

BILL ANALYSIS

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By: Hughes
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas' judicial system is already highly specialized from top to bottom. Texas is one of only two states with specialized high courts: the Supreme Court of Texas, which hears civil and juvenile cases, and the Court of Criminal Appeals, which hears criminal cases. At the trial court level, Texas has over 200 specialized courts, from probate courts in some counties to specialized district courts designated to hear family cases, juvenile cases, or veterans' cases.

The one specialty court that Texas does not have though is a court specifically specializing in resolving complex business disputes. In this respect, Texas lags behind other states. As of 2021, 29 states are operating some form of business or complex litigation court or court system. S.B. 27 will strengthen Texas' reputation as the best state in which to do business by creating a specialized business trial court to streamline resolutions of business disputes. S.B. 27 will ensure specialized business courts are staffed by qualified and skilled judges, that way courts can quickly develop a reputation for fairness, efficiency, and consistency, giving businesses confidence in Texas' legal system and encouraging them to incorporate and headquarter in Texas.

As proposed, S.B. 27 amends current law relating to the creation of a specialty trial court to hear certain cases and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Supreme Court of Texas in SECTION 1 (Section 24A.020, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 2, Government Code, by adding Chapter 24A, as follows:

CHAPTER 24A. BUSINESS COURT

Sec. 24A.001. DEFINITIONS. Defines "controlling person," "governing documents," "governing law," "governing person," "governmental entity," "internal affairs," "managerial official," "officer," "organization," "owner," "ownership interest," and "qualified transaction."

Sec. 24A.002. BUSINESS COURT JUDICIAL DISTRICT. Provides that the Business Court Judicial District is composed of all counties in this state.

Sec. 24A.003. JURISDICTION AND POWERS. (a) Provides that the business court for the Business Court Judicial District, subject to Subsections (b) and (c), has the jurisdiction provided to a district court by Section 8 (Jurisdiction of District Courts), Article V (Judicial Department), Texas Constitution, and the jurisdiction and powers provided to district courts by Chapter 24 (District Courts), including the power to:

(1) issue writs of injunction, mandamus, sequestration, attachment, garnishment, and supersedeas; and

(2) grant any relief that is authorized to be granted by a district court.

(b) Provides that the business court has within its district 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 or controlling person or officer of an organization for an act or omission by the organization or by the person in the person's capacity as a governing person; or

(C) an underwriter of securities issued by the organization or the auditor of an organization;

(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, member, or governing person of an organization 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) arises 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) involves violations of the Finance Code or Business and Commerce Code;

(9) an action seeking a declaratory judgment or injunctive relief brought under Chapter 37 (Declaratory Judgements), 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.

(c) Provides that the business court does not have jurisdiction of:

(1) a civil action brought by or against a governmental entity, unless the governmental entity invokes or consents to the jurisdiction of the business court; or

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

Sec. 24A.004. JUDICIAL AUTHORITY. Provides that a judge of the business court has all powers, duties, immunities, and privileges of a district judge.

Sec. 24A.005. INITIAL FILING; REMOVAL AND REMAND; TRANSFER AND DISMISSAL. (a) Authorizes an action in the jurisdiction of the business court to be filed in the business court. Requires the court, if the business court does not have subject matter jurisdiction of the action, or part of the action, to, at the option of the party filing the action:

(1) transfer the action or part of the action to an appropriate district court; or

(2) dismiss the action or part of the action without prejudice to the party's rights.

(b) Authorizes the party filing the action to select the county to which the action or part of the action is transferred if an action or part of an action is to be transferred under Subsection (a)(1) and the action or part of the action could have been filed in more than one county.

(c) Authorizes 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 to remove the action to the business court. Requires the business court to remand the action, or the part in which the business court does not have jurisdiction, to the court from which the action was removed if the business court does not have jurisdiction of the action or part of the action.

(d) Provides that removal of a case to the business court is not subject to the statutes or rules governing the due order of pleading.

(e) Provides that removal of a case does not waive a defect in venue or constitute an appearance to determine personal jurisdiction

Sec. 24A.006. APPEALS. (a) Provides that the Fifteenth Court of Appeals has exclusive jurisdiction over an appeal from an order or judgment of the business court or an original proceeding related to an action or order of the business court, notwithstanding any other law and except as provided by Subsection (b) and in instances when the Supreme Court of Texas (supreme court) has concurrent or exclusive jurisdiction.

(b) Requires an appeal from an order or judgment of the business court or an original proceeding related to an action or order of the business court to be filed in the intermediate court of appeals with jurisdiction of the appeal under Section 22.220 (Civil Jurisdiction) if the Fifteenth Court of Appeals is not created.

(c) Provides that the procedure governing an appeal or original proceeding from the business court is the same as the procedure for an appeal or original proceeding from a district court.

Sec. 24A.007. QUALIFICATIONS OF JUDGE. Requires that a judge of the business court be:

(1) at least 35 years of age;

(2) a United States citizen;

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

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

(A) practicing complex civil business litigation;

(B) practicing 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.008. COMPOSITION OF COURT. (a) Requires the governor, with the advice and consent of the senate, to appoint seven judges to serve the business court.

(b) Authorizes a judge of the business court to be reappointed.

(c) Prohibits the governor from appointing more than three judges who reside in the same county.

Sec. 24A.009. TERMS OF OFFICE. Provides that a judge of the business court serves a two-year term.

