

BILL ANALYSIS

C.S.H.B. 1603
By: Villalba
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties explain that chancery courts are courts with general jurisdiction to facilitate the expeditious, consistent, and reliable resolution of business disputes and to ensure timely adjudication of complex business and commercial disputes. These parties contend that such courts could provide relief to the overburdened district court system by creating an alternative venue for certain types of docket clogging and highly technical disputes. C.S.H.B. 1603 seeks to create a chancery court.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 1603 amends the Government Code to create a seven-member chancery court that has civil jurisdiction concurrent with district courts in specified actions relating to certain for-profit or nonprofit organizations and their owners or other members and certain business transactions. The bill establishes that the chancery court has statewide jurisdiction of such actions and all matters arising out of or related to such actions and authorizes the chancery court to grant any relief available in a district court.

C.S.H.B. 1603 establishes that the chancery court does not have jurisdiction of a civil action brought by or against a governmental entity, unless the governmental entity invokes or consents to the jurisdiction of the chancery court, or a civil action brought pursuant to Business & Commerce Code provisions governing deceptive trade practices, the Estates Code, the Family Code, or Property Code provisions governing trusts, unless all parties consent to the jurisdiction of the chancery court. The bill requires the chancery court to sever any claim in which a party seeks recovery of monetary damages for personal injury or death, unless all parties and the chancery court judge agree that the claim may proceed in the chancery court. The bill requires a cause of action brought pursuant to Business & Commerce Code provisions governing deceptive trade practices, the Estates Code, the Family Code, or Property Code provisions governing trusts in which a party objects to jurisdiction to be severed from any other claim brought under the bill's provisions.

C.S.H.B. 1603 sets out provisions relating to the initial filing, removal and remand, and transfer of an action in the chancery court and requires the Supreme Court of Texas to promulgate rules of civil procedure providing for the timely and efficient removal and remand of cases to and

from the chancery court. The bill authorizes the chancery court to issue any writ necessary for the enforcement of the court's jurisdiction and to answer a question regarding a matter in the court's jurisdiction that is certified to the chancery court by another court. The bill requires a judge of the chancery court to be at least 35 years of age, a United States citizen, a resident of Texas for at least two years before appointment, and a licensed attorney in Texas with 10 or more years of certain specified experience. The bill sets out provisions relating to the following: the composition of the chancery court; the term of office for a chancery court judge; procedures for filling a vacancy on the chancery court; a chancery court judge's salary and frequency of payment; the removal, disqualification, and recusal of a chancery court judge; the assignment of a visiting judge to the chancery court; jury practice and procedure for the chancery court; chancery court location and staffing; and the seal of the chancery court. The bill requires the chancery court to provide rates for fees associated with filings and actions in the chancery court and requires the fees to be set at a sufficient amount to cover the costs of administering the bill's provisions, taking into account fee waivers in the interest of justice. The bill grants a chancery court judge all powers, duties, immunities, and privileges of a district judge, requires a chancery court judge to diligently discharge the duties of the office on a full-time basis, and prohibits a chancery court judge from engaging in the private practice of law.

C.S.H.B. 1603 creates a seven-member court of chancery appeals and makes an appeal available from an order or judgment of the chancery court in the same manner as an appeal is available from an order or judgment of a district court and establishes that the procedure governing such an appeal is the same as an appeal from an order or judgment of a district court. The bill sets out provisions relating to the gubernatorial appointment of justices to the court of chancery appeals and qualifications for such justices; the gubernatorial designation of the chief justice of the court of chancery appeals; the composition of the court of chancery appeals; the term of office for an appellate chancery justice; the random assignment of appellate chancery justices to panels of three; the location of the court of chancery appeals; judgments made by the court of chancery appeals; the review and appeal of decisions made by the court of chancery appeals; the clerk of the court of chancery appeals; compensation for appellate chancery justices; and the seal of the court of chancery appeals.

