SUBJECT: Repealing interlocutory appeals under the Texas Arbitration Act

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 5 ayes — Gray, Hilbert, Bosse, Roman, Zbranek

0 nays

4 absent — Alvarado, Dutton, Goodman, Nixon

WITNESSES: (*On introduced version*):
For — None

Against — Hartley Hampton, Texas Trial Lawyers Association

On — Bill Vance

BACKGROUND: Methods of alternative dispute resolution include arbitration, where the decision is binding on the parties, and mediation, where the decision is merely advisory unless both parties agree in advance to abide by it.

The Texas Arbitration Act (TAA), Chapter 171 of the Civil Practices and Remedies Code, governs any arbitration agreements or provisions in written contracts compelling arbitration. The Federal Arbitration Act (FAA) governs arbitration agreements under federal law.

DIGEST: CSHB 1425 would repeal sect. 171.017 of the Civil Practices and Remedies Code, which specifies when an appeal is available under the Texas Arbitration Act.

CSHB 1425 would take effect September 1, 1997.

SUPPORTERS SAY: CSHB 1425 would make appellate procedure under the Texas Arbitration Act parallel the procedures under the Federal Arbitration Act. The TAA gives parties the right to an interlocutory appeal, i.e., one that stops the case and allows the appeal of a particular issue. Interlocutory appeals can often significantly delay a case because the proceedings are halted until the appellate court has a chance to rule on the appeal.

Under the FAA, a party wishing to appeal a decision can do so only through mandamus, a procedure that allows a petition for the court to order that an action be taken. Mandamus orders can be issued under the FAA by any federal court with jurisdiction over the claim involved. Mandamus actions are generally considered preferable to appeals in terms of judicial economy — there are fewer procedures to follow to rule on a writ of mandamus than there are for an appeal, and mandamus actions can generally be decided quickly, without stopping other proceedings in the action.

By repealing sec. 171.017, appeals of decisions during the arbitration process will be the same under both federal and Texas arbitration law. In both systems, any appeals would have to follow the procedures for mandamus. In many cases where arbitration is used, actions are proper under both state and federal law. In those cases, appeals of decision in the arbitration process often proceed on two different tracks — as interlocutory appeals in state courts and as mandamus requests in federal courts. CSHB 1425 would unite those two proceedings and make appeals follow the same procedures.

Arbitrations are unlike trials in that both parties have agreed to give up certain rights and abide by the decision of the arbiter. Allowing a party to take every decision made in the arbitration before a judge on an interlocutory appeal would defeat the purpose of using arbitration as an alternative means of dispute resolution.

OPPONENTS SAY:

Arbitration under chapter 171 is a binding procedure that is, in many respects, just like a trial before a judge. The rights to appeal arbitration decisions are the same as those rights would be if the case were a normal trial. By removing the right to an interlocutory appeal and allowing only mandamus, CSHB 1425 would make arbitration appeals more limited than appellate rights from a trial.

NOTES:

The original version of the bill would not have repealed sec. 171.017 but would have allowed additional interlocutory appeals to be taken from any decision based on the FAA or other federal law authorizing arbitration.