

SUBJECT: Creating a specialty court to address certain business disputes

COMMITTEE: Judiciary & Civil Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Leach, Murr, Schofield, Slawson, Vasut

3 nays — Julie Johnson, Flores, Moody

1 absent — Davis

WITNESSES: From public hearing held March 22, 2023:

For — Sam Hardy, Energy Transfer; Robert Barnes, IBC Bank; Glenn Hamer, Texas Association of Business; John Ale and Mike Tankersley, Texas Business Law Foundation; Amy Befeld, Texans for Lawsuit Reform; and six individuals (*Registered, but did not testify*: Corbin Van Arsdale, AGC-Texas Building Branch; Scott Stewart, American Council of Engineering Companies of Texas; Steve Koebele, American Property Casualty Insurance Association; Genevieve Collins, Americans for Prosperity; Lauren Spreen, Apache Corporation; Steven Albright and Geoffrey Tahuahua, Associated General Contractors of Texas- Highway Heavy Utility and Industrial Branch; June Deadrick, CenterPoint Energy; Matthew Garcia, Dallas Regional Chamber; Sam Gammage, Dow; Christian Bionat, Greater Houston Partnership; Wendy Foster, Independent Bankers Association of Texas; Regan Ellmer, Independent Insurance Agents of Texas; Annie Spilman, NFIB; Julie Moore, Occidental Petroleum; Travis McCormick, Panhandle Producers & Royalty Owners Association; Neftali Partida, Phillips 66; Matt Grabner, Ryan, LLC; Gerald Lee, San Antonio Chamber of Commerce; Chuck Mains, TBLF; Jon Opelt, Texas Alliance for Patient Access; Sandy Hoy, Texas Apartment Association; Scott Norman, Texas Association of Builders; Kyle Bush, Texas Association of Manufacturers; John Kuhl and John Podvin, Texas Business Law Foundation; Justin Yancy, Texas Business Leadership Council; Brittney Baldovinos, Texas Chemical Council; George Christian, Texas Civil Justice League; Desiree Castro, Texas Food and Fuel Association; John Espinosa, Texas Hispanic

Chamber of Commerce Coalition; Fred Shannon, Texas Medical Liability Trust; John Fleming, Texas Mortgage Bankers Association; Tulse Oberbeck, Texas Oil and Gas Association; Thure Cannon, Texas Pipeline Association; Julia Parenteau, Texas Realtors; Mark Borskey, Texas Recreational Vehicle Association; John McCord, Texas Retailers Association; Tricia Davis, Texas Royalty Council; Becky Walker, Texas Society of Architects; Dana Moore, Texas Trucking Association; Lee Parsley, Texans for Lawsuit Reform; Cary Roberts, US Chamber Institute for Legal Reform; Cathy Dewitt, USAA; Tara Snowden, Zachry Corporation; and William Busby)

Against — Gloria Leal, Mexican American Bar Association of Texas; Jennifer Doan, Tim Newsom, TEX-ABOTA; Laura Tamez, Texas Trial Lawyers Association; and 8 individuals (*Registered, but did not testify*: Emily Amps, Texas AFL-CIO; Jacob Smith, Texas Employment Lawyers Association; Ware Wendell, Texas Watch; Julie Wheeler, Travis County Commissioners Court; and 10 individuals)

On — Megan LaVoie, Office of Court Administration.

DIGEST:

CSHB 19 would create a specialty business court to address and resolve certain business disputes. The court would be a statutory court created under Texas Constitution Art. 5, sec. 1.

Judicial district. The judicial district of the business court would include all counties in Texas and would have divisions geographically consistent and numbered to correspond with the eleven administrative court jurisdictions.

Jurisdiction and powers. The business court would have the same powers as district courts, including those to:

- issue writs of injunction, mandamus, sequestration, attachment, garnishment and supersedeas; and
- grant any relief that may be granted by a district court.

