

# TEXAS BUSINESS COURTS

By

**BYRON F. EGAN**  
**Jackson Walker L.L.P.**  
Dallas, Texas  
[began@jw.com](mailto:began@jw.com)



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**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. JUDGES WITH EXPERTISE AND TRAINING IN COMPLEX BUSINESS MATTERS .....2

III. OPINIONS, PROCEDURES AND POWERS .....2

IV. JURIES. ....3

V. GEOGRAPHIC DIVISIONS .....3

VI. JURISDICTION OF BUSINESS COURTS .....4

VII. APPOINTMENT and terms OF BUSINESS COURT JUDGES .....7

VIII. INITIAL FILING, REMOVAL AND REMAND .....7

IX. APPEALS .....9

X. ADMINISTRATION OF THE BUSINESS COURT .....9

XI. CHALLENGES TO CONSTITUTIONALITY OF BUSINESS COURTS .....10

XII. Sample contractual provision .....11

XIII. CONCLUSION .....11

XIV. Exhibit A .....12

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## I. INTRODUCTION

Texas in 2023 created a new system of specialty trial courts (“*Business Courts*”) to hear significant business related disputes and a special intermediate court of appeals to hear appeals from Business Courts. Legislation to create such courts was passed by the 88<sup>th</sup> Texas Legislative Session which ended on May 29, 2023 and was signed on June 9, 2023 by Governor Greg Abbott. The Business Courts were created by House Bill 19 (“*HB 19*”)<sup>1</sup> as a new chapter 25A (“§ 25A.001 *et seq*” or “*Chapter 25A*”) to the Texas Government Code (the “*Government Code*” or “*Gov. Code*”) with judges to be appointed by the Governor with the consent of the Senate. A separate bill (“*SB 1045*”) amended § 22.201 of the Government Code to create a Fifteenth Court of Appeals (“*15<sup>th</sup> Court of Appeals*”) to hear appeals from Business Courts. Both HB 19 and SB 1045 became effective September 1, 2023, but will be operational only for actions commenced on or after September 1, 2024 to allow time for the appointment and confirmation of their judges and adopt procedural rules for the operation of the courts.<sup>2</sup>

The Business Courts will initially be in the major metropolitan areas (see map attached as *Appendix A*) with the expectation that the Texas Legislature will ultimately create Business Courts for the rest of Texas. The creation of the Texas Business Courts has followed a long and winding road which commenced in 2015,<sup>3</sup> has from the beginning been strongly supported by the Texas Business Law Foundation (“*TBLF*”),<sup>4</sup> but prior efforts stalled in previous legislative sessions due largely to opposition from trial lawyer-focused organizations. HB 19, which ultimately garnered bipartisan support, addresses the growing need for specialized Texas state courts to handle complex business litigation.

The Business Courts are designed to handle a wide range of commercial disputes, including contract disputes, fiduciary duty claims, and other corporate governance issues. By creating a dedicated venue for these cases, the Legislature sought to expedite proceedings, enhance judicial expertise, deliver more predictable outcomes for business disputes, and attract more businesses to Texas by offering a favorable environment for resolving commercial disputes. Any challenges to

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Byron F. Egan is a partner of Jackson Walker L.L.P. in Dallas, Texas. Mr. Egan is Senior Vice Chair and Chair of the Executive Council of the ABA Business Law Section’s Mergers & Acquisitions Committee and former Chair of its Asset Acquisition Agreement Task Force, and a member of the American Law Institute. Mr. Egan is a former Chairman of the Texas Business Law Foundation and is also former Chairman of the Business Law Section of the State Bar of Texas and of that Section’s Corporation Law Committee.

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<sup>1</sup> The final enrolled version of HB 19 as signed into law by Governor Greg Abbott and its legislative history can be found at: <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=88R&Bill=HB19>.

<sup>2</sup> HB 19 §§ 5, 6.

<sup>3</sup> See Byron F. Egan, Texas Chancery Courts: The Missing Link to More Texas Entities, *Texas Bar Journal*, Vol. 79, No. 2 at 98 (Feb. 2016).

<sup>4</sup> For further information on the TBLF, see: <https://www.jw.com/wp-content/uploads/2016/09/1239.pdf>.

the constitutionality of the Business Courts will be decided by the Texas Supreme Court, which has been given exclusive and original jurisdiction over any such disputes.