C.S.H.B. 1603 creates a seven-member Chancery Court Nominations Advisory Council, appointed by the governor, to assist the governor in filling positions for chancery court and court of chancery appeals judges and justices, as applicable, on creation of those courts and on the occurrence of any vacancy on those courts by advising the governor on qualified candidates. The bill sets out provisions relating to qualifications for council members and to the procedure by which the council makes, and the governor uses, its recommendations to fill a vacancy.

C.S.H.B. 1603 requires the governor, as soon as practicable after the bill's effective date, to appoint justices to the court of chancery appeals in the required manner and judges to the chancery court as follows: two judges to a term expiring December 31, 2016; two judges to a term expiring December 31, 2018; and three judges to a term expiring December 31, 2020.

C.S.H.B. 1603 applies to civil actions commenced on or after January 1, 2016.

C.S.H.B. 1603 gives the Supreme Court of Texas exclusive and original jurisdiction over a challenge to the constitutionality of the bill's provisions and authorizes the supreme court to issue injunctive or declaratory relief in connection with the challenge. If the appointment by the governor of judges to the chancery court or the appointment by the governor of justices to the court of chancery appeals is held by the supreme court as unconstitutional, the bill requires the courts to be staffed by sitting or retired judges or justices, as applicable, who are appointed by the supreme court.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1603 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle A, Title 2, Government Code, is amended by adding Chapter 24A to read as follows:
CHAPTER 24A. CHANCERY COURT
SUBCHAPTER A. GENERAL
PROVISIONS
Sec. 24A.001. DEFINITIONS.
Sec. 24A.002. ADVISORY COUNCIL.

SUBCHAPTER B. CHANCERY COURT
Sec. 24A.051. JURISDICTION. (a) The
chancery court has civil jurisdiction
concurrent with district courts in:
(1) a derivative action on behalf of an
organization;
(2) an action arising out of or relating to a
qualified transaction;

(3) an action regarding the governance or
internal affairs of an organization;
(4) an action in which a claim under a state
or federal securities or trade regulation law
is asserted against:
(A) an organization;
(B) a governing person of an organization
for an act or omission by the organization or
by the person in the person's capacity as a
governing person;
(C) a person directly or indirectly
controlling an organization for an act or
omission by the organization; or
(D) a person directly or indirectly
controlling a governing person for an act or
omission by the governing person;
(5) an action by an organization, or an
owner or a member of an organization, if the
action:
(A) is brought against an owner, managerial
official, or controlling person of the
organization; and
(B) alleges an act or omission by the person
in the person's capacity as an owner,
managerial official, or controlling person of

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle A, Title 2, Government Code, is amended by adding Chapter 24A to read as follows:
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SUBCHAPTER A. GENERAL
PROVISIONS
Sec. 24A.001. DEFINITIONS.
Sec. 24A.002. ADVISORY COUNCIL.

SUBCHAPTER B. CHANCERY COURT
Sec. 24A.051. JURISDICTION. (a) The
chancery court has civil jurisdiction
concurrent with district courts in:
(1) a derivative action on behalf of an
organization;
(2) an action arising out of or relating to a
qualified transaction in which the amount in
controversy exceeds \$10 million, excluding
interest, statutory damages, exemplary
damages, penalties, attorney's fees, and
costs;
(3) an action regarding the governance or
internal affairs of an organization;
(4) an action in which a claim under a state
or federal securities or trade regulation law
is asserted against:
(A) an organization;
(B) a governing person of an organization
for an act or omission by the organization or
by the person in the person's capacity as a
governing person;
(C) a person directly or indirectly
controlling an organization for an act or
omission by the organization; or
(D) a person directly or indirectly
controlling a governing person for an act or
omission by the governing person;
(5) an action by an organization, or an
owner or a member of an organization, if the
action:
(A) is brought against an owner, managerial
official, or controlling person of the
organization; and
(B) alleges an act or omission by the person
in the person's capacity as an owner,
managerial official, or controlling person of

the organization;

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

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

(8) an action in which the amount in controversy exceeds \$1 million excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and costs that:

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

(B) involve violations of the Finance Code or Business & Commerce Code;

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

(A) the Business Organizations Code;

(B) an organization's governing documents; or

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

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

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

(c) The chancery court may grant any relief available in a district court.

