

BILL ANALYSIS

Senate Research Center

H.B. 1294
By: Rose (Williams)
State Affairs
5/19/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Section 51.014, Civil Practice and Remedies Code, authorizes an appeal of an interlocutory trial court order presenting a controlling question of law if an immediate appeal from the order may materially advance the ultimate termination of the litigation. The statute requires agreement of the parties before the appeal can be taken and before a stay pending appeal can be imposed. Texas courts of appeals have shown confusion about the procedure for taking a permissive appeal under Section 51.014.

H.B. 1294 removes the requirement of an agreement before an appeal is available for civil actions in which the amount in controversy exceeds \$100,000; provides that the parties may agree to a stay, or a party may request a stay, or a court may order a stay; provides a 20-day deadline for filing the application requesting permission to appeal; and clarifies the procedures for taking a permissive appeal under Section 51.014, Civil Practice and Remedies Code.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 51.014, by amending Subsections (d), (e), and (f), and adding Subsections (d-1) and (g) Civil Practice and Remedies Code, as follows:

(d) Authorizes a trial court in a civil action, rather than a district court, other than a suit affecting the parent-child relationship or a suit for divorce, or other than a suit under general maritime law or under the Jones Act, in which the amount in controversy exceeds \$100,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, to by written order permit an appeal from an interlocutory order that is not otherwise appealable if the interlocutory order to be appealed involves a controlling question of law that is determinative of the outcome as to which there is a substantial ground for difference of opinion, and an immediate appeal from the interlocutory order may materially advance the ultimate termination of the litigation and the interlocutory order is not reviewable by petition for writ of mandamus. Deletes existing text referring to the agreement of parties to the written order.

(d-1) Authorizes a trial court, in a suit affecting the parent-child relationship, a suit for divorce, a suit under general maritime law or under the Jones Act, or a civil action in which the amount in controversy does not exceed \$100,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, to permit an appeal under Subsection (d) if the criteria in Subdivisions (1)-(3) of that subsection are met and the parties agree to an interlocutory appeal in accordance with this section.

(e) Requires an order permitting an appeal under Subsection (d) or (d-1) to be included in the interlocutory order being appealed. Requires the order, if the interlocutory order addresses more than one question of law, to state which questions are subject to appeal.

(f) Provides that an appeal under Subsection (d) or (d-1) does not stay proceedings in the trial court unless the parties agree to a stay or the trial or appellate, rather than the district court orders a stay. Provides that if the trial or appellate court orders a stay of proceedings in the trial court, the stay expires on the date set by the court in accordance with this section. Requires the stay to expire not later than the 18-month anniversary of

the date on which the trial court signs the interlocutory order being appealed and prohibits the stay from being extended beyond that date. Prohibits the cumulative length of all stays granted under this section may not exceed 18 months, f more than one interlocutory appeal is allowed in the same civil action under Subsection (d) or (d-1), unless otherwise agreed by the parties. Deletes existing text relating to courts that are authorized to grant a stay in the proceedings. Makes conforming changes.

(g) Authorizes an appellate court to, in its discretion, accept an appeal permitted by Subsection (d) or (d-1) if the appealing party files in the court of appeals having appellate jurisdiction over the action a motion for leave to appeal. Requires the motion to be filed in the court of appeals not later than the 20th day after the date the trial court signs the order permitting the appeal. Requires the appealing party, if the court of appeals grants leave to appeal, to pursue the appeal in accordance with the procedures set forth in the Texas Rules of Appellate Procedure for an accelerated appeal. Provides that the date the court of appeals enters the order accepting the appeal starts the time for filing the notice of appeal. Deletes existing text relating to the appellate court authorizing an appeal.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.