

BILL ANALYSIS

C.S.H.B. 40
By: Landgraf
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2023, the 88th Texas Legislature passed H.B. 19, which created the Business Court and marked Texas as the 31st state to establish a specialized court to address complex business litigation. The Business Court's judicial district is composed of all counties in Texas, divided into 11 divisions corresponding to the state's administrative judicial districts. H.B. 19 provided for five divisions of the court to open on September 1, 2024, covering the state's most populous counties, with activation of the remaining six divisions to be taken up by the 89th Texas Legislature. Governor Abbott appointed two judges to each of the initial five divisions in June 2024 and the Business Court began receiving cases on September 1, 2024. In its first six months, the Business Court has handled over 80 cases, covering a wide range of civil business matters. However, the bill author has informed the committee that this early experience has also revealed areas in need of refinement, including clarifications on jurisdiction, the required amount in controversy for the court's authority, procedural rules, and other operational matters. C.S.H.B. 40 seeks to ensure Texas continues to benefit from its Business Court by making revisions to the court's jurisdiction, providing for the appointment of judges to the remaining six divisions of the court and additional judges to the First and Eleventh Court Divisions, and specifying that applicable provisions of state law that currently only reference district courts also reference the Business Court.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTIONS 46 and 56 of this bill.

ANALYSIS

Vexatious Litigants

C.S.H.B. 40 amends the Civil Practice and Remedies Code to include the business court among the courts that may enter an order applicable to each court in Texas prohibiting a person from filing, pro se, a new litigation without permission of the appropriate local administrative judge if the court finds after the requisite notice and hearing that the person is a vexatious litigant.

Proper Venue

C.S.H.B. 40 establishes that an interlocutory appeal from the business court's determination in a suit with more than one plaintiff that a plaintiff did or did not independently establish proper

venue or that a plaintiff who did not independently establish proper venue did or did not establish certain information must be taken to the Fifteenth Court of Appeals.

Lost Records

C.S.H.B. 40 authorizes a person interested in a judgment, order, or decree of the business court to file an application with the clerk of the business court for purposes of supplying a record that has been lost, destroyed, or removed.

Depositions

C.S.H.B. 40 authorizes a deposition on written questions of a witness who is alleged to reside or to be in Texas to be taken by a judge or clerk of the business court.

Miscellaneous Provisions in Trial Matters

C.S.H.B. 40 includes the business court among the courts in which each party or party's attorney to the civil action filed in the court must do the following:

- include partial identification information in its initial pleading; and
- provide the clerk with written notice of the party's name and current residence or business address.

The bill includes in the definition of "tertiary recusal motion" a third or subsequent motion for recusal or disqualification filed against a business court judge by the same party in a case. The bill subjects a claim against a business court judge that is added to a case pending in the court to which the judge was elected or appointed to applicable statutory requirements for such a claim, including the requirement for the applicable presiding judge to assign the severed claim to a different judge.

Appeals

C.S.H.B. 40 includes an interlocutory order of the business court among the interlocutory orders a person may appeal under statutory provisions relating to appeals from a county or district court. The bill includes the judgment or interlocutory order of the business court among the judgments or interlocutory orders for which a person, in a matter subject to the Federal Arbitration Act, may take an appeal or writ of error to the applicable court of appeals under the same circumstances that an appeal from a federal district court's order or decision would be permitted under that federal law.

Writs of Attachment; Writs of Garnishment

C.S.H.B. 40 includes the judge or clerk of the business court among the judges and clerks who may issue a writ of original attachment returnable to the court of issuance and a writ of garnishment returnable to the clerk's court.

Receiver for Certain Mineral Interests

C.S.H.B. 40 includes the business court among the courts that may appoint a receiver for the mineral interest or leasehold interest under a mineral lease owned by a nonresident or absent defendant in certain actions. The bill includes the business court division of the county in which all or part of certain land is located among the courts that may appoint a receiver for the following purposes:

- for certain land or an estate, on the application of a person who has a vested, contingent, or possible interest in land or an estate subject to a contingent future interest relating to minerals, pending the occurrence of the contingency and the vesting of the future interest if certain conditions are satisfied;

- for contingent future interests, on the application of a person who has a vested, contingent, or possible interest in land or an estate that is under an oil, gas, or mineral lease and is subject to a contingent future interest, pending the occurrence of the contingency and the vesting of the future interest if certain conditions are satisfied; and
- for the royalty interest owned by a nonresident or absent defendant in certain actions involving an undivided mineral interest or leasehold interest under a mineral lease of land in Texas.

Injunctions

C.S.H.B. 40 authorizes a business court judge to grant a writ returnable to another business court judge if that judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to implement the purpose sought for the writ. In seeking the writ, the applicant or attorney for the applicant must attach to the application an affidavit that fully states the facts of the inaccessibility and the efforts made to reach and communicate with the other business court judge. The bill requires the business court judge to whom the application is made to refuse to hear the application unless the judge determines the applicant made fair and reasonable efforts to reach and communicate with the other business court judge. The bill establishes that the injunction may be dissolved on a showing the applicant did not first make reasonable efforts to procure a hearing on the application before the other business court judge.

