

NEW TEXAS BUSINESS COURT

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By: Daryl B. Robertson, Copyright Reserved 2023¹

I. Introduction

House Bill No. 19 (as amended, “*HB 19*”) has been passed by the 2023 Texas Legislature in its Regular Session. *HB 19* was originally authored by Representatives Murr, Leach, Landgraf, Meyer and Lujan and then co-authored by 72 other House members. *HB 19* was sponsored in the Texas Senate by Senator Bryan Hughes. It is expected that *HB 19* will be signed into law by Governor Abbott because a business courts bill was one of the Governor’s top priorities. If signed into law, *HB 19* will become effective on September 1, 2023.² *HB 19* adds a new Chapter 25A to the Texas Government Code that establishes a business court for the State of Texas.³ This article is a summary only of *HB 19* and should not be relied on as a complete description of that bill.

II. Creation and Divisions

HB 19 creates a statutory court under § 1, Article V of the Texas Constitution and calls the new court a business court.⁴ Although *HB 19* itself is effective on September 1, 2023, the business court will start hearing cases after September 1, 2024.⁵ However, a provision in *HB 19* specifies that the business court is not created unless the Texas Legislature makes a specific appropriation of money for that purpose.⁶ I have been advised that the funds for the business court have been appropriated by the Texas Legislature in this session.

New Chapter 25A specifies that the judicial district of the business court is composed of all counties in Texas. The business court is composed of 11 divisions. Five of these divisions have no subsequent conditions to their creation. These are the First Business Court Division, Third Business Court Division, Fourth Business Court Division, Eighth Business Court Division and Eleventh Business Court Division. The other six Business Court Divisions will be abolished on September 1, 2026, unless reauthorized by the 2025 Texas Legislature and funded through additional legislative appropriations at that time.⁷ The Business Court Divisions are defined to match their correspondingly numbered Administrative Judicial Regions, as defined in Section 72.042 of the Texas Government Code.⁸ The First Administrative Judicial Region is composed of the counties of Collin, Dallas, Ellis, Fannin, Grayson, Kaufman, and Rockwall. The Third Administrative Judicial Region is composed of the counties of Austin, Bell, Blanco, Bosque, Burnet, Caldwell, Colorado, Comal, Comanche, Coryell, Falls, Fayette, Gonzales, Guadalupe, Hamilton, Hays, Hill, Lampasas, Lavaca, Llano, McLennan, Milam, Navarro, Robertson, San Saba, Travis, and Williamson. The Fourth Administrative Judicial Region is composed of the counties of Aransas, Atascosa, Bee, Bexar, Calhoun, DeWitt, Dimmit, Frio, Goliad, Jackson, Karnes, LaSalle, Live Oak, Maverick, McMullen, Refugio, San Patricio, Victoria, Webb, Wilson,

¹ The author is a partner in the Dallas, Texas office of Hunton Andrews Kurth LLP.

² *HB 19* §9.

³ *HB 19* §1, adding Gov. Code Chapter 25A.

⁴ *HB 19* §1, adding Gov. Code §25A.002.

⁵ *HB 19* §5.

⁶ *HB 19* §7(a).

⁷ *HB 19* §1, adding Gov. Code §25A.003.

⁸ *Id.*, adding Gov. Code §25A.003(c) - (m).

Zapata, and Zavala. The Eighth Administrative Judicial Region is composed of the counties of Archer, Clay, Cooke, Denton, Eastland, Erath, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Somervell, Stephens, Tarrant, Wichita, Wise, and Young. The Eleventh Administrative Judicial Region is composed of the counties of Brazoria, Fort Bend, Galveston, Harris, Matagorda, and Wharton.

