

By: Villalba

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.

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;

17 (3) an action regarding the governance or internal  
18 affairs of an organization;

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

21 (A) an organization;

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

25 (C) a person directly or indirectly controlling  
26 an organization for an act or omission by the organization; or

27 (D) a person directly or indirectly controlling a

1 governing person for an act or omission by the governing person;

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

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

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

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

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

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

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

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

27 (9) an action brought under Chapter 37, Civil Practice

1 and Remedies Code, involving:

2 (A) the Business Organizations Code;

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

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

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

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

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

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

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

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

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

24 (a) An action in the jurisdiction of the chancery court may be filed  
25 in the chancery court. If the chancery court does not have subject  
26 matter jurisdiction of the action, or part of the action, the court  
27 shall dismiss without prejudice to refiling the whole or part of the

1 action. A claim that is dismissed under this subsection may be  
2 refiled in a court with jurisdiction by the party who filed the  
3 claim in the chancery court not later than the 30th day after the  
4 date the claim was dismissed by the chancery court, notwithstanding  
5 the expiration of a period of limitation provided by statute.

6 (b) A party to an action filed in a district court or county  
7 court at law that is in the subject matter jurisdiction of the  
8 chancery court may remove the action to the chancery court by filing  
9 a notice of removal with the chancery court and the court in which  
10 the action was originally filed. If the chancery court does not  
11 have jurisdiction of the action or part of the action, the chancery  
12 court shall remand the action, or the part in which the chancery  
13 court does not have jurisdiction, to the court from which the action  
14 was removed.

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

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

19 (e) Any claim in which the chancery court does not have  
20 jurisdiction under Section 24A.051(d) must be transferred to a  
21 district court in a county in which the claim could have been  
22 originally filed. If the claim could have been filed in more than  
23 one county, the party bringing the claim may elect the county to  
24 which the claim is transferred.

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

27 (g) The supreme court shall promulgate rules of civil



1 procedure providing for the timely and efficient removal and remand  
2 of cases to and from the chancery court.

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

6 (1) writ of injunction;

7 (2) writ of mandamus;

8 (3) writ of sequestration;

9 (4) writ of attachment;

10 (5) writ of garnishment; and

11 (6) writ of supersedeas.

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

15 Sec. 24A.054. QUALIFICATIONS OF JUDGE. A judge of the  
16 chancery court must:

17 (1) be at least 35 years of age;

18 (2) be a United States citizen;

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

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

23 (A) practicing complex civil business  
24 litigation;

25 (B) practicing complex business transaction law;

26 (C) teaching courses in complex civil business  
27 litigation or complex business transaction law at an accredited law

1 school in this state;

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

4 (E) any combination of experience described by  
5 Paragraphs (A)-(D).

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

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

10 (c) The governor may not appoint:

11 (1) more than three judges who reside in the same  
12 county; or

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

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

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

21 Sec. 24A.058. JUDICIAL AUTHORITY. A chancery court judge  
22 has all powers, duties, immunities, and privileges of a district  
23 judge.

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

27 (1) the salary paid to a district judge by the state

1 under Section 659.012; and

2 (2) the maximum amount of county contributions and  
3 supplements allowed by law to be paid to a district judge under  
4 Section 659.012.

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

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

9 (b) A chancery court judge is disqualified or shall recuse  
10 himself or herself in a particular case for the same reasons as a  
11 district judge. Disqualification or recusal of a chancery court  
12 judge shall be governed by the same procedure as disqualification  
13 or recusal of a district judge.

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

17 Sec. 24A.062. VISITING JUDGE. (a) A retired or former  
18 judge or justice may be assigned as a visiting judge of the chancery  
19 court by the chief justice of the supreme court. A visiting judge  
20 of the chancery court is subject to objection, disqualification, or  
21 recusal in the same manner as a retired or former judge or justice  
22 is subject to objection, disqualification, or recusal if appointed  
23 as a visiting district judge.

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

26 (c) Before accepting an assignment as a visiting judge of  
27 the chancery court, a retired or former judge or justice shall take

1 the constitutional oath of office required of appointed officers of  
2 this state and file the oath with the supreme court.

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

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

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

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

16 (e) The parties and the chancery court judge may agree to  
17 hold the jury trial in any other county.

18 (f) The drawing of jury panels, selection of jurors, and  
19 other jury-related practice and procedure in the chancery court  
20 shall be the same as for the district court in the county in which  
21 the trial is held.