The major components of HB 19 and SB 1045 include:

## **II. JUDGES WITH EXPERTISE AND TRAINING IN COMPLEX BUSINESS MATTERS**

**2.1** The Business Courts are to be staffed with judges appointed by the Governor as soon as practicable after September 1, 2023, with the advice and consent of the Senate, who possess specialized knowledge and expertise in handling complex business disputes. Judges are appointed for a two year initial term and may be reappointed by the Governor.<sup>5</sup> By fostering a high level of expertise among the judiciary, the objective is to improve the quality of decisions and instill confidence in the Texas judiciary's ability to handle complex business disputes.

**2.2** A Business Court judge must be at least 35 years of age, a United States citizen and have been a resident of a county within the Division of the Business Court to which the judge is appointed for at least five years before appointment and must be a licensed attorney in Texas who has 10 or more years of experience in: (a) practicing complex civil business litigation; (b) practicing business transaction law; (c) serving as a judge of a court in Texas with civil jurisdiction; or (d) any combination of such experience.<sup>6</sup> A Business Court judge may not have had his or her license to practice law revoked, suspended or subject to a probated suspension.<sup>7</sup>

## **III. OPINIONS, PROCEDURES AND POWERS**

**3.1** The Supreme Court is required to adopt rules for the issuance of written opinions by the Business Court and to set fees for filings and actions in the Business Court in amounts sufficient to cover the cost of administering the Business Court, taking into account fee waivers necessary for the interest of justice.<sup>8</sup> The Supreme Court must also adopt rules of civil procedure for the Business Court as the Supreme Court determines necessary, including rules providing for the timely and efficient removal and remand of cases to and from the Business Court and the assignment of cases to judges of the Business Court.<sup>9</sup> The Business Court itself may adopt rules of practice and procedure consistent with the Texas Rules of Civil Procedure and the Texas Rules of Evidence. Except as otherwise provided in Chapter 25A, the practices, procedures, 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 Texas district courts.

**3.2** It is anticipated that the Business Courts judges will issue written opinions explaining their decisions, a departure from the standard practice of most Texas civil district courts. These opinions are intended to enhance the predictability of legal issues for Texas businesses by providing concrete guidance for critical issues of Texas corporate governance, fiduciary duties of officers,

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<sup>5</sup> HB 19 § 6; §§ 25A.008, 25A.009.

<sup>6</sup> § 25A.008(a).

<sup>7</sup> § 25A.008(b).

<sup>8</sup> S 25A.016.

<sup>9</sup> § 25A.020.

directors, and managers, and interpretation of complex business transactional documents. The opinions would be applying and interpreting existing statutory and case law.

**3.3** HB 19 anticipates the creation of provisions for streamlined procedures within the Business Courts, including simplified filing requirements, expedited scheduling, and enhanced case management techniques tailored to the unique needs of commercial litigation. The expectation is that such measures will reduce delays, improve efficiency, and provide litigants with a more predictable and timely resolution of their disputes.

**3.4** Business Courts have the powers provided to Texas district courts by Chapter 24 of the Government Code, including the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, and supersedes and to grant any relief that may be granted by a district court.<sup>10</sup> A Business Court judge has all the powers, duties, immunities and privileges of a Texas district judge.<sup>11</sup>

#### **IV. JURIES.**

**4.1** HB 19 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."<sup>12</sup>

**4.2** A jury trial in a case filed initially in the Business Court must be held in any county in which the case could have been filed under Texas Civil Practice and Remedies Code § 15.002 as chosen by the plaintiff.<sup>13</sup> A jury trial in a case removed to the Business Court must be held in the county in which the action was originally filed.<sup>14</sup> However, a jury trial for a case in which a written contract specifies a county as venue for lawsuits must be held in that county.<sup>15</sup> The parties and the Business Court judge may agree to hold the jury trial in any other county, but a party may not be required to agree to hold the jury trial in a different county.<sup>16</sup> The drawing of jury panels, selection of jurors and other jury-related practice and procedure in the Business Court are to be the same as for the district court in the county in which the trial is held.<sup>17</sup>

#### **V. GEOGRAPHIC DIVISIONS**

**5.1** HB 19 creates a statutory court under § 1, Article V of the Texas Constitution and calls the new court a "business court."<sup>18</sup>

**5.2** New Chapter 25A of the Government Code specifies that the judicial district of the Business Court is composed of all counties in Texas and has eleven geographic Divisions ("**Divisions**")<sup>19</sup>, five of these Divisions are in main metropolitan areas, have no subsequent

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<sup>10</sup> § 25A.004.