C.S.H.B. 40 includes the business court division of the county in which a party is domiciled among the jurisdictions in which a writ of injunction against the party who is a Texas resident may be tried.

C.S.H.B. 40 prohibits the business court from adopting local rules in conflict with Civil Practice and Remedies Code provisions governing injunctions.

Trial by Special Judge

C.S.H.B. 40 includes the business court among the courts in which a pending civil or family law matter whose judge may order referral of the case on agreement of the parties as provided by Civil Practice and Remedies Code provisions relating to a trial by a special judge and must stay proceedings in the judge's court pending the outcomes of the trial.

C.S.H.B. 40 revises the qualifications of a special judge as follows:

- includes a retired or former business court judge among the persons who may serve as a special judge;
- includes service for at least four years in a business court among the service for which a person may serve as a special judge; and
- includes the condition that the requisite years of service as a judge may be satisfied by a combination of service on the applicable courts.

C.S.H.B. 40 specifies that the requirements of the referring court with which a special judge's verdict must comply include any applicable requirements for the issuance of a written opinion. Accordingly, the bill includes among the conditions on a court's authority to grant a new trial the condition that the special judge does not submit any applicable written opinion within the requisite time period.

C.S.H.B. 40 establishes that an appeal of an order of the referring judge's court is as provided by applicable law, in addition to the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure.

Alternative Methods of Dispute Resolution

C.S.H.B. 40 includes the business court in the definition of "court" for purposes of Civil Practice and Remedies Code provisions governing alternative dispute resolution procedures.

General Arbitration

C.S.H.B. 40 establishes that Civil Practice and Remedies Code provisions governing general arbitration do not confer on the business court any new or additional jurisdiction. However, the bill, in making changes to those provisions as they relate to the jurisdiction of a district court, clarifies, as follows:

- the authorization of a party, before arbitration proceedings begin, to file an application for a court order to invoke the jurisdiction of the court over an ancillary proceeding in rem also applies with respect to the manner and subject to the conditions under which the proceeding may be instituted and conducted ancillary to a civil action in the business court;
- the authorization of a party, during the period an arbitration is pending before the arbitrators or at or after the conclusion of the arbitration, to file an application for a court order to require the issuance and service under court order in an ancillary proceeding in rem also applies with respect to the manner of and conditions under which the proceeding may be conducted ancillary to a civil action in the business court;
- the requirement for a court to hear each initial and subsequent application also applies with respect to the manner and with the notice required by law or court rule for making and hearing a motion filed in a pending civil action in the business court;
- the requirement for the process and service and the return of service of an initial application also applies with respect to the form and the substance required for process and service on a defendant in a civil action in the business court; and
- the requirement for notice to an adverse party for each subsequent application to an initial application also applies with respect to the same manner as is required for a motion filed in a pending civil action in the business court.

The bill includes the business court among the places in which a party may file an initial application for an order under Civil Practice and Remedies Code provisions governing general arbitration. The bill requires such an initial application filed in the business court to plead facts to establish venue in a county in a division of the business court. The bill specifies that, for purposes of the requirement for an appeal of a judgment or decree entered under such provisions or certain orders to be taken in the manner and to the extent as an appeal from an order or judgment in a civil action, that appeal must be taken to the applicable court of appeals.

Arbitration and Conciliation of International Commercial Disputes

C.S.H.B. 40 establishes that Civil Practice and Remedies Code provisions governing arbitration and conciliation of international commercial disputes do not confer on the business court any new or additional jurisdiction. However, the bill includes the division of the business court of the county in which the place of arbitration is located among the courts that may take certain actions or to which a party may submit a request under the following provisions:

- the authorization for a court to appoint an arbitrator or take necessary measures on request of a party if under an appointment procedure agreed to by each party, certain persons fail to act as required by that procedure;
- the authorization for a challenging party that is unsuccessful in an arbitration tribunal to request a court to decide the challenge;
- the authorization for a party, if there is a controversy concerning the termination of an arbitrator's mandate, to request a court to decide the termination;
- the authorization for a party, if the arbitration tribunal rules as a preliminary question that it has jurisdiction, to request a court to decide the matter;
- the authorization for the arbitration tribunal or a party with the approval of the tribunal to request assistance from a court in taking evidence;

- the authorization for a court, if the parties to two or more arbitration agreements agree, in the respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of the agreements, to order the arbitrations consolidated, appoint an arbitration tribunal, or make any other order the court considers necessary, subject to certain conditions; and
- the authorization for a party to an arbitration agreement to request an interim measure of protection from a court before or during an arbitration.