III. Powers of Business Court

The business court has the powers provided to Texas district courts by Chapter 24 of the Government Code, including the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, and supersedeas and to grant any relief that may be granted by a district court.⁹ A business court judge has all the powers, duties, immunities and privileges of a district judge.¹⁰

IV. Jurisdiction of Business Court

The business court has civil jurisdiction concurrent with district courts in two different sets of specified actions -- one set in which the amount in controversy exceeds \$5,000,000 and the second set in which the amount in controversy exceeds \$10,000,000. In each case, the minimum amount in controversy excludes interest, statutory damages, exemplary damages, penalties, attorneys' fees and court costs. The specified \$5 million-minimum actions include a (1) a derivative proceeding, (2) an action regarding the governance, governing documents or internal affairs of an organization, (3) an action in which a claim under a state or federal securities or trade regulation law is asserted against (a) an organization, (b) a controlling person or managerial official of an organization for an act or omission by the organization or by the person in the person's capacity as such, (c) an underwriter of securities issued by the organization or (d) the auditor of an organization, (4) an action by an organization, or an owner of an organization, if the action is brought against an owner, controlling person or managerial official of the organization and alleges an act or omission by that person in the person's capacity as such, (5) an action alleging that an owner, controlling person or managerial official breached a duty owed to a organization or an owner of an organization, including breach of a duty of loyalty or good faith, (6) an action seeking to hold an owner or governing person of an organization liable for an obligation of the organization, other than on account of a written contract signed by that person in a capacity other than as an owner or governing person, and (7) an action arising out of the Texas Business Organizations Code.¹¹ However, the \$5,000,000 minimum for the amount in controversy does not apply if a party to the action is a publicly traded company.¹² For that purpose, "publicly traded company" means an entity whose voting equity securities are listed on a national securities exchange registered with the United States Securities and Exchange Commission under Section 6, Securities Exchange Act of 1934 (15 U.S.C. Section 78f) and any entity that is majority owned or controlled by such an entity.¹³

⁹ *Id.*, adding Gov. Code §25A.004(a).

¹⁰ *Id.*, adding Gov. Code §25A.005.

¹¹ *Id.*, adding Gov. Code §25A.004(b).

¹² *Id.*, adding Gov. Code §25A.004(c).

¹³ *Id.*, adding Gov. Code §25A.001(13).

For purposes of the foregoing list of specified actions, it should be noted that “controlling person” is unusually and broadly defined by new Chapter 25A to mean a person who directly or indirectly controls a governing person, officer or organization, so in theory there could be a controlling person of an individual director or officer.¹⁴ Also, “organization” is very broadly defined to mean a foreign or domestic entity or association, regardless of whether the organization is for profit or nonprofit, including: (A) a corporation; (B) a limited partnership; (C) a general partnership; (D) a limited liability partnership; (E) a limited liability company; (F) a business trust; (G) a real estate investment trust; (H) a joint venture; (I) a joint stock company; (J) a cooperative; (K) a bank; (L) a credit union; (M) a savings and loan association; (N) an insurance company; and (O) a series of a limited liability company or of another entity.¹⁵ For Texas lawyers familiar with the Texas Business Organizations Code (the “TBOC”), the terms “governing person,” “governing documents,” “internal affairs,” “managerial official,” “officer,” and “owner” are defined in new Chapter 25A in a substantively similar manner to their definitions in the TBOC.¹⁶ Finally, “derivative proceeding” is defined to mean a civil action brought in the right of a domestic or foreign corporation, a domestic or foreign limited liability company, or a domestic or foreign limited partnership, to the extent provided by the TBOC.¹⁷

The specified \$10 million-minimum actions include: (1) an action arising out of a “qualified transaction;” (2) an action that arises out of a contract or commercial transaction in which the parties to the contract or transaction agreed in the contract or a subsequent agreement that the business court has jurisdiction of the action, except an action that arises out of an insurance contract, and (3) an action that arises out of a violation of the Texas Finance Code or Texas Business & Commerce Code by an organization or an officer or governing person acting on behalf of an organization, other than a bank, credit union or savings and loan association.¹⁸ The phrase “qualified transaction” is defined in Chapter 25A to mean a transaction under which a party: (A) pays or receives, or is obligated to pay or is entitled to receive, consideration with an aggregate value of at least \$10 million; or (B) lends, advances, borrows, receives, is obligated to lend or advance, or is entitled to borrow or receive money or credit with an aggregate value of at least \$10 million. However, the phrase excludes a transaction involving a loan or an advance of money or credit by a bank, credit union, or savings and loan institution.¹⁹