<sup>11</sup> § 25A.005.

<sup>12</sup> § 25A.015((a).

<sup>13</sup> § 25A.015(b).

<sup>14</sup> § 25A.015(c).

<sup>15</sup> § 25A.015(d).

<sup>16</sup> § 25A.015(3).

<sup>17</sup> § 25A.015(f) and (g).

<sup>18</sup> § 25A.002.

<sup>19</sup> The Business Court Divisions are defined to match their correspondingly numbered Administrative Judicial Regions, as defined in Section 74.042 of the Government Code (§ 25.003).

conditions to their creation and are expected to hear cases commencing September 1, 2024.<sup>20</sup> The five initial Divisions that are projected to be staffed and in operation by September 1, 2024 are: the First Business Court Division [Dallas], Third Business Court Division [Austin], Fourth Business Court Division [San Antonio], Eighth Business Court Division [Fort Worth] and Eleventh Business Court Division [Houston].<sup>21</sup>

**5.3** The remaining six Business Court Divisions<sup>22</sup> will be abolished on September 1, 2026, unless reauthorized by the 2025 Texas Legislature and funded through additional legislative appropriations at that time.<sup>23</sup>

## **VI. JURISDICTION OF BUSINESS COURTS**

**6.1** The Business Courts have civil jurisdiction concurrent with district courts in two different sets of specified actions in which the amount in controversy exceeds (1) \$5,000,000 and (2) \$10,000,000. In each case, the minimum amount in controversy excludes interest, statutory damages, exemplary damages, penalties, attorneys' fees and court costs.

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<sup>20</sup> § 25A.003.

<sup>21</sup> The five Divisions to become operational on September 1, 2024 (§ 25.003) and which are defined to match their correspondingly numbered Administrative Judicial Regions, as defined in Section 72.042 of the Government Code, are:

- (a) First Administrative Judicial Region is composed of the counties of Collin, Dallas, Ellis, Fannin, Grayson, Kaufman, and Rockwall;
- (b) Third Administrative Judicial Region is composed of the counties of Austin, Bell, Blanco, Bosque, Burnet, Caldwell, Colorado, Comal, Comanche, Coryell, Falls, Fayette, Gonzales, Guadalupe, Hamilton, Hays, Hill, Lampasas, Lavaca, Llano, McLennan, Milam, Navarro, Robertson, San Saba, Travis, and Williamson;
- (c) Fourth Administrative Judicial Region is composed of the counties of Aransas, Atascosa, Bee, Bexar, Calhoun, DeWitt, Dimmit, Frio, Goliad, Jackson, Karnes, LaSalle, Live Oak, Maverick, McMullen, Refugio, San Patricio, Victoria, Webb, Wilson, Zapata, and Zavala;
- (d) Eighth Administrative Judicial Region is composed of the counties of Archer, Clay, Cooke, Denton, Eastland, Erath, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Somervell, Stephens, Tarrant, Wichita, Wise, and Young;
- (e) Eleventh Administrative Judicial Region is composed of the counties of Brazoria, Fort Bend, Galveston, Harris, Matagorda, and Wharton.

<sup>22</sup> The six remaining Business Court Divisions (which will not become operational in 2024) (§ 25A.003(n)) are:

- (a) Second Administrative Judicial Region is composed of the counties of Angelina, Bastrop, Brazos, Burleson, Chambers, Grimes, Hardin, Jasper, Jefferson, Lee, Liberty, Madison, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington;
- (b) Fifth Administrative Judicial Region is composed of the counties of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, Starr, and Willacy;
- (c) Sixth Administrative Judicial Region is composed of the counties of Bandera, Brewster, Crockett, Culberson, Edwards, El Paso, Gillespie, Hudspeth, Jeff Davis, Kendall, Kerr, Kimble, Kinney, Mason, McCulloch, Medina, Menard, Pecos, Presidio, Reagan, Real, Sutton, Terrell, Upton, Uvalde, and Val Verde;
- (d) Seventh Administrative Judicial Region is composed of the counties of Andrews, Borden, Brown, Callahan, Coke, Coleman, Concho, Crane, Dawson, Ector, Fisher, Gaines, Garza, Glasscock, Haskell, Howard, Irion, Jones, Kent, Loving, Lynn, Martin, Midland, Mills, Mitchell, Nolan, Reeves, Runnels, Schleicher, Scurry, Shackelford, Sterling, Stonewall, Taylor, Throckmorton, Tom Green, Ward, and Winkler;
- (e) Ninth Administrative Judicial Region is composed of the counties of Armstrong, Bailey, Baylor, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hutchinson, King, Knox, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Terry, Wheeler, Wilbarger, and Yoakum; and
- (f) Tenth Administrative Judicial Region is composed of the counties of Anderson, Bowie, Camp, Cass, Cherokee, Delta, Franklin, Freestone, Gregg, Harrison, Henderson, Hopkins, Houston, Hunt, Lamar, Leon, Limestone, Marion, Morris, Nacogdoches, Panola, Rains, Red River, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt, and Wood.

<sup>23</sup> § 25.003(n).

**6.2.1.** The specified \$5 million-minimum actions<sup>24</sup> include a (1) a derivative proceeding, (2) an action regarding the governance, governing documents or internal affairs of an organization, (3) an action in which a claim under a state or federal securities or trade regulation law is asserted against (a) an organization, (b) a controlling person or managerial official of an organization for an act or mission by the organization or by the person in the person 's capacity as such, (c) an underwriter of securities issued by the organization or (d) the auditor of an organization, (4) 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 that person in the person's capacity as such, (5) an action alleging that an owner, controlling person or managerial official breached a duty owed to an organization or an owner of an organization, including breach of a duty of loyalty or good faith, (6) an action seeking to hold an owner or governing person of an organization liable for an obligation of the organization, other than on account of a written contract signed by that person in a capacity other than as an owner or governing person, and (7) an action arising out of the Texas Business Organizations Code ("**TBOC**").<sup>25</sup>

**6.2.2.** For purposes of the foregoing list of specified actions with a \$5,000,000 minimum amount in controversy: (i) "**controlling person**" means a person who directly or indirectly controls a governing person, officer or organization, so in theory there could be a controlling person of an individual director or officer; (ii) "**derivative proceeding**" means a civil action brought in the right of a domestic or foreign corporation, a domestic or foreign limited liability company, or a domestic or foreign limited partnership, to the extent provided by the TBOC; (iii) "**governing person,**" "**governing documents,**" "**internal affairs,**" "**managerial official,**" "**officer,**" and "**owner**" are defined in new Chapter 25A in a substantively similar manner to their definitions in the TBOC; and (iv) "**organization**" is defined to mean a foreign or domestic entity or association, regardless of whether the organization is for profit or nonprofit, including: (A) a corporation; (B) a limited partnership; (C) a general partnership; (D) a limited liability partnership; (E) a limited liability company; (F) a business trust; (G) a real estate investment trust; (H) a joint venture; (I) a joint stock company; (J) a cooperative; (K) a bank; (L) a credit union; (M) a savings and loan association; (N) an insurance company; and (O) a series of a limited liability company or of another entity.<sup>26</sup>

**6.2.3.** The \$5,000,000 minimum for the amount in controversy does not apply if a party to the action is a "**publicly traded company,**" which is defined as an entity whose voting equity securities are listed on a national securities exchange registered with the United States Securities and Exchange Commission under Section 6 of the Securities Exchange Act of 1934 and any entity that is majority owned or controlled by such an entity.<sup>27</sup>

**6.3** The specified \$10 million-minimum actions<sup>28</sup> include: (1) an action arising out of a "**qualified transaction**";<sup>29</sup>(2) an action that arises out of a contract or commercial transaction in which the parties to the contract or transaction agreed in the contract or a subsequent agreement

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<sup>24</sup> § 25A.004(b)

<sup>25</sup> § 25A.004(b).

<sup>26</sup> § 25A.001.

<sup>27</sup> §§ 25.001(13) and 25.004(c).