The bill requires the party to an arbitration agreement that requests such an interim measure of protection to select the court in the manner provided by Civil Practice and Remedies Code provisions governing general arbitration as it relates to filing an initial application.

Prohibition Against Having an Interest in Certain Business Entities

C.S.H.B. 40 amends the Government Code to make applicable to a judge of the business court the prohibition against a judge or justice, as applicable, having a significant interest in a business entity that owns, manages, or operates certain community residential facilities, or any other facility intended to accomplish a purpose or provide a service described by applicable state law regarding those facilities, or correctional or rehabilitation facilities on the date the person takes office or while serving as a judge.

Definitions

For purposes of provisions governing the business court, the bill defines "fundamental business transaction" as a merger, interest exchange, conversion, or sale of all or substantially all of an entity's assets and revises the definition of "qualified transaction" as follows:

- lowers from \$10 million to \$5 million the minimum aggregate value of an applicable transaction that constitutes the term; and
- specifies that the term includes a series of related transactions with such aggregate value.

Business Court Divisions

C.S.H.B. 40 removes the provisions abolishing the following business court divisions unless reauthorized by the legislature and funded through additional legislative appropriations:

- Second Business Court Division;
- Fifth Business Court Division;
- Sixth Business Court Division;
- Seventh Business Court Division;
- Ninth Business Court Division; and
- Tenth Business Court Division.

Accordingly, the bill repeals the Government Code provision that sets the expiration of provisions relating to such business court divisions at September 1, 2026. The bill also excludes Montgomery County from the Second Business Court Division and includes the county instead in the Eleventh Business Court Division.

Jurisdiction of the Business Court

C.S.H.B. 40 specifies that the civil jurisdiction that the business court has concurrent with district courts over certain actions in which the amount in controversy exceeds \$5 million includes actions over which a district court has exclusive jurisdiction. The bill revises the jurisdiction of the business court with respect to certain actions in which the amount in controversy exceeds \$10 million as follows:

- lowers the threshold for the amount in controversy of certain actions to fall within the court's jurisdiction from an amount that exceeds \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs, to an amount that exceeds \$5 million, excluding those costs;

- specifies that, for purposes of an action arising out of a contract or commercial transaction in which the parties to the contract or transaction agreed in the contract or a subsequent agreement that the business court has jurisdiction of the action, except an action that arises out of an insurance contract, the action arises out of a business, commercial, or investment contract or transaction in which the parties to the contract or transaction made such an agreement; and
- includes the following actions among the actions that fall within the business court's jurisdiction:
 - an action arising out of or relating to the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies and a trade secret, as defined by reference to the Texas Uniform Trade Secrets Act; and
 - an action arising out of that law.

The bill establishes that the amount in controversy for jurisdictional purposes of any such action in which the amount in controversy exceeds \$5 million, excluding certain costs, is the total amount of all joined parties' claims.

C.S.H.B. 40 establishes that the business court has civil jurisdiction concurrent with district courts in an action to enforce an arbitration agreement, appoint an arbitrator, or review an arbitral award, or in other judicial actions authorized by an arbitration agreement, Civil Practice and Remedies Code provisions governing general arbitration and arbitration and conciliation of international commercial disputes, or the Federal Arbitration Act, if a claim included in the controversy in arbitration is described as an action in which the business court has concurrent civil jurisdiction with a district court and in which the amount in controversy exceeds \$5 million, excluding certain costs, regardless of the actual amount in controversy of the claim.

C.S.H.B. 40 revises the civil jurisdiction that the business court has concurrent with district courts in an action seeking injunctive relief or a declaratory judgment under the Uniform Declaratory Judgments Act involving a dispute based on a claim within the court's jurisdiction as follows:

- includes among the actions over which the business court has civil jurisdiction concurrent with district courts an action seeking other equitable relief;
- specifies that the civil jurisdiction applies to an action seeking only injunctive relief or a declaratory judgment under that act or such equitable relief; and
- limits the applicability of the jurisdiction to the following claims:
 - an action regarding the governance, governing documents, or internal affairs of an organization;
 - an action by an organization or an owner of an organization that is brought against an owner, controlling person, or managerial official of the organization and alleges an act or omission by the person in the person's capacity as an owner, controlling person, or managerial official of the organization;
 - an action alleging that an owner, controlling person, or managerial official breached a duty owed to an organization or an owner of an organization by reason of the person's status as an owner, controlling person, or managerial official, including the breach of a duty of loyalty or good faith; and
 - an action arising out of the Business Organizations Code.

C.S.H.B. 40 specifies that in an action in which the business court has civil jurisdiction concurrent with the district courts, the business court has supplemental jurisdiction over any other claim so related to the action that the claim forms part of the same case or controversy and that the business court's supplemental jurisdiction includes a claim that requires the joinder of intervention of an additional party. The bill removes the condition that all parties and the applicable judge agree to a claim within the business court's supplemental jurisdiction in order for the claim to proceed.

