

By: Leach

H.B. No. 4149

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the business court and the Court of Business Appeals to hear certain cases; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 2, Government Code, is amended by adding Chapter 24A to read as follows:

CHAPTER 24A. BUSINESS COURT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 24A.001. DEFINITIONS. In this chapter:

(1) "Controlling person" means a person who directly or indirectly controls a governing person, officer, or organization.

(2) "Governing documents" means the instruments, documents, or agreements adopted under an organization's governing law to govern the organization's formation and internal affairs.

The term includes:

(A) a certificate of formation, articles of incorporation, and articles of organization;

(B) bylaws;

(C) a partnership agreement;

(D) a company agreement or operating agreement;

(E) a shareholder agreement;

(F) a voting agreement or voting trust agreement;

and

1 (G) an agreement among owners restricting the
2 transfer of ownership interests.

3 (3) "Governing law" means the law governing the
4 formation and internal affairs of an organization.

5 (4) "Governing person" means a person who is entitled,
6 alone or as part of a group, to manage and direct an organization's
7 affairs under the organization's governing documents and governing
8 law. The term includes:

9 (A) a member of the board of directors of a
10 corporation or other organization;

11 (B) a general partner of a general or limited
12 partnership;

13 (C) a manager of a limited liability company that
14 is managed by its managers;

15 (D) a member of a limited liability company that
16 is managed by its members;

17 (E) a trust manager of a real estate investment
18 trust; and

19 (F) a trustee of a business trust.

20 (5) "Governmental entity" means:

21 (A) the state; or

22 (B) a political subdivision of the state,
23 including a municipality, a county, or any kind of district.

24 (6) "Internal affairs" means:

25 (A) the rights, powers, and duties of an
26 organization's governing persons, officers, owners, and members;
27 and

1 (B) matters relating to the organization's
2 membership or ownership interests.

3 (7) "Managerial official" means a governing person or
4 officer.

5 (8) "Officer" means a person elected, appointed, or
6 designated as an officer of an organization by the organization's
7 governing persons or by the organization's governing documents.

8 (9) "Organization" means a foreign or domestic entity
9 or association that is for profit or nonprofit. The term includes:

10 (A) a corporation;

11 (B) a limited partnership;

12 (C) a general partnership;

13 (D) a limited liability partnership;

14 (E) a limited liability company;

15 (F) a business trust;

16 (G) a real estate investment trust;

17 (H) a joint venture;

18 (I) a joint stock company;

19 (J) a cooperative;

20 (K) a bank;

21 (L) a credit union;

22 (M) a savings and loan association;

23 (N) an insurance company; and

24 (O) a series of a limited liability company or of
25 another entity.

26 (10) "Owner" means an owner of an organization. The
27 term includes:

1 (A) a shareholder or stockholder of a corporation
2 or other organization;

3 (B) a general or limited partner of a partnership
4 or an assignee of a partnership interest in a partnership;

5 (C) a member of, or an assignee of a membership
6 interest in, a limited liability company; and

7 (D) a member of a nonprofit organization.

8 (11) "Ownership interest" means an owner's interest in
9 an organization, including an owner's economic, voting, and
10 management rights.

11 (12) "Qualified transaction" means a qualified
12 transaction as that term is defined in Section 271.001, Business &
13 Commerce Code.

14 Sec. 24A.002. ADVISORY COUNCIL. (a) The governor shall
15 appoint a Business Court Nominations Advisory Council consisting of
16 seven members. A member of the council serves at the pleasure of
17 the governor.

18 (b) Members of the council must meet the requirements of
19 Section 24A.054 for judges of the business court and be experienced
20 in the areas of law in the jurisdiction of the business court.

21 (c) Not more than four members of the council may be
22 associated with the same political party as the governor.

23 (d) To fill a position of a business court judge on the
24 creation of the business court, the position of a court of business
25 appeals justice on the creation of the court of business appeals, or
26 on the occurrence of any subsequent vacancy on the business court or
27 court of business appeals, including a vacancy created by the

1 expiration of a judge's or justice's term of office, the council
2 shall provide the governor with a list of at least five candidates
3 for each vacancy. Each candidate must be well qualified to serve as
4 a judge or justice of the business court or the court of business
5 appeals.

6 (e) The governor may request that the council enlarge the
7 list for any vacancy by adding not to exceed five additional
8 qualified candidates.