<sup>28</sup> § 25.003(d)

<sup>29</sup> As defined in § 25.001(14).

that the Business Court has jurisdiction of the action, except an action that arises out of an insurance contract; and (3) an action that arises out of a violation of the Texas Finance Code or Texas Business & Commerce Code (“*TBCC*”) by an organization or an officer or governing person acting on behalf of an organization, other than a bank, credit union or savings and loan association. The phrase “*qualified transaction*” is defined in Chapter 25A to mean a transaction under which a party: (A) pays or receives, or is obligated to pay or is entitled to receive, consideration with an aggregate value of at least \$10 million; or (B) lends, advances, borrows, receives, is obligated to lend or advance, or is entitled to borrow or receive money or credit with an aggregate value of at least \$10 million, but excludes a transaction involving a loan or an advance of money or credit by a bank, credit union, or savings and loan institution.<sup>30</sup>

**6.4.1.** The Business Courts have civil jurisdiction concurrent with district courts in an action seeking injunctive relief or a declaratory judgment under Chapter 37 of the Texas Civil Practice and Remedies Code involving a dispute based on a claim within the court's jurisdiction described above.<sup>31</sup>

**6.4.2.** The Business Courts also have supplemental jurisdiction over any other claim related to a case or controversy within the court's jurisdiction that forms part of the same case or controversy, provided such supplemental claims may proceed in the Business Court only on the agreement of all parties to the claim and a judge of the Business Court Division in which the action is pending.<sup>32</sup> If the parties involved do not agree on the claim proceeding in the Business Court, the claim may proceed in a court of original jurisdiction concurrently with any related claims proceeding in the Business Court.<sup>33</sup>

**6.5** Notwithstanding the foregoing, the Business Courts do not have jurisdiction over the following claims: (1) a health care liability claim arising under Chapter 74 of the Texas Civil Practices and Remedies Code, (2) a claim in which a party seeks recovery of monetary damages for bodily injury or death, or (3) a claim of legal malpractice.<sup>34</sup> In addition, unless the claim falls within the Business Courts’ supplemental jurisdiction, the Business Courts do not have jurisdiction over (1) a civil action brought by or against a governmental entity or to foreclose on a lien on real or personal property, (2) a claim arising out of Subchapter E of Chapter 15 (which governs covenants not to compete) and Chapter 17 (relating to deceptive trade practices) of the Texas Business & Commerce Code (“*TBCC*”), the Texas Estates Code, the Texas Family Code, the Texas Insurance Code or Chapter 53 (which governs mechanic's liens) and Title 9 (which governs trusts) of the Texas Property Code, (3) a claim arising out of the production or sale of a farm product as defined in *TBCC* § 9.102, (4) a claim related to a consumer transaction, as defined in *TBCC* § 601.001, to which a consumer in Texas is a party arising out of a violation of federal or state law, or (5) a claim related to the duties and obligations under an insurance policy.<sup>35</sup>

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<sup>30</sup> § 25A.001(14).

<sup>31</sup> § 25.004(e).

<sup>32</sup> § 25A.004(f).

<sup>33</sup> *Id.*

<sup>34</sup> § 25.004(h).

<sup>35</sup> § 25A.004(g)



## **VII. APPOINTMENT AND TERMS OF BUSINESS COURT JUDGES**

**7.1** The Governor is required by Chapter 25A to appoint two judges to each of the First, Third, Fourth, Eighth and Eleventh Business Court Divisions as soon as practicable after the effective date of HB 19, which was September 1, 2023.<sup>36</sup> Between July 1, 2026 and September 1, 2026, and if the Legislature provides the funding, the Governor is required to appoint one judge to each of the remaining six Divisions of the Business Court.<sup>37</sup>

**7.2** A Business Court judge is appointed to serve for a term of two years beginning on September 1 of every even-numbered year. Business Court judges may be reappointed.<sup>38</sup> Any appointments by the Governor are with the advice and consent of the Texas Senate.<sup>39</sup> If a Business Court judge vacancy occurs the Governor, with the advice and consent of the Senate, must appoint another person to serve for the remainder of the unexpired term.<sup>40</sup>

**7.3** A Business Court judge may be removed from office in the same manner and for the same reasons as a State district judge.<sup>41</sup> A Business Court judge is disqualified and subject to mandatory recusal for the same reasons a State district judge is subject to disqualification or recusal in a pending case, pursuant to the same procedures as used for a district judge.<sup>42</sup>

