

- SUBJECT:** Relating to permissive interlocutory appeals in civil actions
- COMMITTEE:** Civil Practices — committee substitute recommended
- VOTE:** 7 ayes — Nixon, Rose, Madden, Martinez Fischer, Strama, Talton, Woolley
- 2 nays — P. King, Raymond
- WITNESSES:** For — Lee Parsley, Texans for Lawsuit Reform
- Against — Jay Harvey, Texas Trial Lawyers Association; Charles S. Siegel, Texas Trial Lawyers Association.; Mikal Watts, Watts Law Firm, LLP
- On — Nathan L. Hecht, Supreme Court of Texas
- BACKGROUND:** Civil Practice and Remedies Code, sec. 51.014 provides for an appeal of an interlocutory order. Under subsec. (a), any party, without agreement from an opposing party, may appeal an interlocutory order in several circumstances, including when a court grants or refuses a temporary injunction or denies a motion for summary judgment that is based on an assertion of governmental immunity. In certain situations, a trial may not be commenced until the interlocutory appeal is decided.
- Under subsec. (d), a court may issue an order for interlocutory appeal if the parties agree that the interlocutory order involves a controlling question of law that the parties disagree upon and if the appeal may materially advance the ultimate termination of the case. The parties must agree to such an order if an appeal is not specifically authorized by subsec. (a). An appeal under subsec. (d) does not stay proceedings in the trial court unless the parties agree and the judge orders a stay.
- DIGEST:** CSHB 1294 would amend subsec. (d) to allow a trial court to permit an interlocutory appeal without the agreement of the parties if the amount in controversy exceeded \$100,000. The amount in controversy would exclude interest, statutory or punitive damages and penalties, and attorneys fees and costs.

If the amount in controversy did not exceed \$100,000, the parties would have to agree to an interlocutory appeal for the court to permit such an appeal.

The bill would take effect September 1, 2005, and would apply to an interlocutory order issued on or after that date.

**SUPPORTERS
SAY:**

A party that succeeds on an interlocutory issue often refuses to agree to an appeal of the issue because the party may be more likely to be offered a settlement agreement by the opposing party, who simply wishes to avoid the continued costs of litigation. It is not in the interests of justice to allow such underhanded dealing.

It is in the best interests of both parties to adjudicate an interlocutory issue earlier rather than later in the trial. A party should not be required to spend thousands of dollars litigating a case that may later be overturned on the basis of an issue that could have been settled by an interlocutory appeal early in the case.

The bill would limit permissive interlocutory appeals not agreed to by both parties to cases where the amount in controversy exceeded \$100,000. This would ensure that smaller cases were not dragged out over several years resulting in increased litigation costs.

The bill would not allow the appeal of issues without merit. In permissive interlocutory appeals, the judge acts as gatekeeper and must approve such appeals based on the fact that the issue has merit and that the appeal materially would advance the ultimate termination of the litigation. The bill would result in a reduction – not an increase – in litigation costs for parties.

**OPPONENTS
SAY:**

Interlocutory appeals can result in trial delays of two to three years. It is unreasonable to require a party to wait for such an extended time for an appeal that is not directly authorized by subsec. (a). A wealthy defendant would be more likely to demand an interlocutory appeal in order to coerce the plaintiff to accept a settlement rather than spending thousands of dollars and waiting for several years simply to resolve the interlocutory issue.

Plaintiff's attorneys do not withhold agreement for permissive interlocutory appeals when such an appeal has merit. Plaintiff's attorneys

finance litigation themselves by contingency fee and are not repaid unless the plaintiff wins the case. A plaintiff's attorney would not be willing to risk thousands of dollars to continue trying a case when the case could be overturned on appeal because of an issue that could have been decided by an interlocutory appeal early on in the litigation. It is in the best interests of plaintiff's attorneys to ensure that issues have been correctly decided before investing thousands of additional dollars in litigating a case. There is no problem with the withholding of agreement for permissive interlocutory appeals.

NOTES:

The bill as introduced would have allowed for an interlocutory appeal regardless of the amount in controversy.