The business court would have civil jurisdiction concurrent with district courts for certain actions in which the value disputed exceeded \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney fees and court costs.

The business court also would have supplemental jurisdiction over any other claim related to a case or controversy in the court's jurisdiction that formed part of the same case or controversy. A claim within the business court's supplemental jurisdiction could proceed in the business court only on the agreement of all parties involved in the claim and the judge of the division of the court before which the action was pending.

Unless a claim fell within the business court's supplemental jurisdiction, the court would not have jurisdiction over:

- a civil action brought by or against a governmental entity; or
- any claim arising under the Business and Commerce Code related to deceptive trade practices, Property Code provisions governing trusts, the Estates Code, or the Family Code.

The business court also would not have jurisdiction over a claim from a party seeking recovery or monetary damages for bodily injury or death, including a claim that would otherwise fall within the court's supplemental jurisdiction.

Filing. An action within the jurisdiction of the business court could be filed in the business court. The party filing the action would be required to plead the facts of the case to establish the correct division of the business court, which would be assigned by the business court clerk.

If it was determined that the business court did not have jurisdiction, the court would be required, at the request of the party filing the action, to either transfer the action to a district court or applicable county court, or dismiss the action without prejudice.

If after assignment to a business court division, the court determined that

the division's geographic territory did not include a county of proper venue for the action, the business court would be required to transfer the action to the business court division that did include a county of proper venue.

A party to an action filed in a district court or county court within the jurisdiction of the business court could remove the action to the business court. If the business court did not have jurisdiction over the action, the business court would be required to return the action to the court in which it was originally filed.

The filing of an action or a notice of removal in the business court would be subject to the Civil Practices and Remedies Code.

Removal. To remove an action filed in a district court or county court to the business court, a party would be required to file a notice of removal with both courts within 30 days after the date the party received the initial pleading or summons that named the party. Once received, the clerk of the court where the action was originally filed would be required to immediately transfer the action to the business court.

Removal of a case to the business court would not be subject to the statutes or rules governing due order of pleading and would not waive a defect in venue or constitute an appearance to determine personal jurisdiction.

Transfer. The judge of a court in which an action was filed could request that the presiding judge in the court's administrative region transfer the action to the business court if the action was within the business court's jurisdiction. The judge of the court would be required to notify all parties of the transfer request. The judge in the administrative region could transfer the action to the business court if after a hearing on the request the judge found the transfer would facilitate the fair and efficient administration of justice. The business court clerk would be required to assign a transferred action to the appropriate division of the business court.

Appeals. CSHB 19 would establish that the Fifteenth Court of Appeals had exclusive jurisdiction over an appeal from an order or judgement of the business court or an original proceeding related to an action or order of the business court.

If the Fifteenth Court of Appeals was not created, the bill would require that 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 be filed in the applicable intermediate court of appeals with jurisdiction over the appeal.

Jury provisions. A party to an action in the business court would have the right to a trial jury when required by the constitution, dictated by the following provisions:

- a jury trial in a case filed initially in a business court would be required to be held in any county in which the case could have been filed under applicable law, as selected by the plaintiff;
- a jury trial in a case removed to the business court would be required to be held in the county in which the action was originally filed;
- a jury trial for a case in which a written contract specifies a county as venue for suits would be held in that county; and
- the parties and the business court judge could agree to hold the jury trial in any other county, but a party could not be required to agree to hold the jury trial in a different county.

The drawing of jury panels, selection of jurors and other jury-related practices and procedures in the business court would be required to be the same as those for the district court in the county in which the trial was held. Practice, procedure, rules of evidence, issuance of process and writs and all other matters pertaining to the conduct of trials, hearings, and other business in the business court would be governed by the laws and rules prescribed for district courts.

Written opinions. The Texas Supreme Court would be required to adopt rules pertaining to the issuance of written opinions by the business court.