Sec. 24A.010. VACANCY. Requires the governor, with the advice and consent of the senate, to appoint, in the same manner as the original appointment, another person to serve for the remainder of the unexpired term if a vacancy occurs on the business court.

Sec. 24A.011. JUDGE'S SALARY. (a) Requires a judge of the business court to 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 (Judicial Salaries); 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) Requires the salary to be paid in equal monthly installments.

Sec. 24A.012. REMOVAL; DISQUALIFICATION AND RECUSAL. (a) Authorizes a judge of the business court to be removed from office in the same manner and for the same reasons as a district judge.

(b) Provides that a judge of the business court is disqualified and subject to mandatory recusal for the same reasons a district judge is subject to disqualification or recusal in a pending case. Requires disqualification or recusal of a judge of the business court to be governed by the same procedure as disqualification or recusal of a district judge.

Sec. 24A.013. PRIVATE PRACTICE OF LAW. Requires a judge of the business court to diligently discharge the duties of the office on a full-time basis and prohibits such judge from engaging in the private practice of law.

Sec. 24A.014. VISITING JUDGE. (a) Authorizes a retired or former judge or justice to be assigned as a visiting judge of the business court by the chief justice of the supreme court. Provides that 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) Requires a retired or former judge or justice to take the constitutional oath of office required of appointed officers of this state and file the oath with the supreme court before accepting an assignment as a visiting judge of the business court.

Sec. 24A.015. JURY PRACTICE AND PROCEDURE. (a) Provides that a party in an action pending in the business court has the right to a trial by jury when required by the constitution.

(b) Requires that a jury trial be held in a county in which venue would be found under Section 15.002 (Venue: General Rule), Civil Practice and Remedies Code.

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

(d) Requires that a jury trial in a case filed initially in the business court 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, subject to Subsection (b).

(e) Authorizes the parties and the judge of the business court to agree to hold the jury trial in any other county. Prohibits a party from being required to agree to hold the jury trial in a different county.

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

(g) Provides that 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, unless otherwise provided by this chapter.

Sec. 24A.016. WRITTEN OPINIONS. Requires a judge of the business court, to facilitate the establishment of a coherent body of law, to issue a written opinion when deciding issues of law by order or judgment, unless:

- (1) the court has a well-developed body of law on the issue;
- (2) the court is applying the court's precedent on the issue; and
- (3) another opinion on the issue will not significantly contribute to the development of the law.

Sec. 24A.017. COURT LOCATION; STAFFING. (a) Requires the business court to have a clerk, whose office is required to be located in Travis County in facilities provided by this state. Requires the clerk to:

- (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) Requires each judge of the business court to maintain chambers in the county seat of the judge's county of residence in facilities provided by this state.
- (c) Authorizes the business court, or any judge of the business court, to hold court at any location in this state, as the court determines is necessary or convenient for a particular civil action, subject to Section 24A.015.
- (d) Requires the business court to use the most advanced technology feasible when necessary and appropriate to facilitate expeditious proceedings in matters brought before the court. Authorizes counsel and parties to appear before the business court by means of Internet-based or other technological devices rather than in person, as determined by the business court.
- (e) Requires the sheriff, in person or by deputy, to attend the business court as required by the court in a county in which the business court sits. Entitles the sheriff or deputy to be reimbursed by the state for the cost of attending court.
- (f) Authorizes the business court, subject to any limitations provided by the General Appropriations Act, to 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 judge of the business court;
 - (4) court coordinators; and
 - (5) administrative assistants.
- (g) Requires the court officials to perform the duties and responsibilities of their offices and provides that they are entitled to the compensation, fees, and allowances prescribed by law for the offices.

Sec. 24A.018. FEES. Requires the business court to provide rates for fees associated with filings and actions in the business court. Requires that the fees 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.019. SEAL. Provides that the seal of the business court is the same as that provided by law for a district court except that the seal is required to contain the name "The Business Court of Texas."

Sec. 24A.020. RULES. (a) Requires the supreme court to promulgate rules of civil procedure as the court determines necessary, including rules providing for:

(1) the timely and efficient removal and remand of cases to and from the business court; and

(2) the assignment of cases to judges of the business court.

(b) Authorizes the business court to adopt rules of practice and procedure, subject to any approval required by the supreme court or statute.

SECTION 2. Provides that the business court for the Business Court Judicial District is created January 1, 2025, except as otherwise provided by this Act.

SECTION 3. Requires the governor to appoint judges to the business court for the Business Court Judicial District, as required by Section 24A.008, Government Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 4. (a) Provides that the business court for the Business Court Judicial District is not created unless the legislature makes a specific appropriation of money for that purpose, notwithstanding Chapter 24A, Government Code, as added by this Act. Provides that a specific appropriation, for purposes of this subsection, is an appropriation identifying the business court or an Act of the 88th Legislature, Regular Session, 2023, relating to the creation of a specialty trial court to hear certain cases or of the business court.

(b) Provides that a court of appeals retains the jurisdiction the court had on December 31, 2024, if the business court for the Business Court Judicial District is not created as a result of Subsection (a) of this section, notwithstanding Section 24A.006(a), Government Code, as added by this Act.

SECTION 5. Provides that the changes in law made by this Act apply to civil actions commenced on or after January 1, 2025.

SECTION 6. Effective date: September 1, 2023.