

# TEXAS LAWYER

## Expanding Business Courts' Reach: HB 40's Proposed Changes to the Texas Business Court's Jurisdictional And Removal Procedures

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In May 2023, Texas made significant moves to strengthen its business-friendly reputation with the enactment of House Bill 19, which created the Texas Business Courts to provide a specialized venue for resolving complex business disputes.

The business courts began hearing cases on Sept. 1, 2024, and their launch has proven largely successful. In their first six months, they have handled over 80 cases covering a wide range of civil business matters. These numbers are from the handful of courts currently operational—the First (Dallas), Third (Austin), Fourth (San Antonio), Eighth (Fort Worth), and Eleventh Divisions (Houston).

While these courts have made a positive impact, “early experience has ... 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” according to the sponsors of House Bill 40 (HB 40) which recently passed both chambers of the Texas Legislature.

If Governor Abbott signs it into law, HB 40 will expand the courts (with the addition of six new divisions subject to legislative appropriations), expand the cases they can hear, and add clarity for practitioners as to how to bring cases before these courts. We summarize key features of the law that should be



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Paul Genender, left, and Craig Stanfield, right, with Paul Hastings.

of interest to in-house counsel, transactional lawyers, and litigators.

In particular, practitioners should now consider how their document drafting (specifically, venue provisions) and litigation decisions could help them litigate in the business courts if that is their goal. HB 40 contains substantial expansions to the business courts’ jurisdiction. Still, parties must take steps to take advantage of that jurisdiction, sometimes when drafting documents, and, other times, when making litigation decisions. Otherwise, parties can find themselves in district court and having lost the opportunity to use the business court system.

### Current Jurisdiction and Removal Procedures

Today, the business courts’ jurisdiction is tiered based on the type of action, the amount in controversy,

and whether a publicly traded company is involved. Cases that may be heard in the business courts may still be heard in district courts and, in fact, a party will lose the right to litigate in the business court if a case is not filed there or properly removed. As detailed below, there are a number of nuances to the courts' current jurisdiction which have been the subject of ongoing disputes.

The business courts share jurisdiction with Texas district courts over certain types of high-stakes business disputes when the amount in controversy exceeds \$5 million, including shareholder derivative suits, corporate governance disputes, securities and trade regulation claims, breaches of fiduciary duties by owners or managers, internal company liability issues, and cases involving the Texas Business Organizations Code. They also share jurisdiction with Texas district courts in cases where the amount in controversy exceeds \$10 million for actions concerning certain qualified transactions, certain commercial contract disputes, and for violations of the Texas Finance or Business & Commerce Codes. If a case involves a publicly traded company, the business courts have jurisdiction regardless of the amount in controversy.

The business courts may hear related claims—even if those claims are not a part of the business courts' main jurisdiction—by agreement from all parties and the judge unless they involve medical malpractice, bodily injury or death, legal malpractice. They may **not** hear claims that involve government entities, real estate foreclosures, antitrust, consumer protection, family estates, and insurance law, farming product sales, and consumer transactions involving individual consumers.

The business courts, in resolving claims, may issue injunctions, declaratory judgments, and other typical court orders.

Cases may be filed directly in the business courts and may also be removed to the business courts. Unless all parties agree, a party seeking removal must file a notice within 30 days of either: (1) when it found out—or should have found out—that the business courts have jurisdiction; or (2) if a temporary injunction is pending, within 30 days after the court

grants, denies, or legally denies that injunction. This ensures that removal happens promptly after the relevant facts become clear.

## **I. HB 40's Jurisdictional and Removal Changes**

### **1. Jurisdictional Clarifications and Expansions**

HB 40 provides key changes to the business courts' jurisdiction. These changes will likely increase the number of cases before the business courts. They should also give parties clarity on what cases belong in the business courts and a straightforward path of removal to those courts.

#### **1. Change to Section 25A.004(d) (Qualified-Transactions Jurisdiction)**

HB 40 proposes an overhaul to Section 25A.004(d) of the Texas Government Code which currently governs the court's jurisdiction over designated "qualified transactions." HB 40 changes the definition of qualified transactions. It clarifies that a qualified transaction includes a "transaction or series of related transactions." The bill additionally lowers the monetary component of the definition from the current \$10 million to \$5 million. HB 40 also adds two new subsections to Section 25A.004(d)—subsections (4) and (5).

The proposed subsection (4) gives the business courts jurisdiction over actions 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 bio-science technologies and a trade secret, as defined by reference to the Texas Uniform Trade Secrets Act, known as TUTSA. And proposed subsection (5) gives the business courts jurisdiction over actions arising out of TUTSA.

#### **· Addition of Section 24A.004(d-1) (Jurisdiction over Arbitration Matters)**

HB 40 clarifies that the business courts have concurrent jurisdiction with the district courts over actions related to arbitrations, including (1) actions to enforce an arbitration agreement, (2) actions to appoint arbitrators, (3) actions to review arbitral awards, and (4) in other judicial actions authorized by an arbitration agreement, Chapters 171 or 172

of the Texas Civil Practice and Remedies Code, or the Federal Arbitration Act, if a claim included in the controversy in arbitration is described in Subsections (b) or (d).

· **Change to Section 24A.004(f) (Supplemental Jurisdiction)**

HB 40 tweaks the business courts' supplemental jurisdiction provision. It specifies that, in actions where the business courts have concurrent jurisdiction with the district courts, the business courts have supplemental jurisdiction over any other claim so related to an action that the claim forms part of the same case or controversy.

· **Change to Sections 24A.004(g) and (h) (Exclusions from Jurisdiction)**

HB 40 tweaks Section 24A.004(g), which governs cases that fall outside the business courts' jurisdiction unless it falls within the courts' supplemental jurisdiction. First, it clarifies that Section 24A.004(g) applies to claims in a civil action, not to the entire civil action. Second, it specifies that a 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. The bill also moves the current Section 24A.004(g)(4), related to certain consumer transaction suits, to Section 24A.004(h), thereby totally excluding this type of foreclosure claim from the business courts' jurisdiction.

· **Addition of Section 24A.004(i) (Amount in Controversy)**

HB 40 adds Section 24A.004(i) which provides that the amount in controversy is the total amount of all joined parties' claim.

· **Removal Additions**

Although not as drastic as the changes to the business courts' jurisdiction, HB 40 also proposes the additional language "later of" to the end of Section 25A.006(f)(1) and adds Section 25A.006(f)(1)(A). These additions provide a dual pathway for removal when an application for temporary injunction is not pending. Specifically, the additions now modify the removal provision to permit removal no later than the

30th day after the later of the date the party requesting removal was served with process (i.e., the new Section 25A.006(f)(1)(A) pathway) or the date the party requesting removal of the action discovered (or reasonably should have discovered fact establishing the business courts' jurisdiction over an action).

· **Promulgation of Rules**

HB 40 additionally directs the Texas Supreme Court to create rules for quickly and efficiently determining whether a case belongs in the business courts. In doing so, the Texas Supreme Court must consider fairness, efficiency, similarities to district courts, and how the new court system will evolve over time. The rules may include timelines, proof standards, review procedures, and appeals processes to ensure smooth and consistent jurisdictional decisions.

**II. Practical Insights**

HB 40's changes make it easier for litigants to wind up in front of the business courts. Counsel should assess whether this is something they want and, if so, ensure that they take steps when drafting contractual documents and early in litigation to invoke the business courts' jurisdiction. For purposes of existing contractual agreements, counsel might consider amending agreements concerning matters that fall within the newly proposed jurisdictional limits to specify the business courts as the exclusive venue.

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