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By:  Leach H.B. No. 4149

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the business court and the Court of Business 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. BUSINESS 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

(G)  an agreement among owners restricting the transfer of ownership interests.

(3)  "Governing law" means the law governing the formation and internal affairs of an organization.

(4)  "Governing person" means a person who is entitled, alone or as part of a group, to manage and direct an organization's affairs under the organization's governing documents and governing law. The term includes:

(A)  a member of the board of directors of a corporation or other organization;

(B)  a general partner of a general or limited partnership;

(C)  a manager of a limited liability company that is managed by its managers;

(D)  a member of a limited liability company that is managed by its members;

(E)  a trust manager of a real estate investment trust; and

(F)  a trustee of a business trust.

(5)  "Governmental entity" means:

(A)  the state; or

(B)  a political subdivision of the state, including a municipality, a county, or any kind of district.

(6)  "Internal affairs" means:

(A)  the rights, powers, and duties of an organization's governing persons, officers, owners, and members; and

(B)  matters relating to the organization's membership or ownership interests.

(7)  "Managerial official" means a governing person or officer.

(8)  "Officer" means a person elected, appointed, or designated as an officer of an organization by the organization's governing persons or by the organization's governing documents.

(9)  "Organization" means a foreign or domestic entity or association that is for profit or nonprofit. The term includes:

(A)  a corporation;

(B)  a limited partnership;

(C)  a general partnership;

(D)  a limited liability partnership;

(E)  a limited liability company;

(F)  a business trust;

(G)  a real estate investment trust;

(H)  a joint venture;

(I)  a joint stock company;

(J)  a cooperative;

(K)  a bank;

(L)  a credit union;

(M)  a savings and loan association;

(N)  an insurance company; and

(O)  a series of a limited liability company or of another entity.

(10)  "Owner" means an owner of an organization. The term includes:

(A)  a shareholder or stockholder of a corporation or other organization;

(B)  a general or limited partner of a partnership or an assignee of a partnership interest in a partnership;

(C)  a member of, or an assignee of a membership interest in, a limited liability company; and

(D)  a member of a nonprofit organization.

(11)  "Ownership interest" means an owner's interest in an organization, including an owner's economic, voting, and management rights.

(12)  "Qualified transaction" means a qualified transaction as that term is defined in Section 271.001, Business & Commerce Code.

Sec. 24A.002.  ADVISORY COUNCIL. (a) The governor shall appoint a Business Court Nominations Advisory Council consisting of seven members. A member of the council serves at the pleasure of the governor.

(b)  Members of the council must meet the requirements of Section 24A.054 for judges of the business court and be experienced in the areas of law in the jurisdiction of the business court.

(c)  Not more than four members of the council may be associated with the same political party as the governor.

(d)  To fill a position of a business court judge on the creation of the business court, the position of a court of business appeals justice on the creation of the court of business appeals, or on the occurrence of any subsequent vacancy on the business court or court of business appeals, including a vacancy created by the expiration of a judge's or justice's term of office, the council shall provide the governor with a list of at least five candidates for each vacancy. Each candidate must be well qualified to serve as a judge or justice of the business court or the court of business appeals.

(e)  The governor may request that the council enlarge the list for any vacancy by adding not to exceed five additional qualified candidates.

(f)  The governor must appoint a judge or justice to fill a vacancy from the list of candidates submitted by the council.

SUBCHAPTER B. BUSINESS COURT

Sec. 24A.051.  JURISDICTION. (a) The business 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 $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 business 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 business court may grant any relief available in a district court.

(d)  Notwithstanding Subsections (a) and (b), the business 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 business court; and

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

(e)  If a claim is severed as provided by Subsection (d)(2), the business court has discretion to stay or abate its own proceedings pending resolution of the severed claim.

Sec. 24A.052.  INITIAL FILING; REMOVAL AND REMAND; TRANSFER. (a) An action in the jurisdiction of the business court may be filed in the business court. If the business court does not have subject matter jurisdiction of the action, or part of the action, the court shall dismiss without prejudice to refiling the whole or part of the action. A claim that is dismissed under this subsection may be refiled in a court with jurisdiction by the party who filed the claim in the business court not later than the 30th day after the date the claim was dismissed by the business court, notwithstanding the expiration of a period of limitation provided by statute.

(b)  A party to an action filed in a district court or county court at law that is in the subject matter jurisdiction of the business court may remove the action to the business court by filing a notice of removal with the business court and the court in which the action was originally filed. If the business court does not have jurisdiction of the action or part of the action, the business court shall remand the action, or the part in which the business court does not have jurisdiction, to the court from which the action was removed. A party may appeal an interlocutory order of the business court that grants or refuses a remand under this subsection to the court of business appeals.

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

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

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

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

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

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

(1)  writ of injunction;

(2)  writ of mandamus;

(3)  writ of sequestration;

(4)  writ of attachment;

(5)  writ of garnishment; and

(6)  writ of supersedeas.

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

Sec. 24A.054.  QUALIFICATIONS OF JUDGE. A judge of the business court must:

(1)  be at least 35 years of age;

(2)  be a United States citizen;

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

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

(A)  practicing complex civil business litigation;

(B)  practicing complex business transaction law;

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

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

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

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

(b)  A business court judge may be reappointed.

(c)  The governor may not appoint:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e)  The parties and the business court judge may agree to hold the jury trial in any other county. A party may not be required to agree to hold the jury trial in a different county.

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

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

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

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

(1)  receive all filings in the business court; and

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

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

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

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

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

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

(1)  the clerk of the court;

(2)  staff attorneys for the court;

(3)  staff attorneys for each business 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 business court shall provide rates for fees associated with filings and actions in the business 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 business court is the same as that provided by law for a district court except that the seal must contain the name "The Business Court of Texas."

SUBCHAPTER C. COURT OF BUSINESS APPEALS

Sec. 24A.101.  APPEAL; COURT OF BUSINESS APPEALS. (a) An appeal from an order or judgment of the business 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 business 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 business appeals.

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

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

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

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

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

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

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

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

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

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

Sec. 24A.109.  CLERK. The clerk of the business court shall serve as the clerk of the court of business appeals.

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

Sec. 24A.111.  SEAL. The seal of the court of business appeals is the same as that provided by law for a court of appeals except that the seal must contain the name "The Court of Business Appeals of Texas."

SECTION 2.  (a) As soon as practicable after the effective date of this Act, the governor shall appoint judges to the business court, as required by Sections 24A.002(f) 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, 2020;

(2)  the governor shall appoint two judges to a term expiring December 31, 2022; and

(3)  the governor shall appoint three judges to a term expiring December 31, 2024.

(b)  As soon as practicable after the effective date of this Act, the governor shall appoint justices to the court of business 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, 2020.

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 business court under Section 24A.055, Government Code, as added by this Act, is held by the Supreme Court of Texas as unconstitutional, the business 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 business appeals under Section 24A.101, Government Code, as added by this Act, is held by the Supreme Court of Texas as unconstitutional, the court of business appeals shall be staffed by sitting or retired justices who are appointed by the supreme court.

SECTION 5.  This Act takes effect September 1, 2019.