

SUBJECT: Defining “occurrence” in regard to indemnifying state employees

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 5 ayes — Nixon, Gattis, Hartnett, Rose, Woolley
1 nay — Y. Davis
3 absent — Capelo, King, Krusee

WITNESSES: For — None
Against — None
On — Carl Reynolds, Texas Department of Criminal Justice

BACKGROUND: Civil Practice and Remedies Code, chapter 104 governs state liability for the conduct of its public servants. Sec. 104.003 limits the state’s liability for indemnification to \$100,000 for a single person or \$300,000 for a single occurrence in cases that involve personal injury, death, or deprivation of a right, privilege, or immunity, and to \$10,000 in cases of property damage.

DIGEST: CSHB 1297 would amend Civil Practice and Remedies Code, sec. 104.003 to define an occurrence as a distinct event that could include multiple acts of negligence or separate occurrences of damages, if they resulted in or arose from continuous or repeated exposure to the same conditions. The bill would specify that the limitations on state liability for indemnification apply to “each” person or occurrence, rather than to “a single” person or occurrence.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY: CSHB 1297 would clarify the meaning of “occurrence” for state indemnification of its employees. Under current law, a plaintiff could sue the state claiming multiple occurrences from a single action. For example, in a lawsuit against the Texas Department of Criminal Justice, an offender was

sent to a prison hospital where he sexually assaulted two nurses. The nurses' attorney argued that multiple acts of apparent staff negligence enabled the offender to commit these crimes and that those multiple acts constituted multiple occurrences under the statute. Although this case has been resolved, it illustrates the problem with the lack of specificity in the statute. This bill would make it clear that an event like this example would constitute only one occurrence for purposes of state liability. The amended statute would provide guidance so that those affected would have consistent expectations regarding state indemnification.

Although the current statutory language appears to have been modeled on standard-form commercial liability insurance policies, no court has interpreted the limitations on indemnification. Because the language is similar to standard insurance language, it makes sense to define "occurrence" by using that same language. CSHB 1297 would bring the statute more in line with similar limits on state liability that are set out in the Tort Claims Act, providing consistency and clarity in the law. This would dampen plaintiffs' enthusiasm for attempts to seek more damages than they were entitled to and would enable the state to settle cases more efficiently.

**OPPONENTS
SAY:**

CSHB 1297 is unnecessary, as nothing in case law indicates any problem with the statutory definition at issue. By limiting the state's liability too narrowly, the bill would reduce the ability of injured people to sue for compensation for their injuries.

NOTES:

The committee substitute expanded the definition of "occurrence" in the filed version by specifying that multiple acts of negligence or separate occurrences of damages could constitute one occurrence.