**7.4** Being a Business Court judge is considered to be a full-time job. A Business Court judge may not engage in the private practice of law.<sup>43</sup>

**7.5** The Chief Justice of the Texas Supreme Court can assign to serve, as a visiting judge of a Division of the Business Court, a retired or formal judge or justice who satisfies the qualifications required of a Business Court judge.<sup>44</sup> A visiting judge on the Business Court is subject to objection, disqualification or recusal in the same manner as a visiting district judge.<sup>45</sup>

## **VIII. INITIAL FILING, REMOVAL AND REMAND**

**8.1** An action within the jurisdiction of the Business Court may be filed in the Business Court. The party filing the action must plead facts to establish venue in a county in a Division of the Business Court, and the Business Court is required to assign the action to that Division.<sup>46</sup> Venue may be established as provided by law or, if a written contract specifies a county as venue for the action, as provided by the contract.<sup>47</sup>

**8.2** If the Business Court does not have jurisdiction of the action, the court must, at the option of the party filing the action, either transfer the action to a district court or county court at law in a

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<sup>36</sup> § 25A.009(a)(1).

<sup>37</sup> §§ 25A.001(a)(2) and 25A.003.

<sup>38</sup> § 25A.009(b).

<sup>39</sup> § 25A.009(a).

<sup>40</sup> § 25A.010.

<sup>41</sup> § 25A.012(a).

<sup>42</sup> § 25A.012(b).

<sup>43</sup> § 25A.013.

<sup>44</sup> § 25A.014(a).

<sup>45</sup> *Id.*

<sup>46</sup> § 25A.006(a).

<sup>47</sup> *Id.*

county of proper venue or dismiss the action without prejudice to the party's rights.<sup>48</sup> After an action is assigned to a Division of the Business Court, if the Business Court determines that the Division's geographic territory does not include a county of proper venue for the action, the court must: (1) if an operating Division of the Business Court includes a county of proper venue, transfer the action to that Division; or (2) if there is not an operating Division of the Business Court that includes a county of proper venue, at the option of the party filing the action, transfer the action to a district court or county court at law in a county of proper venue.<sup>49</sup>

**8.3** A party to an action filed in a district court or county court at law that is within the jurisdiction of the Business Court may remove the action to the Business Court.<sup>50</sup> If the Business Court does not have jurisdiction of the action, the Business Court must remand the action to the court in which the action was originally filed.<sup>51</sup> A party to an action filed in a district court or county court at law in a county of proper venue that is not within an operating Division of the Business Court or the judge of the court in which the action is filed may not remove or transfer the action to the Business Court.<sup>52</sup>

**8.4** The right to remove an action to the Business Court has a time deadlines. A party may file an agreed notice of removal at any time during the pendency of the action.<sup>53</sup> If all parties to the action have not agreed to remove the action, the notice of removal must be filed: (1) not later than the 30th day after the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the Business Court's jurisdiction over the action; or (2) if an application for temporary injunction is then pending, not later than the 30th day after the date such application is granted, denied, or denied as a matter of law. The notice of removal must be filed with the Business Court and the court in which the action was originally filed.<sup>54</sup> On receipt of the notice, the clerk of the court in which the action was originally filed is required immediately to transfer the action to the Business Court in accordance with rules adopted by the Texas Supreme Court, and the Business Court clerk must assign the action to the appropriate Division of the Business Court.<sup>55</sup>

**8.5** The judge of a court in which an action is filed may request the presiding judge for the court's administrative region to transfer the action to the Business Court if the action is within the Business Court's jurisdiction.<sup>56</sup> The judge is required to notify all parties of the transfer request and request a hearing on the transfer request.<sup>57</sup> After a hearing on the request, the presiding judge may transfer the action to the Business Court if the presiding judge finds the transfer will facilitate the fair and efficient administration of justice.<sup>58</sup> The Business Court clerk must assign an action that is so transferred to the appropriate Division of the Business Court.<sup>59</sup>

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<sup>48</sup> § 25A.006(b).

<sup>49</sup> § 25A.006(c).

<sup>50</sup> § 25A.006(d).

<sup>51</sup> *Id.*

<sup>52</sup> § 25A.006(e).

<sup>53</sup> § 25A.006(f).

<sup>54</sup> *Id.*

<sup>55</sup> § 25A.006(g).

