

By: Landgraf

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) "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 SUBCHAPTER B. BUSINESS COURT

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

17 (1) a derivative action on behalf of an organization;
18 and

19 (2) an action in which the amount in controversy
20 exceeds \$10 million, excluding interest, statutory damages,
21 exemplary damages, penalties, attorney's fees, and costs, that
22 arises against, between, or among organizations, governing
23 authorities, governing persons, members, or owners, relating to a
24 contract transaction for business, commercial, investment,
25 agricultural, or similar purposes.

26 (b) The business court has statewide jurisdiction of an
27 action described in Subsection (a) and all matters arising out of or

1 related to an action described in Subsection (a).

2 (c) The business court may grant any relief available in a
3 district court.

4 (d) Notwithstanding Subsections (a) and (b), the business
5 court:

6 (1) does not have jurisdiction of a civil action
7 brought by or against a governmental entity, unless the
8 governmental entity invokes or consents to the jurisdiction of the
9 business court; and

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

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

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

20 (a) An action in the jurisdiction of the business court may be
21 filed in the business court. If the business court does not have
22 subject matter jurisdiction of the action, or part of the action,
23 the court shall dismiss without prejudice to refileing the whole or
24 part of the action. A claim that is dismissed under this subsection
25 may be refiled in a court with jurisdiction by the party who filed
26 the claim in the business court not later than the 30th day after
27 the date the claim was dismissed by the business court,

1 notwithstanding the expiration of a period of limitation provided
2 by statute.

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

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

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

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

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

26 (g) The supreme court shall promulgate rules of civil
27 procedure providing for the timely and efficient removal and remand

1 of cases to and from the business court.

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

5 (1) writ of injunction;

6 (2) writ of mandamus;

7 (3) writ of sequestration;

8 (4) writ of attachment;

9 (5) writ of garnishment; and

10 (6) writ of supersedeas.

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

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

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

17 (2) be a United States citizen;

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

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

22 (A) practicing complex civil business
23 litigation;

24 (B) practicing business transaction law;

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

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

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

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

8 (b) A business court judge may be reappointed.

9 (c) The governor may not appoint:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (c) Before accepting an assignment as a visiting judge of
26 the business court, a retired or former judge or justice shall take
27 the constitutional oath of office required of appointed officers of

1 this state and file the oath with the supreme court.

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

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

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

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

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

18 (f) The drawing of jury panels, selection of jurors, and
19 other jury-related practice and procedure in the business 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 business court not
25 otherwise provided for in this chapter are governed by the laws and
26 rules prescribed for district courts.

27 (h) The business court may adopt rules of practice, which

1 must be approved by the supreme court.

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

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

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

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

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

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

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

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

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

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

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

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

18 SUBCHAPTER C. COURT OF BUSINESS APPEALS

19 Sec. 24A.101. APPEAL; COURT OF BUSINESS APPEALS. An appeal
20 from an order or judgment of the business court is available in the
21 same manner as an appeal from an order or judgment of a district
22 court. The procedure governing an appeal from an order or judgment
23 of a business court is the same as an appeal from an order or
24 judgment of a district court. An appeal from an order or judgment
25 of the business court must be filed in the court of business
26 appeals.

27 Sec. 24A.102. COMPOSITION OF COURT. (a) The court of

1 business appeals is composed of seven justices appointed by the
2 governor with the advice and consent of the senate.

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

6 (c) The governor shall designate one of the seven justices
7 as the chief justice of the court of business appeals.

8 (d) A justice of the court of business appeals may be
9 reappointed by the governor.

10 Sec. 24A.103. TERMS OF OFFICE. The justices of the court of
11 business appeals shall serve two-year terms of office.

12 Sec. 24A.104. VACANCY. If a vacancy occurs on the court of
13 business appeals, the governor, with the advice and consent of the
14 senate, shall appoint, in the same manner as the original
15 appointment, another person to serve for the remainder of the
16 unexpired term.

17 Sec. 24A.105. JUDICIAL AUTHORITY. A justice of the court of
18 business appeals has all powers, duties, immunities, and privileges
19 of a court of appeals justice.

20 Sec. 24A.106. PANEL. The justices appointed to the court of
21 business appeals shall sit in randomly selected panels of three to
22 hear and determine appeals from the business court.

23 Sec. 24A.107. LOCATION. The justices hearing appeals from
24 the business court may sit in any convenient place to hear the
25 appeal.

26 Sec. 24A.108. JUDGMENT. The court of business appeals
27 shall render judgments and hand down opinions in the same manner as

1 any other court of appeals under Chapter 22.

2 Sec. 24A.109. REVIEW. (a) A party may seek an en banc
3 review of a decision of a panel of the court of business appeals.

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

8 Sec. 24A.110. CLERK. The clerk of the business court shall
9 serve as the clerk of the court of business appeals.

10 Sec. 24A.111. COMPENSATION. A justice of the court of
11 business appeals shall receive compensation equal to that of the
12 chief justice of a court of appeals, including the maximum amount of
13 local contributions.

14 Sec. 24A.112. SEAL. The seal of the court of business
15 appeals is the same as that provided by law for a court of appeals
16 except that the seal must contain the name "The Court of Business
17 Appeals of Texas."

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

22 (b) As soon as practicable after the effective date of this
23 Act, the governor shall appoint justices to the court of business
24 appeals, as required by Section 24A.102, Government Code, as added
25 by this Act.

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

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

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

10 (c) If the appointment of justices by the governor to the
11 court of business appeals under Section 24A.102, Government Code,
12 as added by this Act, is held by the Supreme Court of Texas as
13 unconstitutional, the court of business appeals shall be staffed by
14 sitting or retired justices who are appointed by the supreme court.

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