

BILL ANALYSIS

Senate Research Center

S.B. 884
By: Harris
Jurisprudence
3-10-97
As Filed

DIGEST

Currently, in the codes enacted under the state's continuing statutory revision program, established under Section 323.007, Government Code, the legislature, through the legislative council, strives for consistency in manner of expression. In those codes, "may," "shall," "must," and similar words and phrases are used with particular meaning. Despite the consistency with which those terms are used in drafting legislation, definitions are needed for consistency in interpretation. For example, in a recent federal district court case, the court determined that "may not," which imposes a prohibition, was instead permissive as used in Section 123.008, Human Resources Code. The court effectively interpreted "may not" to mean "may or may not." See Order Denying Cross-Motion for Summary Judgment in *Sharpstown Civil Assn. v. Maxicare Home Services, Inc.*, Civil Action No. H-94-1592, (S.D. Texas, 1995). Additionally, the legislature occasionally enacts bills that conflict. Both common law and statute establish a rule that, if those bills are irreconcilable, the act last in date of enactment controls. The law has not established rules for determining which of two acts are later in date of enactment, particularly if the journals or other legislative records fail to clearly provide that information. This bill would set forth definitions for terms such as "may" and "shall" and, additionally, set forth rules for determining which of two conflicting acts is later in enactment.

PURPOSE

As proposed, S.B. 884 sets forth definitions for certain legislative terms or phrases and rules of construction for certain irreconcilable statutes and amendments.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 311B, Government Code, by adding Section 311.016, as follows:

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. Sets forth the constructions of "may," "shall," "must," "is entitled to," "may not," "is not entitled to," and "is not required to," which apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute.

SECTION 2. Amends Section 311.025, Government Code, by adding Subsections (d) and (e), to provide that in this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute. Sets forth the order of priority for the date of enactment of bills if the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment.

SECTION 3. Amends Section 312.014, Government Code, as follows:

Sec. 312.014. IRRECONCILABLE AMENDMENTS. Provides that if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails. Requires amendments, if the amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, to be harmonized so that effect may be given to each. Provides that if the amendments are

irreconcilable, the latest in date of enactment prevails. Provides that in this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute. Sets forth the order of priority for the date of enactment of bills if the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment.

SECTION 4. Emergency clause.

Effective date: upon passage.