<sup>56</sup> § 25A.006(k).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

**8.6** Upon establishment of jurisdiction and venue over an action, the Business Court judge must by order declare the county in which any jury trial for the action will be held as determined under Section 25A.015.

## **IX. APPEALS**

Except in instances when the Texas Supreme Court has concurrent or exclusive jurisdiction, the Fifteenth Court of Appeals has exclusive intermediate jurisdiction over an appeal from an order or judgment of the Business Court or an original proceeding relating to an action or order of the Business Court,<sup>60</sup> and also over civil cases brought by or against the State or any of its instrumentalities other than various criminal, family law and tort matters.<sup>61</sup> The Fifteenth Court of Appeals has statewide jurisdiction, will be located in Austin, Texas and will initially have a chief justice and four other justices.<sup>62</sup> The procedures governing an appeal or original proceeding from the Business Court are generally the same as the procedures for an appeal or original proceeding from a district court.

## **X. ADMINISTRATION OF THE BUSINESS COURT**

**10.1** The appointed Business Court judges, by majority vote, not later than the seventh day after the first day of a term, must select one of their members to serve as administrative presiding judge for the duration of the term.<sup>63</sup> If a vacancy occurs in the position of administrative presiding judge, the remaining Business Court judges must select as soon as practicable a judge of the court to serve as administrative presiding judge for the remainder of the unexpired term.<sup>64</sup>

**10.2** The administrative presiding judge of the Business Court must manage administrative and personnel matters on behalf of the Business Court and must appoint a clerk whose office is to be located in Travis County in facilities provided by the State of Texas.<sup>65</sup> The clerk must accept all filings in the Business Court and fulfill the legal and administrative functions of a district clerk.

**10.3** Each Business Court judge must maintain chambers in the county the judge selects within the geographic boundaries of the Division to which the judge is appointed in facilities provided by the State of Texas.<sup>66</sup> A Business Court judge may hold court at any courtroom within the geographic boundaries of the Division to which the judge is appointed as the court determines necessary or convenient for a particular civil action.<sup>67</sup> To the extent practicable, a county using existing courtrooms or facilities must accommodate the Business Court in the conduct of the court's hearings and other proceedings.

**10.4** Remote proceedings, other than a jury trial, may be conducted in the Business Court to facilitate the resolution of a matter before the court.<sup>68</sup> However, the Business Court may not require a party or attorney to remotely attend a court proceeding in which oral testimony is heard unless

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<sup>60</sup> § 25A.007; Gov. Code § 22.220(d).

<sup>61</sup> Gov. Code §§ 22.201 and 22.2151

<sup>62</sup> Gov. Code §§ 22.201, 21.2151 and 22.216.

<sup>63</sup> § 25A,009(d).

<sup>64</sup> *Id.*

<sup>65</sup> § 25A.017(c).

<sup>66</sup> § 25A.017(d).

<sup>67</sup> § 25A.017(d).

<sup>68</sup> § 25A.017(a).

the parties agree.<sup>69</sup> The Business Court must provide reasonable notice to the public that a proceeding will be conducted remotely and an opportunity for the public to observe the remote proceeding.<sup>70</sup>

**10.5** In a county in which a Business Court Division sits, the sheriff, in person or by deputy, must attend the Business Court as required by the court.<sup>71</sup> The sheriff or deputy is entitled to reimbursement from the State of Texas for the cost of attending the Business Court.<sup>72</sup> The Business Court has authority to appoint personnel necessary for the operation of the court, including personnel to assist the clerk of the court, staff attorneys for the court, staff attorneys for each judge of the Business Court, court coordinators and administrative assistants.<sup>73</sup> All personnel, including the Business Court clerk, are employees of the Office of Court Administration of the Texas Judicial System and are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations.<sup>74</sup> The Business Court is administratively attached to the Office of Court Administration of the Texas Judicial System, but that Office does not have any authority or responsibility related to the duties of the Business Court.<sup>75</sup> That Office must provide administrative support to the Business Court as necessary to enable the Business Court to carry out its duties under Chapter 25A and may employ personnel necessary to provide administrative support to the Business Court.