C.S.H.B. 40 revises the claims over which the business court does not have jurisdiction unless the claim falls within the court's supplemental jurisdiction as follows:

- clarifies that the applicable provision applies to a claim in a civil action, not to the entire civil action, as provided under current law;
- specifies that the civil action to foreclose on a lien on real or personal property is a civil action seeking to foreclose on a lien on real or personal property an individual owns at the time the action is filed;
- specifies that a claim arising out of statutory provisions governing covenants not to compete does not include a claim described by a certain provision; and
- removes the following from the claims over which the business court does not have jurisdiction, subject to that exception:
 - a claim arising out of the Insurance Code; and
 - a claim related to a transaction between a merchant and one or more consumers to which a consumer in Texas is a party, arising out of a violation of federal or state law.

However, the bill establishes that the business court does not have jurisdiction of such a claim related to a transaction between a merchant and one or more consumers, regardless of whether the claim falls within the court's supplemental jurisdiction.

Rules Related to Jurisdictional Determination

C.S.H.B. 40 requires the Texas Supreme Court by rule to establish procedures for the prompt, efficient, and final determination of business court jurisdiction on the filing of an action in the business court. In adopting those rules, the supreme court must consider the following:

- the business court's purpose of efficiently addressing complex business litigation in a manner comparable to or more effective than the business and commercial courts operating in other states;
- the commonalities of law and procedure existing between the business court and district courts as trial courts functioning under the Texas Constitution and within the judicial branch of the state;
- the limited potential for the movement of an action between a district court and the business court as it relates to issues of fundamental fairness or the preservation of constitutionally or statutorily protected rights of the parties; and
- the need for guidance on evolving usage of the business court and the Fifteenth Court of Appeals over time by business litigants and their counsel as the courts develop a body of precedent and practice.

The bill authorizes the supreme court, in adopting the rules, to also do the following:

- provide for jurisdictional determinations based on pleadings or summary proceedings;
- establish appropriate standards of proof;
- establish limited periods during which issues or rights must be asserted, considered agreed to, or waived;
- establish procedures for the review of jurisdictional determinations by the business court by another judge or panel of judges, including a regional presiding judge or the administrative presiding judge of the business court;
- allow, require, or prohibit interlocutory appeals;
- provide for accelerated appeals; or
- provide for any other procedures necessary for the prompt, efficient, and final determination of business court jurisdiction.

Initial Filing

C.S.H.B. 40 provides that, for purposes of the requirement for the party filing an action within the jurisdiction of the business court to plead facts to establish venue, venue may be established as provided by a party's governing documents in the following actions:

- an action regarding the governance, governing documents, or internal affairs of an organization;
- an action by an organization or an owner of an organization that is brought against an owner, controlling person, or managerial official of the organization and alleges an act or omission by the person in the person's capacity as an owner, controlling person, or managerial official of the organization;
- an action alleging that an owner, controlling person, or managerial official breached a duty owed to an organization or an owner of an organization by reason of the person's status as an owner, controlling person, or managerial official, including the breach of a duty of loyalty or good faith; and
- an action arising out of the Business Organizations Code.

Appointment of Business Court Judges

C.S.H.B. 40 requires the governor, with the advice and consent of the senate, to appoint one additional judge to each of the First and Eleventh Divisions of the business court if the legislature makes a specific appropriation of money for that purpose. The bill authorizes a judge appointed to the business court to begin state employment and receive compensation for service as a judge for not more than 30 days before the beginning of the judge's term to allow time for training, organization of staff and chambers, and study of business court precedent, procedure, and pending cases.

Administrative Presiding Judge and Pro Tempore

C.S.H.B. 40 revises the requirement for the business court judges by majority vote to select a judge to serve as administrative presiding judge as follows:

- changes the deadline by which the vote must take place from not later than the seventh day after the first day of a term to not later than September 15 of each even-numbered year; and
- includes the selection of a judge serving a different division of the court to serve as administrative presiding judge pro tempore among the matters to be voted on.

Accordingly, the bill replaces the requirement for the remaining business court judges to select a judge of the court to serve as administrative presiding judge if a vacancy occurs in the position with a provision establishing that the administrative presiding judge pro tempore serves as administrative presiding judge and a requirement that the remaining business court judges must by majority vote instead select a judge of the court to serve as successor administrative judge pro tempore.

C.S.H.B. 40 requires the administrative presiding judge pro tempore to act as administrative presiding judge in any matter in which the administrative presiding judge:

- has delegated the judge's official duties to the administrative presiding judge pro tempore; or
- is unable to perform the judge's official duties.

