to interpret substantive law and changes to it as it always has.

**OPPONENTS
SAY:**

The courts exist as an important check on the other branches of government when they interpret the laws. If the courts are to fully exercise this vital function, the Legislature should not require the courts to read law or make findings in certain predetermined ways. The courts must be allowed to independently read the law as it is written when it is clear on its face. If the courts and citizenry cannot rely on current law meaning what it plainly says, then the plain language of a statute will have no particular meaning. Statutes must mean what they plainly say. Thwarting the ability of the courts to independently interpret the law would undermine the rule of law.

NOTES:

The substitute differs from the bill as filed by requiring that statements of legislative intent be included in the recodification statutes at issue in the Supreme Court's jurisdiction and in the Code Construction Act.

The companion bill, SB 2038 by Duncan, passed the Senate by 30-0 on April 30.