**10.6** To promote the orderly and efficient administration of justice, the Business Court judges may exchange benches and sit and act for each other in any matter pending before the court.<sup>76</sup>

**10.7** The Office of Court Administration of the Texas Judicial System is required to submit to the Texas Legislature a report on the number and types of cases heard by the Business Court in the preceding year no later than December 1 of each year with respect to the preceding year.<sup>77</sup>

## **XI. CHALLENGES TO CONSTITUTIONALITY OF BUSINESS COURTS**

**11.1** As HB 19 was being debated in the Legislature, some opponents suggested that they would challenge its constitutionality in the courts. As a consequence Section 4 of HB 19 provides that “The Texas Supreme Court has exclusive and original jurisdiction over a challenge to the constitutionality of this Act and may issue injunctive or declaratory relief.”<sup>78</sup>

**11.2** Chapter 25A of the Government Code provides that the Business Court is a statutory court created by the Texas Legislature under Article 5, Section 1 of the Texas Constitution:

Sec. 1. JUDICIAL POWER VESTED IN COURTS; LEGISLATIVE POWER REGARDING COURTS. The judicial power of this State shall be vested in one Supreme

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<sup>69</sup> *Id.*

<sup>70</sup> § 25A.017(g).

<sup>71</sup> § 25A.017(h).

<sup>72</sup> *Id.*

<sup>73</sup> § 25A.017(i).

<sup>74</sup> § 25A.017(i).

<sup>75</sup> § 25A.0171.

<sup>76</sup> § 25A.009(f).

<sup>77</sup> § 21.0171(a).

<sup>78</sup> HB 19 § 4(a).

Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

The Legislature’s authority to create new courts and provide for the selection of their judges was upheld by the Texas Supreme Court in *Jordan v. Crudgington*, 149 Tex. 237 231 S.W. 2d 641 (Tex. 1950). Some opponents of the Business Court have claimed that the Business Court is unconstitutional because its structure and powers are comparable to a state district court’s, making it a defacto state district court without complying with other provisions of the Texas Constitution applicable to state district courts. These arguments track the dissenting opinion in *Jordan*, which was not persuasive to the Texas Supreme Court majority in 1950, or to the Texas Legislature in 2023.

**11.3** If the appointment of judges by the Governor to the Business Court is held by the Texas Supreme Court as unconstitutional, the Business Courts will instead be staffed by retired or former judges or justices who are appointed to the Business Courts as provided for visiting judges and justices in Chapter 25A. Such appointments would be by the Chief Justice of the Supreme Court and not the Governor.

## **XII. SAMPLE CONTRACTUAL PROVISION**

Even though Business Courts will not be able to try cases before September 1, 2024, parties can insert forum selection clauses in their governing documents and contracts that specify that disputes will be adjudicated in Business Courts.<sup>79</sup> Such a forum selection clause could read as follows:

Any claim, charge, allegation, demand, suit, cause of action, action, complaint, dispute or controversy (“*Claim*”) arising out of, relating to, or in connection with, this Agreement or any conduct related to, arising out of, or in connection with, the performance or nonperformance of this Agreement, or, with the consent of the judge of a Business Court in the applicable Business Court Division of the State of Texas (and the parties shall have an affirmative obligation to seek such judge’s consent), any Claim which is related to, arises out of, or is in connection with, a dispute between the parties that is within the jurisdiction of a Business Court in the Business Court Division of the State of Texas shall be exclusively brought before a Business Court in the applicable Business Court Division of the State of Texas (“*Texas Business Court*”) if the matter meets the jurisdictional requirements of such Texas Business Court and such Texas Business Court is then accepting new case filings; and, if the Claim does not meet the jurisdictional requirements of such Texas Business Court or it is not then accepting new filings, then the matter shall be exclusively brought in [the Texas state district court or federal district court in the county of [insert name of designated county]].

## **XIII. CONCLUSION**

By offering a specialized forum for resolving significant business disputes, Texas is enhancing its capacity to address the needs of its business community.

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<sup>79</sup> See EGAN ON ENTITIES Corporations, Partnerships and Limited Liability Companies in Texas (4<sup>th</sup> Ed. 2023) §2.2.2(c).

**XIV. EXHIBIT A**

**Appendix A**

**Administrative Judicial Regions  
and Business Court Divisions**

Divisions 1, 3, 4, 8 and 11 - open September 1, 2024  
Divisions 2, 5, 6, 7, 9 and 10 - open September 1, 2026  
if authorized by 2025 Texas Legislature