The business court has civil jurisdiction concurrent with district courts in an action seeking injunctive relief or a declaratory judgment under Chapter 37 of the Texas Civil Practice and Remedies Code involving a dispute based on a claim within any of the court's jurisdiction described above.²⁰ The business court also has supplemental jurisdiction over any other claim related to a case or controversy within the court’s jurisdiction that forms part of the same case or controversy. However, such supplemental claim may proceed in the business court only on the agreement of all parties to the claim and a judge of the business court division in which the action is pending. If the parties involved do not agree on the claim proceeding in the business court, the

¹⁴ *Id.*, adding Gov. Code §25A.001(1).

¹⁵ *Id.*, adding Gov. Code §25A.001(10).

¹⁶ *Id.*, adding Gov. Code §25A.001(3), (5), (7), (8), (9), (11).

¹⁷ *Id.*, adding Gov. Code §25A.001(2).

¹⁸ *Id.*, adding Gov. Code §25A.004(d).

¹⁹ *Id.*, adding Gov. Code §25A.001(14).

²⁰ *Id.*, adding Gov. Code §25A.004(e).

claim may proceed in a court of original jurisdiction concurrently with any related claims proceeding in the business court.²¹

Notwithstanding the foregoing, the business court does not have jurisdiction over the following claims: (1) a health care liability claim arising under Chapter 74 of the Texas Civil Practices and Remedies Code, (2) a claim in which a party seeks recovery of monetary damages for bodily injury or death, or (3) a claim of legal malpractice.²² In addition, unless the claim falls within the business court’s supplemental jurisdiction, the business court does not have jurisdiction over (1) a civil action brought by or against a governmental entity or to foreclose on a lien on real or personal property, (2) a claim arising out of Subchapter E of Chapter 15 (which governs covenants not to compete) and Chapter 17 (relating to deceptive trade practices) of the Texas Business & Commerce Code (“*TBCC*”), the Texas Estates Code, the Texas Family Code, the Texas Insurance Code or Chapter 53 (which governs mechanic’s liens) and Title 9 (which governs trusts) of the Texas Property Code, (3) a claim arising out of the production or sale of a farm product as defined in *TBCC* § 9.102, (4) a claim related to a consumer transaction, as defined in *TBCC* § 601.001, to which a consumer in Texas is a party arising out of a violation of federal or state law, or (5) a claim related to the duties and obligations under an insurance policy.²³

V. Qualification of Business Court Judges

To qualify to be appointed as a business court judge, a person must be at least 35 years of age and a United States citizen and have been a resident of a county within the division of the business court to which the judge is appointed for at least five years before appointment and must be a licensed attorney in Texas who has 10 or more years of experience in: (a) practicing complex civil business litigation; (b) practicing business transaction law; (c) serving as a judge of a court in Texas with civil jurisdiction; or (d) any combination of experience described in (a) – (c).²⁴ A business court judge may not have had his or her license to practice law revoked, suspended or subject to a probated suspension.²⁵

VI. Appointment of Business Court Judges

The Governor of Texas is required by new Chapter 25A to appoint judges to the First, Third, Fourth, Eighth and Eleventh Business Court Divisions as soon as practicable after the effective date of HB 19, which is September 1, 2023.²⁶ Between July 1, 2026 and September 1, 2026, the Governor is required to appoint judges to the remaining six divisions of the business court.²⁷ The Governor has to appoint two judges to each of the First, Third, Fourth, Eighth and Eleventh Business Court Divisions and one judge to each of the remaining divisions of the business court.²⁸ A business court judge serves for a term of two years beginning on September 1 of every even-numbered year. Business court judges may be reappointed. Any appointments by the

²¹ *Id.*, adding Gov. Code §25A.004(f).