Judicial Expenses; Official Duties

C.S.H.B. 40 entitles a business court judge engaged in the discharge of official duties in a location other than the county in which the judge maintains chambers to travel expenses as provided by the Travel Regulations Act. The bill also entitles a business court judge to receive from the state the actual and necessary postage, telephone, and telecommunications expenses incurred in the discharge of the judge's official duties. The official duties of a business court judge include presenting educational information regarding the business court to legal and business groups and attending educational meetings in Texas and other states of the United States relating to business law, business litigation, and the function of the business court.

Disqualification or Recusal From Case

C.S.H.B. 40 requires a business court judge who determines on the judge's own motion the judge should not hear a case pending in the judge's court because the judge is disqualified or subject to recusal to do the following:

- enter a recusal order;
- request the presiding judge of the business court to assign another judge of the business court to hear the case; and
- take no further action in the case except for good cause as stated in the order in which the action is taken.

The bill establishes that the administrative presiding judge is not required to assign such a case to a different division of the business court.

Exception From Certain Judicial Training Requirements

C.S.H.B. 40 exempts a judge of the business court from the judicial training requirements under statutory provisions relating to appellate courts that are not germane to the jurisdiction of the business court, including the training requirements for diversions from the Texas Department of Criminal Justice and instruction related to family violence, sexual assault, trafficking of persons, and child abuse and neglect.

Visiting Judges

C.S.H.B. 40 includes an active judge or justice who satisfies the qualifications to serve as a business court judge among the judges and justices who may be assigned by the chief justice of the supreme court as a visiting judge of a division of the business court. The bill authorizes the chief justice to assign an active judge of the business court to serve as a visiting judge of a district court, a constitutional county court, or a statutory county court located in the division served by the judge of the business court. The bill makes a judge of the business court serving as a visiting judge subject to objection, disqualification, or recusal under the Court Administration Act in the same manner as an active judge or justice or an active district court judge is subject to objection, disqualification, or recusal if appointed as a visiting judge.

Court Location

C.S.H.B. 40 changes the location in which each business court judge must maintain chambers from the county the judge selects within the geographic boundaries of the division to which the judge is appointed to the county with the largest population within those geographic boundaries or a county adjacent to that county and within those geographic boundaries. The bill authorizes the chief justice to approve the location of a business court judge's chambers in a county other than either such county that is within the geographic boundaries of the division.

C.S.H.B. 40 changes the entities with which the Office of Court Administration (OCA) may contract for the use of facilities for a business court judge's chambers from the county to a public or private party. The bill revises the requirement for a county to accommodate the business court in the conduct of the court's hearing and other proceedings as follows:

- removes the condition that the county use existing courtrooms and facilities in fulfilling that requirement; and
- includes the condition that the county fulfill that requirement instead with courtrooms and facilities equivalent to those provided to district courts.

The bill authorizes a county to seek reimbursement from the state in an amount equal to the market rate for those facilities in the county as calculated by the Texas Facilities Commission for the purpose. The bill requires a county to include the reasonably anticipated requirements of the business court in the planning for and implementation of additions and improvements to the county's courtrooms and facilities.

C.S.H.B. 40 revises the requirement for the sheriff, in a county in which a division of the business court sits, to in person or by deputy attend the business court as required by the court as follows:

- includes OCA among the entities that may require the sheriff to attend the business court;
- includes any other licensed peace officer employed by the state or local governmental entity, including the Department of Public Safety, among the individuals who may be required to attend the business court;
- includes among the duties of an individual who may be required to attend the business court providing security for the business court's judges and accordingly includes the cost of providing security among the costs to which an individual is entitled to reimbursement from the state;
- includes the county in which a business court judge maintains chambers as a location in which the sheriff, sheriff's deputy, and other licensed peace officer may be required to provide the described services; and
- provides that the officers providing the described services are entitled to reimbursement from the state.

Office of Court Administration Report on the Business Court

C.S.H.B. 40 specifies that the report on the business court that OCA must submit to the legislature not later than December 1 of each year includes the following:

- a summary of the caseload of each business court judge in the preceding year;
- a summary of the extent to which business court judges have been assigned to hear cases in other divisions to equalize caseloads;
- a projection of the expected caseloads of the business court judges for the following two years; and
- recommendations regarding action by the legislature, the governor, the chief justice of the supreme court, or the business court to ensure the business court meets existing and projected demand for the business court's services in the following two years.

Civil Actions Commenced Before September 1, 2024

C.S.H.B. 40, notwithstanding Section 8, Chapter 380 (H.B. 19), Acts of the 88th Legislature, Regular Session, 2023, establishes that a civil action commenced before September 1, 2024, that is within the jurisdiction of the business court may be transferred to and heard by the business court on an agreed motion of a party and permission of the business court under rules adopted by the supreme court for the purpose. The bill requires the supreme court, when adopting such rules, to do the following:

- prioritize complex civil actions of longer duration that have proven difficult for a district court to resolve because of the other demands on the district court's caseload;
- consider the capacity of the business court to accept the transfer of the action without impairing the business court's efficiency and effectiveness in resolving actions commenced on or after September 1, 2024; and
- ensure the facilitation of the fair and efficient administration of justice.

