

By: Villalba

H.B. No. 1603

Substitute the following for H.B. No. 1603:

By: Simmons

C.S.H.B. No. 1603

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the chancery court and the court of  
chancery 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. CHANCERY 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 Chancery 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 chancery court and be experienced  
20 in the areas of law in the jurisdiction of the chancery 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 chancery court judge on the  
24 creation of the chancery court, the position of a court of chancery  
25 appeals justice on the creation of the court of chancery appeals, or  
26 on the occurrence of any subsequent vacancy on the chancery court or  
27 court of chancery 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 chancery court or the court of chancery  
5 appeals.

6 (e) The governor may request that the council enlarge the  
7 list for any vacancy with up to five additional qualified  
8 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. CHANCERY COURT

12 Sec. 24A.051. JURISDICTION. (a) The chancery 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

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 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

1 proceed in the chancery court.

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

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

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

17 (b) A party to an action filed in a district court or county  
18 court at law that is in the subject matter jurisdiction of the  
19 chancery court may remove the action to the chancery court by filing  
20 a notice of removal with the chancery court and the court in which  
21 the action was originally filed. If the chancery court does not  
22 have jurisdiction of the action or part of the action, the chancery  
23 court shall remand the action, or the part in which the chancery  
24 court does not have jurisdiction, to the court from which the action  
25 was removed.

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

1        (d) Removal of a case does not waive a defect in venue or  
2 constitute an appearance to determine personal jurisdiction.

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

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

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

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

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

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

26        Sec. 24A.054. QUALIFICATIONS OF JUDGE. A judge of the  
27 chancery court must:

- 1           (1) be at least 35 years of age;  
2           (2) be a United States citizen;  
3           (3) be a resident of this state for at least two years  
4 before appointment; and  
5           (4) be a licensed attorney in this state and have 10 or  
6 more years of experience in:  
7                   (A) practicing complex civil business  
8 litigation;  
9                   (B) practicing complex business transaction law;  
10                  (C) teaching courses in complex civil business  
11 litigation or complex business transaction law at an accredited law  
12 school in this state;  
13                  (D) serving as a judge of a court in this state  
14 with civil jurisdiction; or  
15                  (E) any combination of experience described by  
16 Paragraphs (A)-(D).

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

20       (b) A chancery court judge may be reappointed.

21       (c) The governor may not appoint:

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

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

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

1       Sec. 24A.057. VACANCY. If a vacancy occurs on the chancery  
2 court, the governor, with the advice and consent of the senate,  
3 shall appoint, in the same manner as the original appointment,  
4 another person to serve for the remainder of the unexpired term.

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

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

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

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

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

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

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

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

1       Sec. 24A.062. VISITING JUDGE. (a) A retired or former  
2 judge or justice may be assigned as a visiting judge of the chancery  
3 court by the chief justice of the supreme court. A visiting judge  
4 of the chancery court is subject to objection, disqualification, or  
5 recusal in the same manner as a retired or former judge or justice  
6 is subject to objection, disqualification, or recusal if appointed  
7 as a visiting district judge.

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

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

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

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

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

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

27       (e) The parties and the chancery court judge may agree to

1 hold the jury trial in any other county.

2 (f) The drawing of jury panels, selection of jurors, and  
3 other jury-related practice and procedure in the chancery 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 chancery court are  
9 governed by the laws and rules prescribed for district courts.

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

12 Sec. 24A.064. COURT LOCATION; STAFFING. (a) The chancery  
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 chancery 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 chancery 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 chancery court, or any  
22 judge of the chancery 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 chancery 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 chancery court, counsel and parties may appear  
2 before the chancery court by means of Internet-based or other  
3 technological devices rather than in person.

4 (e) In a county in which the chancery court sits, the  
5 sheriff shall in person or by deputy attend the chancery 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 chancery 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 chancery 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 chancery court shall provide rates  
21 for fees associated with filings and actions in the chancery 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 chancery court is the  
26 same as that provided by law for a district court except that the  
27 seal must contain the name "The Chancery Court of Texas."

1                    SUBCHAPTER C. COURT OF CHANCERY APPEALS

2                    Sec. 24A.101. APPEAL; COURT OF CHANCERY APPEALS. (a) An  
3 appeal from an order or judgment of the chancery 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 chancery 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 chancery appeals.

11                   (c) The appointment of a justice to the court of chancery  
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 chancery appeals must meet the  
15 qualifications of a judge of the chancery court as provided by  
16 Section 24A.054.

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

20                   Sec. 24A.103. COMPOSITION OF COURT. Not more than three  
21 justices appointed to the court of chancery 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 chancery 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 chancery

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 chancery appeals shall sit in randomly selected panels of three to  
5 hear and determine appeals from the chancery court.

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

9 Sec. 24A.107. JUDGMENT. The court of chancery 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 chancery appeals.

14 (b) A party to an order or judgment of the chancery court or  
15 the court of chancery 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 chancery court shall  
19 serve as the clerk of the court of chancery appeals.

20 Sec. 24A.110. COMPENSATION. A justice of the court of  
21 chancery 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 chancery  
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 Chancery  
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 chancery  
5 court, as required by Sections 24A.002 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, 2016;

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

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

13       (b) As soon as practicable after the effective date of this  
14 Act, the governor shall appoint justices to the court of chancery  
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, 2016.

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 chancery 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 chancery 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 chancery appeals under Section 22A.101, Government Code,  
3 as added by this Act, is held by the Supreme Court of Texas as  
4 unconstitutional, the court of chancery 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, 2015.