9 (f) The governor must appoint a judge or justice to fill a
10 vacancy from the list of candidates submitted by the council.

11 SUBCHAPTER B. BUSINESS COURT

12 Sec. 24A.051. JURISDICTION. (a) The business court has
13 civil jurisdiction concurrent with district courts in:

14 (1) a derivative action on behalf of an organization;

15 (2) an action arising out of or relating to a qualified
16 transaction in which the amount in controversy exceeds \$10 million,
17 excluding interest, statutory damages, exemplary damages,
18 penalties, attorney's fees, and costs;

19 (3) an action regarding the governance or internal
20 affairs of an organization;

21 (4) an action in which a claim under a state or federal
22 securities or trade regulation law is asserted against:

23 (A) an organization;

24 (B) a governing person of an organization for an
25 act or omission by the organization or by the person in the person's
26 capacity as a governing person;

27 (C) a person directly or indirectly controlling

1 an organization for an act or omission by the organization; or

2 (D) a person directly or indirectly controlling a
3 governing person for an act or omission by the governing person;

4 (5) an action by an organization, or an owner or a
5 member of an organization, if the action:

6 (A) is brought against an owner, managerial
7 official, or controlling person of the organization; and

8 (B) alleges an act or omission by the person in
9 the person's capacity as an owner, managerial official, or
10 controlling person of the organization;

11 (6) an action alleging that an owner, managerial
12 official, or controlling person breached a duty, by reason of the
13 person's status as an owner, managerial official, or controlling
14 person, including the duty of care, loyalty, or good faith;

15 (7) an action seeking to hold an owner of an
16 organization, a member of an organization, or a governing person
17 liable for an obligation of the organization, other than on account
18 of a written contract signed by the person to be held liable in a
19 capacity other than as an owner, member, or governing person;

20 (8) an action in which the amount in controversy
21 exceeds \$10 million excluding interest, statutory damages,
22 exemplary damages, penalties, attorney's fees, and costs that:

23 (A) arise against, between, or among
24 organizations, governing authorities, governing persons, members,
25 or owners, relating to a contract transaction for business,
26 commercial, investment, agricultural, or similar purposes; or

27 (B) involve violations of the Finance Code or

1 Business & Commerce Code;

2 (9) an action brought under Chapter 37, Civil Practice
3 and Remedies Code, involving:

4 (A) the Business Organizations Code;

5 (B) an organization's governing documents; or

6 (C) a dispute based on claims that fall within
7 the provisions of this subsection; and

8 (10) an action arising out of the Business
9 Organizations Code.

10 (b) The business court has statewide jurisdiction of an
11 action described in Subsection (a) and all matters arising out of or
12 related to an action described in Subsection (a).

13 (c) The business court may grant any relief available in a
14 district court.

15 (d) Notwithstanding Subsections (a) and (b), the business
16 court:

17 (1) does not have jurisdiction of a civil
18 action brought by or against a governmental entity, unless the
19 governmental entity invokes or consents to the jurisdiction of the
20 business court; and

21 (2) must sever any claim in which a party seeks
22 recovery of monetary damages for personal injury or death or any
23 claim arising under Chapter 17, Business & Commerce Code, the
24 Estates Code, the Family Code, or Title 9, Property Code, unless all
25 parties and the business court judge agree that the claim may
26 proceed in the business court.

27 (e) If a claim is severed as provided by Subsection (d)(2),

1 the business court has discretion to stay or abate its own
2 proceedings pending resolution of the severed claim.

3 Sec. 24A.052. INITIAL FILING; REMOVAL AND REMAND; TRANSFER.

4 (a) An action in the jurisdiction of the business court may be
5 filed in the business court. If the business court does not have
6 subject matter jurisdiction of the action, or part of the action,
7 the court shall dismiss without prejudice to refileing the whole or
8 part of the action. A claim that is dismissed under this subsection
9 may be refiled in a court with jurisdiction by the party who filed
10 the claim in the business court not later than the 30th day after
11 the date the claim was dismissed by the business court,
12 notwithstanding the expiration of a period of limitation provided
13 by statute.

