



TEXAS BUSINESS COURT EXPANDS REACH: HB 40 LOWERS THRESHOLDS AND BROADENS JURISDICTION

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Earlier this week, the Texas Legislature passed House Bill (HB) 40 which contains some significant changes to the new court system for complex business disputes. The most significant change is that HB 40 expanded the jurisdiction of the Texas Business Court by lowering the amount in controversy threshold for external business disputes and adding new types of claims to its subject matter jurisdiction. HB 40 also adds several provisions clarifying that various procedural rules apply to the Business Court and to promote the efficient administration of disputes.

Lowering the Amount in Controversy – Tex. Gov’t Code §§ 25A.004(d), (i)

HB 40 reduces the amount in controversy required for external business disputes from \$10 million to \$5 million. The external business disputes covered under § 25A.004(d) is broad and includes breach of contract, business torts, actions arising under the Finance Code (e.g., Unfair Debt Collection Act) and actions arising out of a violation of the Texas Business & Commerce Code (e.g., fraud in real estate or stock transactions, UCC, TUFTA, DTPA, trademark claims and restrictive covenants).

HB 40 also clarifies that, for purposes of calculating the amount in controversy, the sum includes “the total amount of all joined parties’ claims.” This means that a case could come within the Business Court’s jurisdiction and thus, be removable, because of the joinder of other parties that assert counterclaims or cross claims. This change essentially codifies the ruling in *C Ten 31 LLC v. John Tarbox et al.* where the Third Division of the Business Court held that “the amount in controversy requirement applies at the ‘action’ level, considering all claims . . . , rather than as a per-claim minimum.” Cause No. 24-BC03A-0004, at 15 (3rd Div. Tex. Bus. Ct., Jan. 3, 2025).

Addition of Intellectual Property Disputes – Tex. Gov’t Code § 25A.004(d)(4–5)

The Legislature amended the Business Court's jurisdiction of external disputes to now include intellectual property disputes. Specifically, any action arising out of "ownership, use, licensing, installation or performance of intellectual property" or the Texas Uniform Trade Secrets Act.

Addition of Appeals from Arbitration – Tex. Gov't Code § 25A.004(d-1)

HB 40 now also allows the Business Court to address actions to enforce arbitration agreements, appoint an arbitrator or review an arbitration award.

Changing Definition of "Qualified Transaction" – Tex. Gov't Code § 25A.001(14)

For the most common form of external business disputes brought in the Business Court (actions arising out of a "qualified transaction"), HB 40 changed the definition of "qualified transaction" to lower the amount at issue in the transactions to \$5 million matching the lower amount in controversy requirement under § 25A.004(d). HB 40 also expanded the definition of "qualified transaction" to include not just a single transaction, but also a "series of related transactions."

Removing Actions from pre-September 1, 2024 – Tex. Gov't Code § 25A.021

Dozens of parties tried to remove their cases when the Business Court opened on Sept. 1, 2024, despite the case beginning months or years before. Unfortunately for those parties, the statute creating the court system clarified at the very end that it applied to only actions commenced on or after Sept. 1, 2024.

HB 40 now allows the removal of actions that were filed before Sept. 1, 2024, but ONLY if all parties and the judge agree to the removal. This is a limited exception to the cutoff but can be useful if all parties see the value in having a complex issue decided by the Business Court.

Other smaller changes:

1. **Business Court Judge Unavailable:** in the event the assigned judge is unavailable, and a party is seeking an immediate ruling (namely, an injunction), § 65.022 of the Civil Practice & Remedies Code allows an attorney to request a different Business Court Judge to make the ruling.
2. **Removal deadline clarified:** the deadline to remove a case to the Business Courts is now the later of 30 days after service or when the party discovered the case was removable.
3. **Clean up provisions:** HB 40 adds "the business court" to numerous provisions of the Civil Practice & Remedies Code related to various administrative actions or procedures.

Context and Implications

Texas's shiny new Business Court system, intended to handle its most complex cases, just expanded its reach and made various changes improving its efficiency and administration. These changes will go in effect on September 1. However, these changes won't affect venue provisions already in contracts, so we recommend incorporating language into the venue provision of your contracts to require eligible

disputes to be brought in the new Business Court if you want that court to adjudicate future business disputes. We are happy to provide sample venue language to incorporate upon request.

HB 40 is expected to be signed by the Governor, but it has not yet been officially signed.

Related Practices

Litigation

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