

By: Landgraf, Bonnen, Leach, Smith

H.B. No. 1875

Substitute the following for H.B. No. 1875:

By: Middleton

C.S.H.B. No. 1875

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 AND COURT OF BUSINESS APPEALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 24A.001. DEFINITIONS. In this chapter:

(1) "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.

(2) "Governing law" means the law governing the

1 formation and internal affairs of an organization.

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

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

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

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

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

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

16 (F) a trustee of a business trust.

17 (4) "Governmental entity" means:

18 (A) the state; or

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

21 (5) "Internal affairs" means:

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

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

27 (6) "Officer" means a person elected, appointed, or

1 designated as an officer of an organization by the organization's
2 governing persons or the organization's governing documents.

3 (7) "Organization" means a foreign or domestic entity
4 or association, regardless of whether for profit or nonprofit. The
5 term includes:

6 (A) a corporation;

7 (B) a limited partnership;

8 (C) a general partnership;

9 (D) a limited liability partnership;

10 (E) a limited liability company;

11 (F) a business trust;

12 (G) a real estate investment trust;

13 (H) a joint venture;

14 (I) a joint stock company;

15 (J) a cooperative;

16 (K) a bank;

17 (L) a credit union;

18 (M) a savings and loan association;

19 (N) an insurance company; and

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

22 (8) "Owner" means an owner of an organization. The
23 term includes:

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

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

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

3 (D) a member of a nonprofit organization.

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

7 SUBCHAPTER B. BUSINESS COURT

8 Sec. 24A.051. JURISDICTION. (a) The business court has
9 civil jurisdiction concurrent with district courts in:

10 (1) a derivative action on behalf of an organization;
11 and

12 (2) an action in which the amount in controversy
13 exceeds \$10 million, excluding interest, statutory damages,
14 exemplary damages, penalties, attorney's fees, and costs, that
15 arises against, between, or among organizations, governing
16 authorities, governing persons, members, or owners, relating to a
17 contract transaction for business, commercial, investment,
18 agricultural, or similar purposes.

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

22 (c) The business court may grant any relief available in a
23 district court.

24 (d) Notwithstanding Subsections (a) and (b), the business
25 court:

26 (1) does not have jurisdiction of a civil
27 action brought by or against a governmental entity, unless the

1 governmental entity invokes or consents to the jurisdiction of the
2 business court; and

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

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

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

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

23 (b) A party to an action filed in a district court or county
24 court at law that is in the subject matter jurisdiction of the
25 business court may remove the action to the business court by filing
26 a notice of removal with the business court and the court in which
27 the action was originally filed. If the business court does not

1 have jurisdiction of the action or part of the action, the business
2 court shall remand the action, or the part in which the business
3 court does not have jurisdiction, to the court from which the action
4 was removed. A party may appeal an interlocutory order of the
5 business court that grants or refuses a remand under this
6 subsection to the Court of Business Appeals.

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

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

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

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

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

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

25 (1) writ of injunction;

26 (2) writ of mandamus;

27 (3) writ of sequestration;

1 (4) writ of attachment;

2 (5) writ of garnishment; and

3 (6) writ of supersedeas.

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

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

9 (1) at least 35 years of age;

10 (2) a United States citizen;

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

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

15 (A) practicing complex civil business
16 litigation;

17 (B) practicing business transaction law;

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

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

23 (E) any combination of activities described by
24 Paragraphs (A)-(D).

25 Sec. 24A.055. COMPOSITION OF COURT. (a) The governor, with
26 the advice and consent of the senate, shall appoint seven judges to
27 serve the business court.

1 (b) A judge of the business court may be reappointed.

2 (c) The governor may not appoint:

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

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

7 Sec. 24A.056. TERMS OF OFFICE. A judge of the business
8 court serves a two-year term.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Code.

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

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

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

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

16 (g) Practice, procedure, rules of evidence, issuance of
17 process and writs, and all other matters pertaining to the conduct
18 of trials, hearings, and other business in the business court are
19 governed by the laws and rules prescribed for district courts,
20 unless otherwise provided by this chapter.

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

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

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

27 (2) fulfill the legal and administrative functions of

1 a district clerk and an appellate court clerk.

2 (b) Each judge of the business court shall maintain chambers
3 in the county seat of the judge's county of residence in facilities
4 provided by the state.