14 (b) A party to an action filed in a district court or county
15 court at law that is in the subject matter jurisdiction of the
16 business court may remove the action to the business court by filing
17 a notice of removal with the business court and the court in which
18 the action was originally filed. If the business court does not
19 have jurisdiction of the action or part of the action, the business
20 court shall remand the action, or the part in which the business
21 court does not have jurisdiction, to the court from which the action
22 was removed. A party may appeal an interlocutory order of the
23 business court that grants or refuses a remand under this
24 subsection to the court of business appeals.

25 (c) Removal of a case to the business court is not subject to
26 the statutes or rules governing the due order of pleading.

27 (d) Removal of a case does not waive a defect in venue or

1 constitute an appearance to determine personal jurisdiction.

2 (e) Any claim in which the business court does not have
3 jurisdiction under Section 24A.051(d) must be transferred to a
4 district court in a county in which the claim could have been
5 originally filed. If the claim could have been filed in more than
6 one county, the party bringing the claim may elect the county to
7 which the claim is transferred.

8 (f) A cause of action filed in the business court shall be
9 assigned to the docket of a judge on a rotating basis.

10 (g) The supreme court shall promulgate rules of civil
11 procedure providing for the timely and efficient removal and remand
12 of cases to and from the business court.

13 Sec. 24A.053. POWERS AND DUTIES. (a) The business court may
14 issue any writ necessary for the enforcement of the court's
15 jurisdiction, including a:

- 16 (1) writ of injunction;
17 (2) writ of mandamus;
18 (3) writ of sequestration;
19 (4) writ of attachment;
20 (5) writ of garnishment; and
21 (6) writ of supersedeas.

22 (b) The business court may answer a question regarding a
23 matter in the court's jurisdiction that is certified to the
24 business court by another court.

25 Sec. 24A.054. QUALIFICATIONS OF JUDGE. A judge of the
26 business court must:

- 27 (1) be at least 35 years of age;

1 (2) be a United States citizen;

2 (3) be a resident of this state for at least two years
3 before appointment; and

4 (4) be a licensed attorney in this state and have 10 or
5 more years of experience in:

6 (A) practicing complex civil business
7 litigation;

8 (B) practicing complex business transaction law;

9 (C) teaching courses in complex civil business
10 litigation or complex business transaction law at an accredited law
11 school in this state;

12 (D) serving as a judge of a court in this state
13 with civil jurisdiction; or

14 (E) any combination of experience described by
15 Paragraphs (A)-(D).

16 Sec. 24A.055. COMPOSITION OF COURT. (a) The business court
17 is composed of seven judges appointed by the governor with the
18 advice and consent of the senate.

19 (b) A business court judge may be reappointed.

20 (c) The governor may not appoint:

21 (1) more than three judges who reside in the same
22 county; or

23 (2) more than a majority of judges associated with the
24 same political party.

25 Sec. 24A.056. TERMS OF OFFICE. The judges of the business
26 court shall serve staggered six-year terms of office.

27 Sec. 24A.057. VACANCY. If a vacancy occurs on the business

1 court, the governor, with the advice and consent of the senate,
2 shall appoint, in the same manner as the original appointment,
3 another person to serve for the remainder of the unexpired term.

4 Sec. 24A.058. JUDICIAL AUTHORITY. A business court judge
5 has all powers, duties, immunities, and privileges of a district
6 judge.

7 Sec. 24A.059. JUDGE'S SALARY. (a) A business court judge
8 shall be paid a total annual salary from the state that is the sum
9 of:

10 (1) the salary paid to a district judge by the state
11 under Section [659.012](#); and

12 (2) the maximum amount of county contributions and
13 supplements allowed by law to be paid to a district judge under
14 Section [659.012](#).

15 (b) The salary shall be paid in equal monthly installments.

16 Sec. 24A.060. REMOVAL; DISQUALIFICATION AND RECUSAL. (a)
17 A business court judge may be removed from office in the same manner
18 and for the same reasons as a district judge.

19 (b) A business court judge is disqualified or shall recuse
20 himself or herself in a particular case for the same reasons as a
21 district judge. Disqualification or recusal of a business court
22 judge shall be governed by the same procedure as disqualification
23 or recusal of a district judge.

24 Sec. 24A.061. PRIVATE PRACTICE OF LAW. A business court
25 judge shall diligently discharge the duties of the office on a
26 full-time basis and may not engage in the private practice of law.