These provisions expire September 1, 2035.

Applicability of Appointments of Attorneys Ad Litem, Guardians Ad Litem, Mediators, and Guardians

C.S.H.B. 40 exempts the business court from the application of Government Code provisions relating to the appointment of attorneys ad litem, guardians ad litem, mediators, and guardians by a court that is located in a county with a population of 25,000 or more.

Judicial Education Requirements

C.S.H.B. 40 makes Government Code provisions relating to judicial education requirements applicable to a business court judge.

Texas Judicial Council

C.S.H.B. 40 increases from 16 to 17 the number of ex officio members on the Texas Judicial Council (TJC) and accordingly includes the administrative presiding judge of the business court as that additional member. The bill clarifies that the administrative presiding judge of the business court is an ex officio member of the TJC while the judge holds the office of administrative presiding judge of the business court.

Court Administration Act

C.S.H.B. 40 includes a former or retired judge who has served as an active judge for at least 96 months in the business court among the eligible justices and judges who may be assigned by the chief justice of the supreme court to a court of appeals for active service regardless of whether a vacancy exists in the court to which the justice or judge is assigned and among the eligible judges who may be included on the list of retired and former judges that is maintained by the presiding judge of each administrative judicial region. The bill revises the qualifications for being the presiding judge of an administrative judicial region to include being a serving or retired business court judge or being a former judge with at least 12 years of service as a business court judge. For these purposes, the bill includes a person who has served as an active judge in the business court but who is not a retired judge in the definition of "former judge."

C.S.H.B. 40 includes a business court judge among the judges that the attorney general must defend in any action or suit in any court in which the judge is a defendant because of the judge's office or capacity as judge if the judge requests the attorney general's assistance in the defense of the suit.

C.S.H.B. 40 includes the business court among the courts from and to which the judicial panel on multidistrict litigation may transfer civil actions involving one or more common questions of fact pending in the same or different courts for consolidated or coordinated pretrial proceedings, including summary judgment or other dispositive motions but not for trial on the merits.

State Handgun Licensing Law

C.S.H.B. 40 includes a judge of the business court in the definition of "state judge" for purposes of state handgun licensing law.

Judicial Compensation

C.S.H.B. 40 entitles a judge of a division of the business court, in addition to the annual state base salary, to an annual state salary supplement in an amount equal to the difference between the judge's annual state base salary and the maximum combined base salary from all state and county sources paid to a district judge. The bill entitles a business court judge who serves as administrative presiding judge of the business court to an annual state base salary in the amount equal to \$5,000 more than the maximum salary from the state to which the judge is otherwise entitled for the judge's annual state base salary plus the annual state salary supplement.

Applicability of Bill Provisions

Except as otherwise provided, C.S.H.B. 40 applies only to civil actions commenced on or after September 1, 2024.

Repealed Provisions

C.S.H.B. 40 repeals the following provisions:

- the requirement for 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, if the Fifteenth Court of Appeals is not created, to be filed in the court of appeals with appellate jurisdiction of civil cases for the county declared by the business court;
- the requirement for a business court judge to serve for a term of two years, beginning on September 1 of every even-numbered year; and
- the requirement for a retired or former judge or justice, before accepting an assignment as a visiting judge of a division of the business court, to take the constitutional oath of office required of appointed officers of the state and to file the oath with the secretary of the state.

C.S.H.B. 40 repeals the following Government Code provisions:

- Section 25A.003(n);
- Section 25A.007(b);
- Section 25A.009(b); and
- Section 25A.014(b).

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 40 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and substitute revise the definition of "qualified transaction" for purposes of provisions governing the business court by lowering the minimum aggregate value of an applicable transaction that constitutes the term and specifying that the term includes a series of related transactions with such aggregate value. However the introduced made a further revision that the term includes a transaction or series of related transactions under which one or more parties has the transaction with the minimum aggregate value, whereas the substitute does not make this revision.

While the introduced and substitute both revise the civil jurisdiction of the business court, the substitute does not include the following actions in the civil jurisdiction the business court has concurrent with district courts, as in the introduced:

- an action arising out of an insurance contract or other arrangement to indemnify or hold harmless an organization or its current or former controlling persons, managerial officials, employees and agents, or to advance expenses to such persons, against losses arising from their service in these positions or their alleged wrongful or negligent actions;
- an action arising out of a reinsurance contract relating to such an insurance contract or other arrangement;
- an action arising out of a fundamental business transaction, including an action arising out of an insurance contract or other arrangement providing insurance or indemnity to parties to a fundamental business transaction against agreed payment obligations, losses, or expenses and an action to enforce an agreement not to compete related to a fundamental business transaction if the action is against an organization that is party to the transaction or a controlling person or managerial official of the organization; and

- an action arising out of malpractice or professional misconduct by an attorney, certified public accountant, or other licensed professional where the client of the professional is an organization, including claims by, against, and among insurers and reinsurers providing professional liability insurance covering claims against the professionals or organizations employing them.

