

Interpretation and application of nonsubstantive recodification bills

SB 2038 by Duncan (Hartnett)

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DIGEST:

SB 2038 would have limited the Texas Supreme Court's jurisdiction regarding nonsubstantive revisions of existing Texas law and would have amended the Code Construction Act to regulate the interpretation and application of nonsubstantive revisions of the law by a court, executive branch agency, or other entity. Under SB 2038, the codification or revision of a statute would not have affected its meaning or effect 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 changes and that was prepared for the Legislature's consideration by the Texas Legislative Council.

In interpreting and applying a codified or revised statute, the Supreme Court, other courts, executive branch agencies, or other entities would have been required 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 or other interpreting entity otherwise would have found 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 a court or other interpreting entity had found no direct express evidence of legislative intent to change the sense, meaning, or effect of the statute would have been considered to be unintended and would have been given no effect.

GOVERNOR'S REASON FOR VETO:

“The plain words of a statute are the starting point for interpreting the law. Senate Bill No. 2038 would eliminate this fundamental principle. Citizens, judges, and lawyers may debate the proper interpretation and application of those words but they may not debate what those words are. Senate Bill No. 2038 would abandon that basic and necessary premise. The reliability of the language found in the Texas codes would be subject to second guessing. Judges would no longer be able to apply the law simply by looking at its plain text. Senate Bill No. 2038 would likely result in an increase in litigation as lawyers would challenge the plain meaning of Texas statutes and compel courts to look to repealed codes and former session laws to determine what is Texas law.

“The codification and revision process was established to make Texas law more accessible. Senate Bill No. 2038 would undermine the very purpose of the codification process by forcing both practitioners and ordinary citizens to locate and research old versions of our laws in order to determine if the current Texas codes really mean what they say.

“Similar legislation, House Bill No. 2809, was vetoed in 2001. The concerns that existed then still exist today. Determining our state’s laws should not be a burdensome process; Texans should be able to determine what our law says by simply reading the codes.”

RESPONSE: **Sen. Robert Duncan**, the bill’s author, had no comment on the veto.

Rep. Will Hartnett, the House sponsor, said: “The intent of the Legislature is paramount in interpreting any statute. The Legislature unanimously passed SB 2038 in response to courts’ unabashed violation of the Legislature’s clearly expressed intent that recodifications cause no substantive change in law. The Legislature unanimously repudiates this violation and demands that the courts adhere to crystal clear legislative intent. I expect that the Legislature will pass a constitutional amendment to preempt any future veto.”

NOTES: The HRO analysis of HB 4126 by Hartnett, the House companion to SB 2038, appeared in Part Two of the May 8 *Daily Floor Report*.