27 Sec. 24A.062. VISITING JUDGE. (a) A retired or former

1 judge or justice may be assigned as a visiting judge of the business
2 court by the chief justice of the supreme court. A visiting judge
3 of the business court is subject to objection, disqualification, or
4 recusal in the same manner as a retired or former judge or justice
5 is subject to objection, disqualification, or recusal if appointed
6 as a visiting district judge.

7 (b) A visiting judge must meet the qualifications of a
8 business court judge as provided by Section 24A.054.

9 (c) Before accepting an assignment as a visiting judge of
10 the business court, a retired or former judge or justice shall take
11 the constitutional oath of office required of appointed officers of
12 this state and file the oath with the supreme court.

13 Sec. 24A.063. JURY PRACTICE AND PROCEDURE. (a) A party in
14 an action pending in the business court has the right to a trial by
15 jury when required by the constitution.

16 (b) A jury trial shall be held in a county in which venue
17 would be found under Section 15.002, Civil Practice and Remedies
18 Code.

19 (c) Subject to Subsection (b), a jury trial in a case
20 removed to the business court shall be held in the county in which
21 the action was originally filed.

22 (d) Subject to Subsection (b), a jury trial in a case filed
23 initially in the business court shall be held in any county in which
24 it could have been filed under Section 15.002, Civil Practice and
25 Remedies Code, as chosen by the plaintiff.

26 (e) The parties and the business court judge may agree to
27 hold the jury trial in any other county. A party may not be required

1 to agree to hold the jury trial in a different county.

2 (f) The drawing of jury panels, selection of jurors, and
3 other jury-related practice and procedure in the business court
4 shall be the same as for the district court in the county in which
5 the trial is held.

6 (g) Practice, procedure, rules of evidence, issuance of
7 process and writs, and all other matters pertaining to the conduct
8 of trials, hearings, and other business in the business court are
9 governed by the laws and rules prescribed for district courts.

10 (h) The business court may adopt rules of practice, which
11 must be approved by the supreme court.

12 Sec. 24A.064. COURT LOCATION; STAFFING. (a) The business
13 court shall have a clerk, whose office shall be located in Travis
14 County in facilities provided by the state. The clerk shall:

15 (1) receive all filings in the business court; and

16 (2) fulfill the legal and administrative functions of
17 a district clerk and an appellate court clerk.

18 (b) The judges of the business court shall maintain chambers
19 in the county seat of their county of residence in facilities
20 provided by the state.

21 (c) Subject to Section 24A.063, the business court, or any
22 judge of the business court, may hold court at any location in the
23 state, as the court determines is necessary or convenient for a
24 particular civil action.

25 (d) The business court shall use the most advanced
26 technology feasible when necessary and appropriate to facilitate
27 expeditious proceedings in matters brought before the court. As

1 determined by the business court, counsel and parties may appear
2 before the business court by means of Internet-based or other
3 technological devices rather than in person.

4 (e) In a county in which the business court sits, the
5 sheriff shall in person or by deputy attend the business court as
6 required by the court. The sheriff or deputy is entitled to be
7 reimbursed by the state for the cost of attending court.

8 (f) Subject to any limitations provided by the General
9 Appropriations Act, the business court may appoint personnel
10 necessary for the operation of the court, including:

- 11 (1) the clerk of the court;
- 12 (2) staff attorneys for the court;
- 13 (3) staff attorneys for each business court judge;
- 14 (4) court coordinators; and
- 15 (5) administrative assistants.

16 (g) The court officials shall perform the duties and
17 responsibilities of their offices and are entitled to the
18 compensation, fees, and allowances prescribed by law for the
19 offices.

20 Sec. 24A.065. FEES. The business court shall provide rates
21 for fees associated with filings and actions in the business court.
22 The fees shall be set at a sufficient amount to cover the costs of
23 administering the provisions of this chapter, taking into account
24 fee waivers in the interest of justice.

25 Sec. 24A.066. SEAL. The seal of the business court is the
26 same as that provided by law for a district court except that the
27 seal must contain the name "The Business Court of Texas."

1 SUBCHAPTER C. COURT OF BUSINESS APPEALS

2 Sec. 24A.101. APPEAL; COURT OF BUSINESS APPEALS. (a) An
3 appeal from an order or judgment of the business court is available
4 in the same manner as an appeal from an order or judgment of a
5 district court. The procedure governing an appeal from an order or
6 judgment of a business court is the same as an appeal from an order
7 or judgment of a district court.