²² *Id.*, adding Gov. Code §25A.004(h).

²³ *Id.*, adding Gov. Code §25A.004(g).

²⁴ *Id.*, adding Gov. Code §25A.008(a).

²⁵ *Id.*, adding Gov. Code §25A.008(b).

²⁶ HB 19 §6(a).

²⁷ HB 19 §6(b).

²⁸ HB 19 §1, adding Gov. Code §25A.009(a).

Governor are with the advice and consent of the Texas Senate.²⁹ If a vacancy occurs in a judge position on the business court, the Governor, with the advice and consent of the Senate, must appoint another person to serve for the remainder of the unexpired term.³⁰ A business court judge may be removed from office in the same manner and for the same reasons as a district judge. A judge is disqualified and subject to mandatory recusal for the same reasons a district judge is subject to disqualification or recusal in a pending case, pursuant to the same procedures as used for a district judge.³¹ A business court judge is considered to be a full-time job, and the judge may not engage in the private practice of law.³²

The Chief Justice of the Texas Supreme Court can assign, as a visiting judge of a division of the business court, a retired or formal judge or justice who satisfies the qualifications required of a business court judge. A visiting judge on the business court is subject to objection, disqualification or recusal in the same manner as a visiting district judge.³³

The Texas Supreme Court has exclusive and original jurisdiction over any challenge to the constitutionality of HB 19 or any part thereof and may issue injunctive or declaratory relief in connection with the challenge. If the appointment of judges by the Texas Governor to the business court is held by the Texas Supreme Court as unconstitutional, the business court will instead be staffed by retired or former judges or justices who are appointed to the business court as provided for visiting judges and justices in Chapter 25A. Such appointments would be by the Chief Justice of the Supreme Court and not the Governor.³⁴

VII. Jury Trials

A party in an action pending in the business court has the right to a jury trial when required by the Texas Constitution. A jury trial in a case filed initially in the business court must be held in any county in which the case could have been filed under Texas Civil Practice and Remedies Code § 15.002 as chosen by the plaintiff. A jury trial in a case removed to the business court must be held in the county in which the action was originally filed. However, a jury trial for a case in which a written contract specifies a county as venue for lawsuits must be held in that county. The parties and the business court judge may agree to hold the jury trial in any other county, but a party may not be required to agree to hold the jury trial in a different county. The drawing of jury panels, selection of jurors and other jury-related practice and procedure in the business court must be the same as for the district court in the county in which the trial is held.³⁵

VIII. Initial Filing, Removal and Remand

An action within the jurisdiction of the business court may be filed in the business court. The party filing the action must plead facts to establish venue in a county in a division of the business court, and the business court is required to assign the action to that division. Venue may

²⁹ *Id.*, adding Gov. Code §25A.009(a) – (c).

³⁰ *Id.*, adding Gov. Code §25A.010.

³¹ *Id.*, adding Gov. Code §25A.012.

³² *Id.*, adding Gov. Code §25A.013.

³³ *Id.*, adding Gov. Code §25A.014(a).

³⁴ HB 19 §4.

³⁵ HB 19 §1, adding Gov. Code §25A.015(a) – (f).

be established as provided by law or, if a written contract specifies a county as venue for the action, as provided by the contract.³⁶

If the business court does not have jurisdiction of the action, the court must, at the option of the party filing the action, either transfer the action to a district court or county court at law in a county of proper venue or dismiss the action without prejudice to the party's rights.³⁷ After an action is assigned to a division of the business court, if the business court determines that the division's geographic territory does not include a county of proper venue for the action, the court must: (1) if an operating division of the business court includes a county of proper venue, transfer the action to that division; or (2) if there is not an operating division of the business court that includes a county of proper venue, at the option of the party filing the action, transfer the action to a district court or county court at law in a county of proper venue.³⁸