(d) Notwithstanding Subsections (a) and (b), the chancery court:

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

the organization;

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

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

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

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

(B) involve violations of the Finance Code or Business & Commerce Code;

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

(A) the Business Organizations Code;

(B) an organization's governing documents; or

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

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

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

(c) The chancery court may grant any relief available in a district court.

(d) Notwithstanding Subsections (a) and (b), the chancery court:

(1) does not have jurisdiction of a civil action;

(A) brought by or against a governmental entity, unless the governmental entity invokes or consents to the jurisdiction of the chancery court; or

(B) brought pursuant to Chapter 17, Business & Commerce Code, the Estates

(2) must sever any claim in which a party seeks recovery of monetary damages for personal injury or death, unless all parties and the chancery court judge agree that the claim may proceed in the chancery court.

Sec. 24A.052. INITIAL FILING; REMOVAL AND REMAND; TRANSFER.
Sec. 24A.053. POWERS AND DUTIES.
Sec. 24A.054. QUALIFICATIONS OF JUDGE.
Sec. 24A.055. COMPOSITION OF COURT.
Sec. 24A.056. TERMS OF OFFICE.
Sec. 24A.057. VACANCY.
Sec. 24A.058. JUDICIAL AUTHORITY.
Sec. 24A.059. JUDGE'S SALARY.
Sec. 24A.060. REMOVAL; DISQUALIFICATION AND RECUSAL.
Sec. 24A.061. PRIVATE PRACTICE OF LAW.
Sec. 24A.062. VISITING JUDGE.
Sec. 24A.063. JURY PRACTICE AND PROCEDURE.
Sec. 24A.064. COURT LOCATION; STAFFING.
Sec. 24A.065. FEES.
Sec. 24A.066. SEAL.

SUBCHAPTER C. COURT OF CHANCERY APPEALS
Sec. 24A.101. APPEAL; COURT OF CHANCERY APPEALS.
Sec. 24A.102. CHIEF JUSTICE.
Sec. 24A.103. COMPOSITION OF COURT.
Sec. 24A.104. TERM OF OFFICE.
Sec. 24A.105. PANEL.
Sec. 24A.106. LOCATION.
Sec. 24A.107. JUDGMENT.
Sec. 24A.108. REVIEW.
Sec. 24A.109. CLERK.
Sec. 24A.110. COMPENSATION.
Sec. 24A.111. SEAL.

Code, the Family Code, or Title 9, Property Code, unless all parties consent to the jurisdiction of the chancery court; and

(2) must sever any claim in which a party seeks recovery of monetary damages for personal injury or death, unless all parties and the chancery court judge agree that the claim may proceed in the chancery court.

(e) A cause of action brought pursuant to Chapter 17, Business & Commerce Code, the Estates Code, the Family Code, or Title 9, Property Code, in which a party objects to jurisdiction as provided by this section shall be severed from any other claim brought under this chapter.

Sec. 24A.052. INITIAL FILING; REMOVAL AND REMAND; TRANSFER.
Sec. 24A.053. POWERS AND DUTIES.
Sec. 24A.054. QUALIFICATIONS OF JUDGE.
Sec. 24A.055. COMPOSITION OF COURT.
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Sec. 24A.106. LOCATION.
Sec. 24A.107. JUDGMENT.
Sec. 24A.108. REVIEW.
Sec. 24A.109. CLERK.
Sec. 24A.110. COMPENSATION.
Sec. 24A.111. SEAL.

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

(1) the governor shall appoint two judges to a term expiring December 31, 2016;

(2) the governor shall appoint two judges to a term expiring December 31, 2018; and

(3) the governor shall appoint three judges to a term expiring December 31, 2020.

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

SECTION 3. The changes in law made by this Act apply to civil actions commenced on or after January 1, 2016.

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

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

(c) If the appointment of a justice by the governor to the court of chancery appeals under Section 22A.101, Government Code, as added by this Act, is held by the Supreme Court of Texas as unconstitutional, the court of chancery appeals shall be staffed by sitting or retired justices who are appointed by the supreme court.

SECTION 5. This Act takes effect September 1, 2015.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.