

## **BILL ANALYSIS**

Senate Research Center

H.B. 2809  
By: Wolens (Cain)  
Administration  
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Engrossed

### **DIGEST AND PURPOSE**

In *Fleming Foods of Texas, Inc. v. Rylander*, the Texas Supreme Court held that an omission from the 1981 Tax Code, a nonsubstantive revision, effected a substantive change in the law relating to the persons eligible to apply for a sales tax refund. The court made its holding despite repeated and clear statements in the law and on the face of the bill that no substantive change was intended. The court rejected the arguments made on rehearing in an amicus brief joined in by the Texas Legislative Council and numerous individual legislators and found that a change in a codified statute that was direct, unambiguous, and irreconcilable with prior law would be given effect as an intended, substantive change in the statute. This bill would establish a rule of construction to assist future courts in avoiding the result reached in *Fleming* and would establish a related rule of construction that any absence of legislative action in regard to the statutes at issue in *Fleming* does not constitute legislative acceptance of that holding.

Furthermore, with most Texas statutes now codified into a topical code, a large component of statutory revision is editorial housekeeping. At each session of the legislature, the Legislative Council prepares for enactment a bill several hundred pages in length that accomplishes that housekeeping by renumbering or re-lettering sections of law, correcting cross-references, and the like. In addition, the housekeeping bill conforms code provisions to acts of the previous legislature and harmonizes multiple acts of the previous legislature affecting the same section, an action often unofficially taken by the private publisher of Vernon's Texas Codes Annotated. Because the housekeeping bill is considered by the same legislature that seeks to amend many of the statutes in need of update, each session many bills are longer and more complicated than necessary to accomplish the author's purpose because the bill must also accomplish or consider other bills accomplishing the housekeeping. H.B. 2809 gives similar powers to the Legislative council, eliminating the need for a large part of the housekeeping bill and simplifying bills that amend existing 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 Chapter 311C, Government Code, by adding Section 311.033, as follows:

Sec. 311.033. EFFECT OF NONSUBSTANTIVE REVISION. Provides that the codification of a statute under the continuing statutory revision program provided for by Section 323.007 in an act stating that no substantive change in law is intended does not affect the meaning or effect of the statute. Requires a court or other entity interpreting and applying the codified statute to give the codified statute the same effect and meaning that was or would have been given the statute before its codification, notwithstanding the repeal of the prior statute and regardless of an omission or change that the court or other entity would otherwise find to be direct, unambiguous, and irreconcilable with prior law. Requires an omission or change for which the court finds no direct evidence of legislative intent to change the sense, meaning, or

effect of the statute to be considered unintended and to be treated as if the omission or change were a typographical or similar error.

SECTION 2. Amends Chapter 311C, Government Code, by adding Section 311.034, as follows:

Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. Prohibits a statute from being construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. Defines "person."

SECTION 3. Amends Chapter 323, Government Code, by adding Section 323.0071, as follows:

Sec. 323.0071. EDITORIAL POWERS FOR STATUTES. (a) Defines "section."

(b) Requires the executive director of the council to perform the duties of revisor of statutes or designate an employee to perform those duties. Provides that the powers provided by this section are authorized as part of the statutory revision program for certain purposes.

(c) Prohibits the revisor, in carrying out these powers, from altering the sense, meaning, or effect of a statute. Prohibits the revisor, if the revisor is in doubt whether a specific change is authorized by this section, from making the change but requires the revisor to incorporate the proposed change into legislation.

(d) Sets forth a list of authorization given to the revisor, in accordance with this section.

(e) Provides that in addition to the actions described by Section (d), the revisor is authorized, if two or more acts of a legislative session affect the same section and the revisor finds that there is no irreconcilable conflict between the changes made by each act, to harmonize the acts and incorporate the changes made by each act into the text of the section.

(f) Requires the revisor to publish proposed actions under this section in a report the form of which is designed to clearly identify each proposed action, including words to be added or deleted, and the purpose of each proposed action.

(g) Requires the revisor to file notice of the report described by Section (f) with the secretary of state for publication in the Texas Register and provide a copy of the notice to each member of the legislature. Requires the notice to contain certain information.

(h) Prohibits the effective date of actions proposed in the report from being earlier than the 61st day after the date notice is published in the Texas Register.

(i) Requires the revisor to give all interested persons a reasonable opportunity to comment on the actions proposed in the report and requires the revisor to fully consider all comments.

(j) Requires the final actions of the revisor under this section to be effected by order issued by the revisor and filed with the secretary of state. Provides that the order takes effect on the date stated in the order, which may not be earlier than the 31st day after the date the order is filed with the secretary of state. Requires the secretary of state to publish the order in the Texas Register.

(k) Requires the revisor to communicate actions under this section to each publisher of Texas statutes, and requires the text of the statutes published by the publisher to reflect

the actions of the revisor.

(m) Provides that the saving provisions of Section 311.031 apply to actions by the revisor under this section.

SECTION 4. Provides that the legislature finds the decision of the Texas Supreme Court in *Fleming Foods of Texas, inc. v. Rylander*, 6 S.W. 3d 278 (Tex. 1999), to be inconsistent with the clear and repeatedly expressed intent of the legislature in the enactment of the Tax Code and other nonsubstantive codes enacted under the state's continuing statutory revision program under Section 323.007, Government Code. Requires the absence of any legislative action subsequent to the holding in *Fleming Foods of Texas, inc. v. Rylander* to not be construed as legislative acceptance of the holding in that case.

SECTION 5. Repeals Section 323.008 (Statutory Revision Advisory Committee), Government Code.

SECTION 6. Effective date: upon passage or on the 91st day after the last day of the legislative session.