A party to an action filed in a district court or county court at law that is within the jurisdiction of the business court may remove the action to the business court. If the business court does not have jurisdiction of the action, the business court must remand the action to the court in which the action was originally filed.³⁹ A party to an action filed in a district court or county court at law in a county of proper venue that is not within an operating division of the business court or the judge of the court in which the action is filed may not remove or transfer the action to the business court.⁴⁰

The right to remove an action to the business court has a time deadline. A party may file an agreed notice of removal at any time during the pendency of the action. If all parties to the action have not agreed to remove the action, the notice of removal must be filed: (1) not later than the 30th day after the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's jurisdiction over the action; or (2) if an application for temporary injunction is then pending, not later than the 30th day after the date such application is granted, denied, or denied as a matter of law.⁴¹ The notice of removal must be filed with the business court and the court in which the action was originally filed. On receipt of the notice, the clerk of the court in which the action was originally filed is required immediately to transfer the action to the business court in accordance with rules adopted by the Texas Supreme Court, and the business court clerk must assign the action to the appropriate division of the business court.⁴²

The judge of a court in which an action is filed may request the presiding judge for the court's administrative region to transfer the action to the business court if the action is within the business court's jurisdiction. The judge is required to notify all parties of the transfer request and request a hearing on the transfer request. After a hearing on the request, the presiding judge may transfer the action to the business court if the presiding judge finds the transfer will facilitate the

³⁶ *Id.*, adding Gov. Code §25A.006(a).

³⁷ *Id.*, adding Gov. Code §25A.006(b).

³⁸ *Id.*, adding Gov. Code §25A.006(c).

³⁹ *Id.*, adding Gov. Code §25A.006(d).

⁴⁰ *Id.*, adding Gov. Code §25A.006(e).

⁴¹ *Id.*, adding Gov. Code §25A.006(f).

⁴² *Id.*, adding Gov. Code §25A.006(g).

fair and efficient administration of justice. The business court clerk must assign an action that is so transferred to the appropriate division of the business court.⁴³

Upon establishment of jurisdiction and venue over an action, the business court judge must by order declare the county in which any jury trial for the action will be held as determined under Chapter 25A.⁴⁴

IX. Appeals

According to HB 19, except in instances when the Texas Supreme Court has concurrent or exclusive jurisdiction, the Fifteenth Court of Appeals has exclusive jurisdiction over an appeal from an order or judgment of the business court or an original proceeding relating to an action or order of the business court.⁴⁵ The Fifteenth Court of Appeals was created by another bill that was passed in the 2023 Texas Legislature.⁴⁶ That appellate court has statewide jurisdiction and will be located in Austin, Texas. The procedures governing an appeal or original proceeding from the business court are the same as the procedures for an appeal or original proceeding from a district court.⁴⁷

X. Opinions, Fees and Rules of Civil Procedure

The Supreme Court is required to adopt rules for the issuance of written opinions by the business court⁴⁸ and to set fees for filings and actions in the business court in amounts sufficient to cover the cost of administering the business court, taking into account fee waivers necessary for the interest of justice.⁴⁹ The Supreme Court must also adopt rules of civil procedure for the business court as the Supreme Court determines necessary, including rules providing for the timely and efficient removal and remand of cases to and from the business court and the assignment of cases to judges of the business court. The business court itself may adopt rules of practice and procedure consistent with the Texas Rules of Civil Procedure and the Texas Rules of Evidence.⁵⁰ Except as otherwise provided in new Chapter 25A, the practices, procedures, rules of evidence, issuance of process and writs and all other matters pertaining to the conduct of trials, hearings and other business in the business court is governed by the laws and rules prescribed for Texas district courts.⁵¹

XI. Administration of the Business Court

The appointed business court judges, by majority vote, must select one of their members to serve as administrative presiding judge for the duration of the term. The selection must occur

⁴³ *Id.*, adding Gov. Code §25A.006(k).

⁴⁴ *Id.*, adding Gov. Code §25A.006(l).

⁴⁵ *Id.*, adding Gov. Code §25A.007(a).

