

BILL ANALYSIS

Senate Research Center
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S.B. 494
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As Filed

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.

As proposed, S.B. 494 (1) removes the requirement of an agreement before an appeal is available; (2) provides that the parties may agree to a stay, or a party may request a stay, pending appeal; (3) provides a 10-day deadline for filing the application requesting permission to appeal; and (4) 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(d), (e), and (f), Civil Practice and Remedies Code, as follows:

(d) Authorizes a court in a civil action, rather than a district court, on a party's motion or on a trial court's own initiative by a written order, to permit an appeal from an interlocutory order that is not otherwise appealable if the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion, and an immediate appeal from the order may materially advance the ultimate termination of the litigation. Deletes existing text referring to the agreement of parties to the written order.

(e) Provides that an appeal under Subsection (d) does not stay proceedings in the trial court, rather than the district court, unless the parties agree to a stay or the trial or appellate court orders a stay of the proceedings pending appeal. Makes conforming changes.

(f) Authorizes an appellate court to accept an appeal permitted by Subsection (d) if the appealing party, no later than the 10th day after the day the trial court signs the order permitting the appeal, files in the court of appeals having appellate jurisdiction over the action an application for permission to appeal explaining why an appeal is warranted under Subsection (d). Requires the appealing party, if the court of appeals accepts the 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. Makes nonsubstantive changes.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.