

By: Villalba

H.B. No. 2594

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

1 Business & Commerce Code;

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

4 (A) the Business Organizations Code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 which the claim is transferred.

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

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

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

- 10 (1) writ of injunction;
- 11 (2) writ of mandamus;
- 12 (3) writ of sequestration;
- 13 (4) writ of attachment;
- 14 (5) writ of garnishment; and
- 15 (6) writ of supersedeas.

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

19 Sec. 24A.054. QUALIFICATIONS OF JUDGE. A judge of the
20 chancery court must:

- 21 (1) be at least 35 years of age;
- 22 (2) be a United States citizen;
- 23 (3) be a resident of this state for at least two years
24 before appointment; and
- 25 (4) be a licensed attorney in this state and have 10 or
26 more years of experience in:

27 (A) practicing complex civil business

1 litigation;

2 (B) practicing complex business transaction law;

3 (C) teaching courses in complex civil business
4 litigation or complex business transaction law at an accredited law
5 school in this state;

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

8 (E) any combination of experience described by
9 Paragraphs (A)-(D).

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

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

14 (c) The governor may not appoint:

15 (1) more than three judges who reside in the same
16 county; or

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

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

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

25 Sec. 24A.058. JUDICIAL AUTHORITY. A chancery court judge
26 has all powers, duties, immunities, and privileges of a district
27 judge.

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

4 (1) the salary paid to a district judge by the state
5 under Section 659.012; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (g) Practice, procedure, rules of evidence, issuance of
27 process and writs, and all other matters pertaining to the conduct

1 of trials, hearings, and other business in the chancery court are
2 governed by the laws and rules prescribed for district courts.

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

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

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

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

11 (b) The judges of the chancery court shall maintain chambers
12 in the county seat of their county of residence in facilities
13 provided by the state.

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

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

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

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

- 4 (1) the clerk of the court;
5 (2) staff attorneys for the court;
6 (3) staff attorneys for each chancery court judge;
7 (4) court coordinators; and
8 (5) administrative assistants.

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

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

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

21 SUBCHAPTER C. COURT OF CHANCERY APPEALS

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

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

4 (c) The appointment of a justice to the court of chancery
5 appeals shall be made by the governor from the list of qualified
6 appellate justices as provided by Section 24A.002.

7 (d) A justice of the court of chancery appeals must meet the
8 qualifications of a judge of the chancery court as provided by
9 Section 24A.054.

10 Sec. 24A.102. CHIEF JUSTICE. The governor shall designate
11 one of the seven justices appointed under Section 24A.101 as the
12 chief justice of the court of chancery appeals.

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

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

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

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

1 appeal.

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

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

7 (b) A party to an order or judgment of the chancery court or
8 the court of chancery appeals may file a petition for review in the
9 supreme court in the same manner and circumstances as a party to an
10 order or judgment of a district court or court of appeals.

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

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

19 Sec. 24A.111. SEAL. The seal of the court of chancery
20 appeals is the same as that provided by law for a court of appeals
21 except that the seal must contain the name "The Court of Chancery
22 Appeals of Texas."

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

27 (1) the governor shall appoint two judges to a term

1 expiring December 31, 2018;

2 (2) the governor shall appoint two judges to a term
3 expiring December 31, 2020; and

4 (3) the governor shall appoint three judges to a term
5 expiring December 31, 2022.

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

10 SECTION 3. The changes in law made by this Act apply to
11 civil actions commenced on or after January 1, 2018.

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

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

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

26 SECTION 5. This Act takes effect September 1, 2017.