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Insights: Alerts

88th Texas Legislature Enacts House Bill 19, Creating New Business Court System

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The 88th Texas Legislature has enacted House Bill 19, which currently awaits Governor Greg Abbott's signature. A significant piece of legislation affecting the state judiciary, HB 19 amends the Texas Government Code by creating a new statewide business court system which will have jurisdiction over business and commercial cases with significant amounts of money in controversy. For Texas businesses, this new law will radically change the landscape of state-level litigation regarding certain types of larger commercial cases. The following summary answers important questions about the new legislation.

1. When will HB 19 take effect?

HB 19 will take effect on September 1, 2023, but the newly-created business courts will not begin accepting cases until September 1, 2024, and the law will only apply to cases filed on or after that date.

2. Which kinds of cases will Texas business courts hear?

Business courts will have concurrent jurisdiction with district courts for certain kinds of cases involving both foreign and domestic business organizations, whether for profit or not-for-profit. The court's jurisdiction will depend on the amount in controversy in the case, exclusive of interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs.

a. Cases Exceeding $5 Million

Business courts will have jurisdiction over the following kinds of cases, if the amount in controversy exceeds $5 million:

(1) Derivative proceedings;

(2) Actions regarding the governance, governing documents, or internal affairs of an organization;

(3) Actions 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 omission by the organization or by the person in the person's capacity as a controlling person or managerial official;

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

(D) The auditor of an organization;

(4) Actions by an organization, or an owner of an organization, if the action:

(A) Is brought against an owner, controlling person, or managerial official of the organization; and

(B) Alleges an act or omission by the person in the person's capacity as an owner, controlling person, or managerial official of the organization;

(5) Actions 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;

(6) Actions 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 the person to be held liable in a capacity other than as an owner or governing person; and

(7) Actions arising out of the Texas Business Organizations Code.

b. <u>Cases Exceeding $10 Million</u>

Business courts will have jurisdiction over the following kinds of cases, if the amount in controversy exceeds $10 million:

(1) Actions arising out of a “qualified transaction,” which generally refers to transactions whose value is at least $10 million, and includes loans;

(2) Actions that arise 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; and

(3) Certain actions that arise out of a violation of the Finance Code or Business & Commerce Code 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.

c. <u>Cases Involving Publicly Traded Companies</u>

If one of the parties to a business court case is a publicly traded company, and the case meets one of the jurisdictional criteria listed above, the business court will have jurisdiction over the case regardless of the amount in controversy.

3. <u>What other powers and duties do Texas business courts have?</u>

HB 19 endows business courts with the power to issue equitable relief, to exercise supplemental jurisdiction, and allows for jury trials of business court cases, subject to some limitations.

a. <u>Equitable Relief</u>

Business courts have the authority to hear cases seeking injunctive or declaratory relief, if the case falls within its jurisdictional authority listed above. Further, business courts can issue writs of injunction, mandamus, sequestration, attachment, garnishment, and supersedeas, and grant any relief that may be granted by a district court.

b. <u>Supplemental Jurisdiction</u>

Business courts may also exercise supplemental jurisdiction. Supplemental jurisdiction exists when a case involves multiple claims arising from a related set of facts, some of which are within the court's jurisdiction and some not. However, for a case to proceed in a business court based on supplemental jurisdiction, the parties to the case and the business court judge must agree that the case should be heard in the business court, rather than another appropriate civil court. If no such agreement can be reached, the claim may proceed in another civil court concurrently with any related claims proceeding in the business court.

c. <u>Jury Trials</u>

Cases in business courts can be tried to a jury when required by the Texas Constitution. Jury trials for cases filed in business courts will be held in a court in any county in which the case could have been filed initially. If a case is removed to a business court, the jury trial will be held in the county in which the case was originally filed. If a contract between the parties to a business court case contains a venue provision, a jury trial of that case will be held in the county agreed on in the contract. The parties to a business court case can also agree to have a trial held in any county of their choosing.