The substitute includes a specification absent from the introduced that the civil jurisdiction the business court has concurrent with district courts in certain actions includes actions in which the amount in controversy exceeds \$5 million and in which a district court has exclusive jurisdiction.

Both the introduced and substitute include a provision establishing that the business court has civil jurisdiction concurrent with district courts in an action to enforce an arbitration agreement, appoint an arbitrator, or review an arbitral award, or in other judicial actions authorized by an arbitration agreement, Civil Practice and Remedies Code provisions governing general arbitration and arbitration and conciliation of international commercial disputes, or the Federal Arbitration Act, if a claim included in the controversy in arbitration relates to an action in which the business court has concurrent civil jurisdiction with a district court in which the amount in controversy exceeds \$5 million, but the versions differ as follows:

- the introduced specified that the jurisdiction applies with respect to an action in which the amount in controversy exceeds \$5 million, which the substitute does not; and
- the substitute specifies instead that the jurisdiction applies regardless of the amount in controversy.

Whereas the introduced established that the business court, in actions within its jurisdiction, has the authority to grant injunctive and other equitable relief, declaratory judgments, and other relief that may be granted by a district court, the substitute does not establish this. However, the introduced and substitute both revise the civil jurisdiction that the business court has concurrent with district courts in an action seeking injunctive relief or a declaratory judgment but differ as follows:

- the introduced specified that the jurisdiction applies without regard to the amount in controversy, whereas the substitute does not; and
- the substitute limits the applicability of the jurisdiction to the following claims, which the introduced did not do:
 - an action regarding the governance, governing documents, or internal affairs of an organization;
 - an action by an applicable organization or an owner of such an organization;
 - an action alleging that an owner, controlling person, or managerial official breached a duty owed to an organization or an owner of an organization by reason of the person's status as an owner, controlling person, or managerial official, including the breach of a duty of loyalty or good faith; and
 - an action arising out of the Business Organizations Code.

Whereas the introduced established that the business court does not have jurisdiction of a claim arising out of statutory provisions relating to deceptive trade practices unless the claim falls within the court's supplemental jurisdiction, the substitute does not establish this.

While the introduced and substitute both remove the exception to the provision establishing that the business court does not have jurisdiction of a consumer transaction between a merchant and one or more consumers to which a consumer in Texas is a party, arising out of a violation of federal or state law unless the claim falls within the court's supplemental jurisdiction, the substitute makes a further change establishing that the business court does not have jurisdiction of such a claim, regardless of whether the claim falls within the court's supplemental jurisdiction.

Whereas the introduced established that, if two or more persons originally and properly join in one action, the action for jurisdictional purposes is treated as if one party is suing for the aggregate amount of all their claims added together for purposes of the amount in controversy

requirements, the substitute establishes instead that the amount in controversy for jurisdictional purposes is the total amount of all joined parties' claims.

Whereas the introduced included a provision specifying that, for purposes of the requirement that a party filing an action plead facts to establish venue, venue may be established by the filing party as provided in each party's governing documents, the substitute establishes that venue may be established as provided by a party's governing documents in an action described as the following:

- an action regarding the governance, governing documents, or internal affairs of an organization;
- an action by an organization or an owner of an organization, if the action is brought against an owner, controlling person, or managerial official of the organization and alleges an act or omission by the person in the person's capacity as an owner, controlling person, or managerial official of the organization;
- an action alleging that an owner, controlling person, or managerial official breached a duty owed to an organization or an owner of an organization by reason of the person's status as an owner, controlling person, or managerial official, including the breach of a duty of loyalty or good faith; and
- an action arising out of the Business Organizations Code.

The substitute does not include the provision of the introduced establishing that the business court has civil jurisdiction concurrent with district courts in an action transferred to the business court by the judicial panel on multidistrict litigation under applicable state law, without regard to the amount in controversy in any single action or whether the county from which the action is transferred to the business court is within an active business court division, so long as the business court otherwise has jurisdiction to hear the action.

The introduced and substitute both provide for rules related to jurisdictional determination of the business court but differ as follows:

- whereas the introduced required the supreme court to adopt rules of civil and judicial procedure for such jurisdictional determination, the substitute requires the supreme court instead by rule to establish procedures for the jurisdictional determination;
- whereas the introduced specified that the determination is in the early stages of a proceeding, the substitute does not include this specification; and
- whereas the introduced specified that the list of considerations for the rules is not exclusive, the substitute specifies instead that the supreme court, in adopting the rules, may provide for any other procedures necessary for the prompt, efficient, and final determination of business court jurisdiction.