22 (g) Practice, procedure, rules of evidence, issuance of  
23 process and writs, and all other matters pertaining to the conduct  
24 of trials, hearings, and other business in the chancery court are  
25 governed by the laws and rules prescribed for district courts.

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

1       Sec. 24A.064. COURT LOCATION; STAFFING. (a) The chancery  
2 court shall have a clerk, whose office shall be located in Travis  
3 County in facilities provided by the state. The clerk shall:

4               (1) receive all filings in the chancery court; and

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

7       (b) The judges of the chancery court shall maintain chambers  
8 in the county seat of their county of residence in facilities  
9 provided by the state.

10       (c) Subject to Section 24A.063, the chancery court, or any  
11 judge of the chancery court, may hold court at any location in the  
12 state, as the court determines is necessary or convenient for a  
13 particular civil action.

14       (d) The chancery court shall use the most advanced  
15 technology feasible when necessary and appropriate to facilitate  
16 expeditious proceedings in matters brought before the court. As  
17 determined by the chancery court, counsel and parties may appear  
18 before the chancery court by means of Internet-based or other  
19 technological devices rather than in person.

20       (e) In a county in which the chancery court sits, the  
21 sheriff shall in person or by deputy attend the chancery court as  
22 required by the court. The sheriff or deputy is entitled to be  
23 reimbursed by the state for the cost of attending court.

24       (f) Subject to any limitations provided by the General  
25 Appropriations Act, the chancery court may appoint personnel  
26 necessary for the operation of the court, including:

27               (1) the clerk of the court;

- (2) staff attorneys for the court;
- (3) staff attorneys for each chancery court judge;
- (4) court coordinators; and
- (5) administrative assistants.

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

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

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

#### SUBCHAPTER C. COURT OF CHANCERY APPEALS

Sec. 24A.101. APPEAL; COURT OF CHANCERY APPEALS. (a) An appeal from an order or judgment of the chancery court is available in the same manner as an appeal from an order or judgment of a district court. The procedure governing an appeal from an order or judgment of a chancery court is the same as an appeal from an order or judgment of a district court.

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

(c) The appointment of a justice to the court of chancery

1 appeals shall be made by the governor from the list of qualified  
2 appellate justices as provided by Section 24A.002.

3 (d) A justice of the court of chancery appeals must meet the  
4 qualifications of a judge of the chancery court as provided by  
5 Section 24A.054.

6 Sec. 24A.102. CHIEF JUSTICE. The governor shall designate  
7 one of the seven justices as the chief justice of the court of  
8 chancery appeals.

9 Sec. 24A.103. COMPOSITION OF COURT. Not more than three  
10 justices appointed to the court of chancery appeals may be from the  
11 same court of appeals.

12 Sec. 24A.104. TERM OF OFFICE. A justice appointed under  
13 Section 24A.101 shall serve on the court of chancery appeals for a  
14 six-year term of office. A justice may be reappointed by the  
15 governor. A justice who retires or resigns from or is not reelected  
16 to the court of appeals must cease service on the court of chancery  
17 appeals on the date the justice is no longer serving on the court of  
18 appeals.

19 Sec. 24A.105. PANEL. The justices appointed to the court of  
20 chancery appeals shall sit in randomly selected panels of three to  
21 hear and determine appeals from the chancery court.

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

25 Sec. 24A.107. JUDGMENT. The court of chancery appeals  
26 shall render judgments and hand down opinions in the same manner as  
27 any other court of appeals under Chapter 22.

1       Sec. 24A.108. REVIEW. (a) A party may seek an en banc  
2 review of a decision of a panel of the court of chancery appeals.

3       (b) A party to an order or judgment of the chancery court or  
4 the court of chancery appeals may file a petition for review in the  
5 supreme court in the same manner and circumstances as a party to an  
6 order or judgment of a district court or court of appeals.

7       Sec. 24A.109. CLERK. The clerk of the chancery court shall  
8 serve as the clerk of the court of chancery appeals.

9       Sec. 24A.110. COMPENSATION. A justice of the court of  
10 chancery appeals shall receive compensation equal to that of the  
11 chief justice of a court of appeals, including the maximum amount of  
12 local contributions. The compensation is in lieu of, not in  
13 addition to, a justice's compensation for service on the court of  
14 appeals.

15       Sec. 24A.111. SEAL. The seal of the court of chancery  
16 appeals is the same as that provided by law for a court of appeals  
17 except that the seal must contain the name "The Court of Chancery  
18 Appeals of Texas."

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

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

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

27               (3) the governor shall appoint three judges to a term



1 expiring December 31, 2020.

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

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

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

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

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

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