4. <u>Are there any limitations on a Texas business court's jurisdiction?</u>

HB 19 limits the jurisdiction of business courts over certain types of claims.

a. <u>No Original Jurisdiction</u>

Unless a claim falls within the business court's supplemental jurisdiction as described above, business courts do not have jurisdiction over the following types of claims:

(1) Civil actions:

(A) brought by or against a governmental entity; or

(B) to foreclose on a lien on real or personal property;

(2) Claims arising out of:

(A) Subchapter E, Chapter 15, and Chapter 17, Business & Commerce Code [pertaining to covenants not to compete, antitrust, and deceptive trade practices];

(B) the Texas Estates Code;

(C) the Texas Family Code;

(D) the Texas Insurance Code; or

(E) Chapter 53, Title 9, Texas Property Code [pertaining to mechanic's, contractor's, or materialman's liens, and to trusts];

(3) Claims arising out of the production or sale of a farm product, as that term is defined by Section 9.102, Business & Commerce Code;

(4) Claims related to a consumer transaction, as that term is defined by Section 601.001, Business & Commerce Code, to which a consumer in this state is a party, arising out of a violation of federal or state law; or

(5) Claims related to the duties and obligations under an insurance policy.

b. <u>No Jurisdiction of Any Kind</u>

Business courts have no jurisdiction over the following types of cases, regardless of whether they fall within the court's supplemental jurisdiction:

(1) Claims arising under Chapter 74, Civil Practice and Remedies Code [pertaining to medical malpractice];

(2) Claims in which a party seeks recovery of monetary damages for bodily injury or death; or

(3) Claims of legal malpractice.

5. <u>How is a case initiated in a Texas business court?</u>

Cases can be initiated in business courts either by original filings or through removal of a case from another civil court.

a. <u>Original Filings</u>

Assuming the jurisdictional requirements listed above are met, a party may file a new lawsuit with a business court by establishing that venue is appropriate in one of the counties served by the division of the business court.

b. <u>Removal</u>

Cases may also be removed from a district court or county court at law into a business court. If the removal is agreed between the parties, the case can be removed at any time during the pendency of the case. If the removal is not agreed, 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 pending on 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, not later than the 30th day after the date the application is granted, denied, or denied as a matter of law.”

If a case is filed in a court of proper venue sitting in a county not served by a business court division, the case may not be removed to any business court.

c. Transfer and Remand

If a case is filed with a business court but the business court lacks jurisdiction over the case, the court may transfer the case to an appropriate district court or county court at law, or dismiss the case without prejudice to refiling.

If a case is removed to a business court but the court lacks jurisdiction, the court must remand the case back to the court it was removed from.

6. Where will Texas business courts be located?

HB 19 establishes 11 business court divisions, divided geographically. Five of those divisions, serving mostly urban centers, will be created effective September 1, 2024, while the creation of the other six divisions, which would serve more rural parts of the state, are deferred to the 2025 Texas Legislature for approval and funding. The first five divisions to be created encompass Dallas County and six surrounding counties (1st Division), Travis County and 27 surrounding counties (3rd Division), Bexar County and 22 surrounding counties (4th Division), Tarrant County and 18 surrounding counties (8th Division), and Harris County and five surrounding counties (11th Division).

The Texas Legislature also created a new court of appeals to serve the new business courts. Senate Bill 1045, passed and signed into law during the 2023 legislative session, provides for the creation of a 15th state court of appeals, located in Austin. This new court of appeals has exclusive jurisdiction over appeals from an order or judgment of the business court or an original proceeding related to an action or order of the business court.

7. How will Texas business court judges be selected?

Judges for these business court divisions will be appointed by the Governor, subject to the advice and consent of the senate, a process similar to the appointment and confirmation of United States federal judges. HB 19 provides for nomination of up to 16 business court judges which will be assigned to the various divisions. Judges will serve for two years beginning on September 1 of every even numbered year (beginning on September 1, 2024) and may be reappointed.

To qualify, a proposed business court judge must be:

(1) at least 35 years of age;

(2) a United States citizen;

(3) 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;

(4) a licensed Texas attorney with 10 or more years of experience in any combination of the following:

(A) practicing complex civil business litigation;

(B) practicing business transactional law; or

(C) serving as a judge of a court in this state with civil jurisdiction; and

(5) must not have had their law license revoked, suspended, or subject to a probated suspension.

8. <u>Why was this law enacted?</u>

Delaware is a popular location for business incorporation, partially because Delaware's Chancery Court, a form of business court, provides a predictable and efficient forum for business litigation. Chancery Court judges are typically experienced commercial attorneys and have created an extensive body of common law around Delaware's commercial statutes. In enacting HB 19, the Texas legislature likely sought to mimic Delaware's Chancery Court system and make Texas a more attractive state for business incorporation. HB 19 was also likely intended to alleviate some frustration associated with extensive delays in litigation due to the volume of cases heard by Texas district courts.

However, being that this is a new court system, and one with such high dollar amounts required, it will take time to see how Texas business courts handle their cases and whether this new forum is advantageous for Texas litigants.

The full text of HB 19 can be found at Tex. Gov't Code §§ 25A.001-020.

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