Business court judges. A business court judge would have the same powers, duties, immunities, and privileges as a district judge. The bill would require that judges, who met certain qualifications established within the bill, be appointed by the governor, with advice and consent of the senate, to each division of the business court. The bill would also establish that a business court judge:

- could be reappointed;
- would be required to take the constitutional oath of office required of appointed officers and file an oath with the secretary of state; and
- could exchange benches and sit and act for each other in any matter pending before the court.

If a vacancy occurred in an office of a business court judge, the governor, with the advice of the senate, would be required to appoint a replacement judge to serve the remainder of the term.

A business court judge could be removed from office in the same manner and for the same reasons as a district court judge and could be disqualified or subject to recusal for the same reasons as a district court judge. A business court judge would be required to diligently discharge the duties of the office on a full-time basis and would not be allowed to engage in the private practice of law.

A retired or former judge or justice that would qualify as a business court judge could be assigned as a visiting judge to the business court by the chief justice of the supreme court. A visiting judge would be subjected to the same objection, disqualification, or recusal in the same manner as a retired or former judge or justice. Before accepting an assignment as a visiting judge, a retired or former judge or justice would be required to take the constitutional oath of office required of appointed officers of the state and file the oath with the secretary of state.

As soon as practicable after the effective date, the governor would be required to appoint judges to the First, Third, Fourth, Eighth and Eleventh Business Court Divisions. On or before September 1, 2026, but not before June 1, 2026, the governor would be required to appoint judges to the Second, Fifth, Sixth, Seventh, Ninth, and Tenth Business Court Divisions.

Court location and staffing. The business court-appointed clerk would be required to establish an office in a state facility in Travis County. The business court clerk would be required to accept all filings in the business court and fulfill the legal and administrative functions of a district clerk.

Each business court judge would be required to maintain chambers in a state-provided facility in the county the judge selected within the geographic boundary of the division to which the judge had been appointed. Unless otherwise provided for by the bill, a business court judge could hold court in any courtroom in the geographic boundaries of the division to which the judge had been appointed as was determined necessary or convenient for a particular civil action.

The business court would be allowed to conduct a remote proceeding to facilitate the resolution of a matter before the court. The business court would not be allowed to require a party, attorney, or juror to remotely attend a jury trial or proceeding in which oral testimony was given, absent good cause or agreement of the parties. The court would be required to provide reasonable notice to the public that the proceeding would be conducted remotely and provide an opportunity for the public to observe the remote proceeding.

The sheriff or deputy sheriff in a county with a business court would be required to attend business court as requested by the court, and would be entitled to reimbursement from the state for costs related to attendance.

The business court would be allowed to appoint certain personnel necessary to operate the court as described by the bill.

Court fees. The Texas Supreme Court would be required to set fees for filings and actions in the business court. Fee amounts would be required at a level sufficient to cover the costs of administering the law, taking into consideration fee waivers necessary for the interest of justice.

Rules. The business court could adopt rules of practice and procedure consistent with the Texas Rules of Civil Procedure of the Texas Rules of Evidence. The supreme court would be required to adopt rules of civil procedure as it deemed necessary, including rules related to 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.

Constitutionality. The supreme court would have exclusive and original jurisdiction related to the constitutionality of the bill and would be able to issue injunctive or declaratory relief in connection with a challenge. If the governor's appointment of business court judges was found to be unconstitutional, the business court would be staffed by retired or former judges or justices appointed under the process identified for retired judges in the bill.

Definitions. The bill would include numerous definitions necessary to implement the underlying statute.

Conforming language. The bill would include conforming language adding business court judges to statutes governing the determination of judge salaries and participation in state judicial retirement system.

The bill would take effect September 1, 2023 and would apply to civil actions commenced on or after September 1, 2024. If the Legislature made a specific appropriation for its purpose, the business court would be created September 1, 2024.

