



NEW TEXAS BUSINESS COURT BILL GOES INTO EFFECT

July 06, 2023

Texas has long championed itself as the best state for business in the country. In furtherance of that goal, the Texas Legislature recently passed a bill that undertook the most substantial reform of business litigation in the State of Texas over the past twenty years.

On June 9, Governor Abbott signed House Bill 19, which creates the first ever dedicated Business Courts in the state. These new courts were created to provide more consistency in decisions in a wide range of large (above \$5 million controversy) business disputes including shareholder derivative proceedings, breach of fiduciary duty claims, corporate governance issues and securities claims. Judges with specialized knowledge and expertise in handling complex commercial disputes will preside over the Business Courts, and notably, will be required to issue written opinions on their decisions to provide guidance on future disputes.

The bill will take effect on September 1, 2023 but will apply only to actions commencing on or after September 1, 2024.

What are the Business Courts?

The bill creates specialized courts that deal with complex commercial disputes in Texas. Proponents of the bill believe that it will result in more judicial efficiency and faster rulings from judges with expertise in business disputes.

The bill creates a statewide business court judicial district with 11 business court divisions. However, only five court divisions have been funded while the other six court divisions are reserved for future funding. The funded court divisions are in Dallas, Houston, San Antonio, Austin and Fort Worth.

Appeals from the Business Courts will be handled by a specialized Court of Appeals (the 15th Court of Appeals).

The Business Courts are to be staffed with judges (initially appointed by the governor with approval by the Senate), who possess specialized knowledge and expertise in handling complex business or commercial disputes. Specifically, the judges must have at least 10 years of experience in complex business litigation or business transaction law, and/or must have prior experience serving as a judge in these practice areas.

Unlike regular state courts, judges in the Business Courts are expected to issue written opinions regarding their decisions. This is intended to provide specific guidance to litigants on how future issues will be decided. Over time, the 15th Court of Appeals and the Business Courts should develop a robust canon of focused decisions that helps predictability of business transactions in the State of Texas, like the Delaware Court of Chancery.

It is also expected that the Business Courts will develop streamlined requirements on issues such as expedited scheduling and case management.

Who will be affected?

The Business Courts have jurisdiction over claims involving:

- For profit and non-profit organizations
- Corporations
- Owners of an organization
- Stakeholders or stockholders of corporations
- General or limited partners of organizations or corporations
- Governing authorities

What subject matters do the Business Courts have jurisdiction over?

- Cases in which the amount in controversy exceed \$5 million for:
 - Derivative proceedings
 - Breach of fiduciary duty claims
 - Matters of corporate governance
 - Claims for piercing the corporate veil
 - Securities claims
- Corporate disputes of any value if one party is publicly traded



- Disputes in which the amount in controversy exceeds \$10 million for cases involving business transactions
- Actions involving violations of the Finance Code or Business and Commerce Code

What claims will not be litigated in the Business Courts?

- Medical malpractice
- Personal injury or death
- Legal malpractice claims
- Matters involving probate law
- Family law
- Landlord-Tenant Disputes
- Claims under insurance policies
- Claims arising under covenants not to compete or deceptive trade practices
- Foreclosure actions or claims arising out of mechanic's liens or trusts
- Matters brought by or against government entities

How does it work?

The governor will appoint up to 15 judges with the Senate's consent. These judges have the same power as district court judges with the exception that they will only serve two-years terms.

Parties have the right to a jury trial as required by the constitution. Jury trials must be held in the county in which the action was filed. Trial rules and procedures are governed by the same rules and procedures of district courts.

How are the Business Courts invoked?

The Business Court must have jurisdiction over the case. Plaintiffs can bring their claims directly in the Business Court. Defendants can transfer qualifying cases into the Business Court.

What potential remedies may be granted?

Any relief that may be granted by a district court can be granted by the Business Courts including injunctions, declaratory judgments, mandamus and sequestrations.

How will this affect you?

Any claim between businesses and shareholders over a certain threshold will now need to be carefully scrutinized to determine if it triggers the jurisdiction of the Business Courts.

Clients may eventually find the Business Courts to be a more favorable forum for deciding complex issues especially issues requiring detailed scrutiny and analysis. Like federal district courts, these Business Courts may exercise more of a gatekeeper function, and more readily use motions to dismiss and motions for summary judgment to weed out cases where the language of the contract or case law is clear.

Further, by removing complex business disputes from existing courts' dockets, the Business Courts may make the existing courts more efficient, which will allow other civil litigation (*i.e.*, personal injury, employment disputes, smaller contract disputes, landlord-tenant) to progress more efficiently and with more specialization than the existing District Courts.

If you have any questions regarding this new bill, please contact Heath Cheek.

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