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

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

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

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

22 (1) the clerk of the court;

23 (2) staff attorneys for the court;

24 (3) staff attorneys for each judge of the business
25 court;

26 (4) court coordinators; and

27 (5) administrative assistants.

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

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

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

13 SUBCHAPTER C. COURT OF BUSINESS APPEALS

14 Sec. 24A.101. JURISDICTION; APPEAL. (a) The Court of
15 Business Appeals has exclusive jurisdiction over an appeal from an
16 order or judgment of the business court.

17 (b) An appeal from an order or judgment of the business
18 court is available in the same manner as an appeal from an order or
19 judgment of a district court.

20 (c) The procedure governing an appeal from an order or
21 judgment of a business court is the same as an appeal from an order
22 or judgment of a district court.

23 Sec. 24A.102. COURT OF BUSINESS APPEALS; COMPOSITION. (a)
24 The governor, with the advice and consent of the senate, shall
25 appoint seven justices to serve as the Court of Business Appeals.

26 (b) A justice of the Court of Business Appeals must meet the
27 qualifications of a judge of the business court as provided by

1 Section 24A.054.

2 (c) A justice of the Court of Business Appeals may be
3 appointed to two or more consecutive terms.

4 Sec. 24A.103. CHIEF JUSTICE. The governor shall designate
5 one of the seven justices appointed under Section 24A.102 as the
6 chief justice of the Court of Business Appeals.

7 Sec. 24A.104. TERM OF OFFICE. A justice of the Court of
8 Business Appeals shall serve a two-year term.

9 Sec. 24A.105. VACANCY. If a vacancy occurs on the Court of
10 Business Appeals, the governor, with the advice and consent of the
11 senate, shall appoint, in the same manner as the original
12 appointment, another person to serve for the remainder of the
13 unexpired term.

14 Sec. 24A.106. JUDICIAL AUTHORITY. A justice of the Court of
15 Business Appeals has all powers, duties, immunities, and privileges
16 as a court of appeals justice.

17 Sec. 24A.107. PANEL. The justices appointed to the Court of
18 Business Appeals shall sit in randomly selected panels of three to
19 hear and determine appeals from the business court.

20 Sec. 24A.108. LOCATION. The justices hearing appeals from
21 the business court may sit in any convenient place to hear the
22 appeal.

23 Sec. 24A.109. JUDGMENT. The Court of Business Appeals
24 shall render judgments and issue opinions in the same manner as any
25 other court of appeals under Chapter 22.

26 Sec. 24A.110. REVIEW. (a) A party may seek an en banc
27 review of a decision of a panel of the Court of Business Appeals.

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

5 Sec. 24A.111. CLERK. The clerk of the business court shall
6 serve as the clerk of the Court of Business Appeals.

7 Sec. 24A.112. COMPENSATION. A justice of the Court of
8 Business Appeals shall receive compensation equal to that of the
9 chief justice of a court of appeals, including the maximum amount of
10 local contributions.

11 Sec. 24A.113. SEAL. The seal of the Court of Business
12 Appeals is the same as that provided by law for a court of appeals
13 except that the seal must contain the name "The Court of Business
14 Appeals of Texas."

15 SECTION 2. (a) As soon as practicable after the effective
16 date of this Act, the governor shall appoint judges to the business
17 court, as required by Section 24A.055, Government Code, as added by
18 this Act.

19 (b) As soon as practicable after the effective date of this
20 Act, the governor shall appoint justices to the Court of Business
21 Appeals, as required by Section 24A.102, Government Code, as added
22 by this Act.

23 SECTION 3. The changes in law made by this Act apply to
24 civil actions commenced on or after January 1, 2022.

25 SECTION 4. (a) The Supreme Court of Texas has exclusive and
26 original jurisdiction over a challenge to the constitutionality of
27 this Act or any part of this Act and may issue injunctive or

1 declaratory relief in connection with the challenge.

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

7 (c) If the appointment of a justice by the governor to the
8 Court of Business Appeals under Section 24A.102, Government Code,
9 as added by this Act, is held by the Supreme Court of Texas as
10 unconstitutional, the Court of Business Appeals shall be staffed by
11 sitting or retired justices who are appointed by the supreme court.

12 SECTION 5. This Act takes effect September 1, 2021.