SUPPORTERS
SAY:

CSHB 19 would establish a new specialty court with jurisdiction over complex business law cases with more than \$10 million dollars in controversy. Texas already has more than 200 specialized courts dealing with probate, juvenile, family and veteran issues, but currently lacks a

court that could deal specifically with complex business issues. Many states have established and operate some form of business or complex litigation court to ensure business suits are reviewed by those with business expertise. Developing this new specialty court in Texas would strengthen the state's legal system and create a more efficient process to address business disputes.

The Legislature has created other specialty courts as authorized by the Constitution. The business court would be: statutory; composed of divisions that aligned with the geography and numbering of the state's administrative courts; presided over by judges with business expertise that would hold offices in each division; and authorized to issue written opinions to help establish precedence for future cases. The court would create a specialized docket, allow cases to be reviewed by judges who were consistently exposed to disputes of a similar nature, and assign a single judge to handle the entirety of a dispute.

Court backlogs. A specialty business court could help address backlogs in district court dockets across the state. Other cases often receive priority over business litigation, which can lead many business conflicts to remain unheard in the Texas court system for years. A business court could help to remove complex or lengthy business cases from existing court dockets, which could facilitate quicker resolutions for all cases.

Home-state venue. Complex business disputes concerning specific matters such as mergers and acquisitions, corporate governance, and securities issues are often unevenly distributed throughout the judicial system, which can lead to inconsistent decisions and approaches in these cases. When complex business cases are heard before a Texas court, they often require intense research by both the judge and jury as well as a lengthy judicial consideration of discovery and dismissal motions, which may be more time and resource intensive.

Some Texas businesses have chosen to have their suits heard within business court venues outside of the state to ensure that the case is addressed within a court system that is familiar with and experienced in

business disputes and contract law. Establishing similar courts in Texas could produce more consistent and timely rulings and improve confidence in the state judicial system among Texas businesses.

Expertise. The bill would require that business court judges have ten or more years of experience in complex civil business litigation or transaction law, have taught courses in those areas, or have served as a judge of a civil court in order to serve in the business court to ensure that complex business cases were heard by judges with such expertise.

Establishing a court dedicated to adjudicating complex business cases could help Texas continue to maintain its strong economic position and compete on the national and world stage.

CRITICS
SAY:

CSHB 19 would be unnecessary, as judges across the state are currently adjudicating business disputes fairly, efficiently, and in accordance with the law. Trial courts are serving their communities well and are dispensing justice across a wide range of cases, meeting the needs of varied litigants independently.

Before creating a new court system, lawmakers should first monitor the pilot program being created by the Texas supreme court to address similar issues in order to identify the needs and best structure for such a court. More review would help ensure that a statewide court focused on one issue was appropriately structured and was not an improper allocation of judicial power.

Structure. The structure of the proposed court districts should be further defined to avoid potential constitutional challenges. Provisions related to jurisdiction, powers, and appointment of judges could be more closely examined to ensure the structure met constitutional and statutory requirements and was the best approach to addressing the concerns that have been raised. Passing a constitutional amendment to authorize the court, define its structure and jurisdiction, and specify how presiding judges would be identified could be a better way to create a new court of this nature.

Separate systems. The implementation of the business court would create separate systems for certain business disputes that could undermine the principle of equal justice under the law. Under the proposed new court system, large companies could have cases heard by the court more frequently, creating a familiarity with the court and its procedures. Opposing parties that rarely litigated within the business court could be at a disadvantage to those who were routinely before the court, such as small businesses in litigation against a large company or facing a law firm routinely before the court. The new business court system could make adjudicating these cases more complex if parties disputed which court should have jurisdiction due to a preference by certain parties.

Judge selection. All judges should be chosen directly by the people through the election process. Judges held directly accountable to voters would help to ensure that the court was directly working for the community it served.

Remote trials. Both plaintiffs and defendants should have a say in whether a case is heard remotely and the ability to appear in-person before the court should be a component of all court proceedings.

NOTES:

According to the Legislative Budget Board, CSHB 19 would have a negative impact of \$15,508,322 on general revenue related funds through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.