While the introduced and substitute both include provisions relating to the disqualification or recusal of a business court judge from a case, the versions differ as follows:

- the introduced included a provision establishing that a change of venue is not necessary because of the disqualification of a business court judge, whereas the substitute does not; and
- the substitute includes a provision absent from the introduced establishing that the administrative presiding judge is not required to assign a case in which a business court judge is disqualified or subject to recusal to a different division of the business court.

The substitute does not include the provision of the introduced establishing that any statute or rule of the state requiring that an appeal from an order or judgement of the business court be appealed to any court of appeals other than the Fifteenth Court of Appeals, and any statute later enacted that does not expressly reference the statutory provision that establishes the cases in which the Fifteenth Court of Appeals has exclusive jurisdiction, shall not be given effect and all such appeals from the business court must be heard by the Fifteenth Court of Appeals.

Whereas the introduced entitled a judge of a division of the business court to additional state compensation equal to the maximum amount a district may be paid as supplemental compensation by a county, including compensation for any extrajudicial services performed on behalf of the county authorized under applicable state law, the substitute entitles such a judge instead to an annual state salary supplement equal to the difference between the judge's annual state base salary and the maximum combined base salary from all state and county sources paid to a district judge.

Whereas the introduced entitled the administrative presiding judge of the business court to state compensation equal to the maximum amount of additional state compensation paid to a local administrative district judge responsible for a number of courts equal to the number of business court judges, the substitute entitles the administrative presiding judge instead to an annual state base salary equal to \$5,000 more than the maximum state salary to which the judge is otherwise entitled for judge's annual state base salary plus the annual state salary supplement.

The introduced and substitute both include an active judge or justice who satisfies the qualifications to serve as a business court judge among the judges and justices who may be assigned by the chief justice of the supreme court as a visiting judge of a division of the business court, however the introduced specified that such an active judge is an active district court judge, whereas the substitute does not.

Whereas the introduced included any unit of state or local government among the entities with which OCA may contract for the use of facilities for a business court judge's chambers, the substitute instead changes the entities with which OCA may contract for that purpose from the county to any public or private party.

While the introduced and substitute both specify that the report on the business court that OCA must submit to the legislature includes the caseload of each business court judge in the preceding year and the extent to which judges have been assigned to hear cases in other divisions to equalize caseloads, the substitute further specifies that the report includes a summary of that caseload and case assignment information.

While the introduced and substitute both authorize the transfer of a civil action commenced before September 1, 2024, that is within the jurisdiction of the business court to the business court on a motion of a party and the permission of the business court under rules adopted by the supreme court, the substitute requires that the motion of a party be an agreed motion and includes a provision absent from the introduced making that authorization expire September 1, 2035.

The substitute does not include the provision of the introduced that established that the references to the business court in Civil Practice and Remedies Code provisions governing general arbitration and arbitration and conciliation of international commercial disputes presume, and the authority of the business court to take actions as provided in those provisions requires, that a claim included in the controversy arbitrated is within the jurisdiction of the business court. However, the substitute establishes that such Civil Practice and Remedies Code provisions do not confer on the business court any new or additional jurisdiction, which the introduced did not establish.

While the introduced and substitute both include the business court among the courts to which the judicial panel on multidistrict litigation may transfer civil actions involving one or more common questions of fact pending in the same or different courts for consolidated or coordinated pretrial proceedings, the introduced included the following conditions on such a transfer:

- the business court must have civil jurisdiction concurrent with the district courts of the action; and
- the transfer may be made without regard to the amount in controversy in any single action and without regard to whether the county from which an action is transferred to the business court is within an active business court division.

The substitute does not include these conditions.

The substitute includes a requirement absent from the introduced that an initial application for an order under Civil Practice and Remedies Code provisions governing general arbitration plead facts to establish venue in a county in a division of the business court.

The substitute includes the business court among the courts from which a party to an arbitration agreement may request an interim measure of protection before or during an arbitration and a requirement for the party to select the court in the manner provided by Civil Practice and Remedies Code provisions governing general arbitration as it relates to filing an initial application, neither of which the introduced included.

The introduced included a provision that made the effect of the bill provisions relating to the assignment of an active judge of the business court to serve as a visiting judge and the prohibition against a business court judge having an interest in certain business entities contingent on voter approval in an election held on November 4, 2025. The substitute, however, does not include this provision.

Whereas the introduced amended Section 6(b), Chapter 380 (H.B. 19), Acts of the 88th Legislature, Regular Session, 2023, to change the deadline by which the governor must appoint a judge to certain business court divisions and to require the governor to appoint one additional judge to each of the First and Eleventh Business Court Divisions, the substitute amends the Government Code instead to require the governor, with the advice and consent of the senate, to appoint one additional judge to each such business court division only if the legislature makes a specific appropriation of money for that purpose.

The introduced included a provision that is absent from the substitute authorizing a business court judge to issue a writ of sequestration returnable to his court.