⁴⁶ Senate Bill 1045 by Sen. Huffman. The 15th Court of Appeals essentially has exclusive statewide jurisdiction over appeals related to claims by or against the state government or any state agencies or a matter relating to the constitutionality of any state law or rule.

⁴⁷ HB 19 §1, adding Gov. Code §25A.007(c).

⁴⁸ *Id.*, adding Gov. Code §25A.016.

⁴⁹ *Id.*, adding Gov. Code §25A.019.

⁵⁰ *Id.*, adding Gov. Code §25A.021.

⁵¹ *Id.*, adding Gov. Code §25A.015(g).

not later than the seventh day after the first day of a term. If a vacancy occurs in the position of administrative presiding judge, the remaining business court judges must select as soon as practicable a judge of the court to serve as administrative presiding judge for the remainder of the unexpired term.⁵²

The administrative presiding judge of the business court must manage administrative and personnel matters on behalf of the business court and must appoint a clerk whose office is to be located in Travis County in facilities provided by the State of Texas. The clerk must accept all filings in the business court and fulfill the legal and administrative functions of a district clerk.⁵³ Each business court judge must maintain chambers in the county the judge selects within the geographic boundaries of the division to which the judge is appointed in facilities provided by the State of Texas.⁵⁴ A business court judge may hold court at any courtroom within the geographic boundaries of the division to which the judge is appointed as the court determines necessary or convenient for a particular civil action. To the extent practicable, a county using existing courtrooms or facilities must accommodate the business court in the conduct of the court's hearings and other proceedings.⁵⁵

Remote proceedings, other than a jury trial, may be conducted in the business court to facilitate the resolution of a matter before the court. However, the business court may not require a party or attorney to remotely attend a court proceeding in which oral testimony is heard unless the parties agree.⁵⁶ The business court must provide reasonable notice to the public that a proceeding will be conducted remotely and an opportunity for the public to observe the remote proceeding.⁵⁷

In a county in which a business court division sits, the sheriff, in person or by deputy, must attend the business court as required by the court. The sheriff or deputy is entitled to reimbursement from the State of Texas for the cost of attending the business court.⁵⁸ The business court has authority to appoint personnel necessary for the operation of the court, including personnel to assist the clerk of the court, staff attorneys for the court, staff attorneys for each judge of the business court, court coordinators and administrative assistants.⁵⁹ All personnel, including the business court clerk, are employees of the Office of Court Administration of the Texas Judicial System and are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations.⁶⁰ The business court is administratively attached to the Office of Court Administration of the Texas Judicial System, but that Office does not have the have any authority or responsibility related to the duties of the business court. That Office must provide administrative support to the business court as necessary to enable the

⁵² *Id.*, adding Gov. Code §25A.009(d).

⁵³ *Id.*, adding Gov. Code §25A.017(b).

⁵⁴ *Id.*, adding Gov. Code §25A.017(c).

⁵⁵ *Id.*, adding Gov. Code §25A.017(d).

⁵⁶ *Id.*, adding Gov. Code §25A.017(e).

⁵⁷ *Id.*, adding Gov. Code §25A.017(g).

⁵⁸ *Id.*, adding Gov. Code §25A.017(h).

⁵⁹ *Id.*, adding Gov. Code §25A.017(i).

⁶⁰ *Id.*, adding Gov. Code §25A.017(k).

business court to carry out its duties under Chapter 25A and may employ personnel necessary to provide administrative support to the business court.⁶¹

To promote the orderly and efficient administration of justice, the business court judges may exchange benches and sit and act for each other in any matter pending before the court.⁶²

XII. Annual Report

The Office of Court Administration of the Texas Judicial System is required to submit to the Texas Legislature a report on the number and types of cases heard by the business court in the preceding year. Such report must be submitted no later than December 1 of each year with respect to the preceding year.⁶³

⁶¹ *Id.*, adding Gov. Code §25A.018(a) – (d).

⁶² *Id.*, adding Gov. Code §25A.009(f).

⁶³ *Id.*, adding Gov. Code §25A.018(e).