8 (b) The governor shall appoint seven active justices from
9 the courts of appeals to serve as the intermediate appellate court,
10 called the court of business appeals.

11 (c) The appointment of a justice to the court of business
12 appeals shall be made by the governor from the list of qualified
13 appellate justices as provided by Section 24A.002.

14 (d) A justice of the court of business appeals must meet the
15 qualifications of a judge of the business court as provided by
16 Section 24A.054.

17 Sec. 24A.102. CHIEF JUSTICE. The governor shall designate
18 one of the seven justices appointed under Section 24A.101 as the
19 chief justice of the court of business appeals.

20 Sec. 24A.103. COMPOSITION OF COURT. Not more than three
21 justices appointed to the court of business appeals may be from the
22 same court of appeals.

23 Sec. 24A.104. TERM OF OFFICE. A justice appointed under
24 Section 24A.101 shall serve on the court of business appeals for a
25 six-year term of office. A justice may be reappointed by the
26 governor. A justice who retires or resigns from or is not reelected
27 to the court of appeals must cease service on the court of business

1 appeals on the date the justice is no longer serving on the court of
2 appeals.

3 Sec. 24A.105. PANEL. The justices appointed to the court of
4 business appeals shall sit in randomly selected panels of three to
5 hear and determine appeals from the business court.

6 Sec. 24A.106. LOCATION. The justices hearing appeals from
7 the business court may sit in any convenient place to hear the
8 appeal.

9 Sec. 24A.107. JUDGMENT. The court of business appeals
10 shall render judgments and hand down opinions in the same manner as
11 any other court of appeals under Chapter 22.

12 Sec. 24A.108. REVIEW. (a) A party may seek an en banc
13 review of a decision of a panel of the court of business appeals.

14 (b) A party to an order or judgment of the business court or
15 the court of business appeals may file a petition for review in the
16 supreme court in the same manner and circumstances as a party to an
17 order or judgment of a district court or court of appeals.

18 Sec. 24A.109. CLERK. The clerk of the business court shall
19 serve as the clerk of the court of business appeals.

20 Sec. 24A.110. COMPENSATION. A justice of the court of
21 business appeals shall receive compensation equal to that of the
22 chief justice of a court of appeals, including the maximum amount of
23 local contributions. The compensation is in lieu of, not in
24 addition to, a justice's compensation for service on the court of
25 appeals.

26 Sec. 24A.111. SEAL. The seal of the court of business
27 appeals is the same as that provided by law for a court of appeals

1 except that the seal must contain the name "The Court of Business
2 Appeals of Texas."

3 SECTION 2. (a) As soon as practicable after the effective
4 date of this Act, the governor shall appoint judges to the business
5 court, as required by Sections 24A.002(f) and 24A.055, Government
6 Code, as added by this Act, as follows:

7 (1) the governor shall appoint two judges to a term
8 expiring December 31, 2020;

9 (2) the governor shall appoint two judges to a term
10 expiring December 31, 2022; and

11 (3) the governor shall appoint three judges to a term
12 expiring December 31, 2024.

13 (b) As soon as practicable after the effective date of this
14 Act, the governor shall appoint justices to the court of business
15 appeals, as required by Section 24A.101, Government Code, as added
16 by this Act.

17 SECTION 3. The changes in law made by this Act apply to
18 civil actions commenced on or after January 1, 2020.

19 SECTION 4. (a) The Supreme Court of Texas has exclusive and
20 original jurisdiction over a challenge to the constitutionality of
21 this Act or any part of this Act and may issue injunctive or
22 declaratory relief in connection with the challenge.

23 (b) If the appointment of judges by the governor to the
24 business court under Section 24A.055, Government Code, as added by
25 this Act, is held by the Supreme Court of Texas as unconstitutional,
26 the business court shall be staffed by sitting or retired judges who
27 are appointed by the supreme court.

1 (c) If the appointment of a justice by the governor to the
2 court of business appeals under Section 24A.101, Government Code,
3 as added by this Act, is held by the Supreme Court of Texas as
4 unconstitutional, the court of business appeals shall be staffed by
5 sitting or retired justices who are appointed by the supreme court.

6 SECTION 5. This Act takes effect September 1, 2019.