SUBJECT: Limiting automatic stays for certain interlocutory appeals

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 8 ayes — Bosse, Janek, Clark, Dutton, Hope, Nixon, Smithee, Zbranek

0 nays

1 absent — Martinez Fischer

WITNESSES: For — Tommy Fibich, Texas Trial Lawyers Association; Tony Lindsay, Harris County Board of District Judges

Against — None

BACKGROUND: Civil Practice and Remedies Code, sec. 51.014 specifies the kinds of trial-court orders that can be appealed immediately (interlocutory appeal) even though they otherwise would not be appealable because they are not a final judgment. These appealable orders include, among others, orders that:

- grant or deny a motion to impose or dissolve a temporary injunction;
- deny a motion for summary judgment based on an assertion that the defendant cannot be sued because he or she is an officer or employee of the state or a political subdivision of the state;
- deny a motion for summary judgment based on an assertion that the defendant is a member of the media and that the allegations involve constitutionally protected free speech; and
- grant or deny a claim that the court lacks jurisdiction because the defendant is a governmental unit or because the defendant lacks sufficient connection with Texas to be sued here.

When an appeal is taken under this statute, a trial cannot begin in the case until the appeal is resolved.

DIGEST: CSHB 978 would amend Civil Practice and Remedies Code, sec. 51.014 to limit the situations in which the appeal automatically stays (postpones) the trial of the case.

An appeal regarding a temporary injunction no longer would stay the trial automatically. An appeal of an order relating to a summary judgment or a jurisdictional claim would stay the trial only if the issue was raised and the party raising it sought a hearing on the issue:

- by the deadline set by the trial court for raising such issues, or
- within 180 days after the defendant first responded to the lawsuit or within 180 days after the defendant pleaded a defense listed above in response to a new claim by the plaintiff, whichever was later.

The bill also would allow a trial court, subject to the parties' agreement, to authorize an interlocutory appeal of an order that normally could not be appealed immediately. The parties would have to agree that the issue to be appealed involved a controlling but truly disputed legal issue and that an immediate appeal could advance the resolution of the case materially. Once the trial court authorized the interlocutory appeal, the appealing party would have 10 days to apply to the court of appeals to have the appeal heard, and the court of appeals could choose to hear the appeal or not. Such an agreed interlocutory appeal would not stay the case in the trial court unless the parties agreed to the postponement and either the trial judge or the court of appeals or one of its judges ordered the stay.

The bill would take effect September 1, 2001, and would apply only to lawsuits filed on or after the effective date.

SUPPORTERS SAY:

CSHB 978 would prevent needless delays in the legal system by eliminating the automatic stay for appeals of temporary injunction orders. Typically, if a case involving a temporary injunction goes to trial, the issues on appeal regarding the grant or denial of a temporary injunction will become moot. Moreover, trying such a case usually is quicker than getting a decision in the appeal. This bill would promote the most expedient resolution of such cases.

The bill also would prevent the waste of the parties' and the court's resources by preventing the stay of trial in a situation where a defendant waits until immediately before trial to raise issues such as immunity claims, then loses on those issues in the trial court and wants to appeal the trial court's ruling. Currently, defendants can (and sometimes do) allow such cases to proceed for months or years before raising these issues. This is

expensive for parties who have spent considerable resources getting ready for trial, only to have the case stayed.

While preventing such abusive practices, the bill also would balance the interests of the defendant seeking the appeal against the interests of the other parties in prompt trial of the case by preserving the automatic stay where the defendant was reasonably prompt in gathering evidence, preparing the motion, and requesting a hearing on the defensive issue.

CSHB 978 also would promote judicial efficiency by allowing the trial court to certify a question for appeal. Occasionally the trial court rules on an issue that is pivotal in a case but about which there is legitimate disagreement. If such a case proceeds to trial and it turns out that the trial judge was incorrect, the whole case may need to be retried. If the question could be sent to the appellate court for a ruling, the resolution of the case would be more streamlined and efficient. Currently, no procedural means exist for such an appeal to be heard without dismissing the other issues in the case to create an appealable final judgment.

At the same time, the bill would not impose an undue burden on the courts of appeals because it would give those courts discretion over whether or not to hear an interlocutory appeal. Likewise, by requiring the parties to agree to the appeal, the bill would prevent situations in which the trial court repeatedly would certify questions that the parties thought were unimportant in order to avoid having to try a case the judge did not want to hear.

OPPONENTS SAY:

CSHB 978 could result in eliminating the right to a stay for defendants who could not discover the evidence for their immunity claim within the time limit the bill would prescribe. The bill should tie the deadline to the discovery deadlines instead of to the pleading dates.

The provisions requiring the parties to agree to certification of a controlling issue of law and to agree to a stay pending such an appeal would reduce the usefulness of the certification procedure. That a trial court might abuse its authority to authorize an appeal or order a stay pending an appeal should be much less of a concern than the possibility that the parties would be uncooperative, especially when the appellate court has the ultimate discretion over whether to hear the appeal.

NOTES:

The committee substitute would allow a stay as long as the party requested a hearing on its defensive motion within the time limit, while the bill as filed would have required that the issue actually be set for the hearing within the time limit. The substitute changed the original by extending the time to raise one of the appealable issues from 150 days to 180 days. The substitute also added the provision that would extend the time for the defendant to raise a summary judgment or jurisdictional issue when the plaintiff amended the lawsuit.

The substitute also added the provision that the parties would have to agree to have the trial court authorize an appeal or to have the case stayed when the court authorized an appeal. Also, the substitute eliminated the original bill's repeal of Civil Practice and Remedies Code, sec. 171.098, which was unintentional and unrelated to the rest of the bill.

A related bill, HB 148 by Wohlgemuth, would add an automatic stay for appeals under sec. 51.014 related to class certification decisions.