

## Texas (Business) Courts to Open for Business: Law Creating Specialized Business Courts in Texas Becomes Official

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Last Friday, June 9, Texas Governor Greg Abbott signed Texas House Bill 19, which codifies a business court system in Texas. Similar to the commercial court systems that exist in Delaware and New York, Texas's business court system will provide a dedicated court system of commercially focused judges to move high-dollar business disputes efficiently through the judicial system. This advisory summarizes key aspects of the legislation.

### What Types of Disputes Will Business Courts Hear?

The business courts would have jurisdiction over three general categories of commercial cases:

1. Cases with more than \$5 million that involve: derivative actions, corporate governance and internal corporate affair issues, securities litigation cases, actions by a business or its owner against another owner or officer, actions to hold owners or executives responsible for breaches of duty, actions to hold owners or governing persons liable for obligations of the business, and actions arising out of the Texas Business Organizations Code.
2. Cases with publicly traded companies that involve the issues listed above, regardless of the amount in controversy.
3. Cases with more than \$10 million that involve: qualified monetary transactions (more than \$10 million), contracts or commercial transactions in which the parties agreed the business court would have jurisdiction (not including insurance contracts) and actions arising out of a violation of the Texas Finance Code or Business & Commerce Code, other than a bank, credit union or savings and loan association.

### What Types of Disputes Won't Go to Business Court?

Certain types of cases are expressly excluded from the jurisdictional reach of the business courts, except on a "supplemental" jurisdiction basis. For example, except where the claims are brought pursuant to the court's supplemental jurisdiction, the following cases are expressly carved out:

- consumer cases, including Deceptive Trade Practices Act claims;
  - cases brought by or against a government entity;
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- cases to foreclose on a lien on real or personal property;
- cases brought under the Family Code, Estates Code, Insurance Code and Title 9 of the Property Code; and
- cases involving the production or sale of farm products, under 9.102 of the Texas Business & Commerce Code.

Also, the following three types of cases cannot go to business court regardless of any supplemental jurisdiction:

- cases involving medical malpractice and personal injury;
- insurance *coverage* cases; and
- cases involving legal malpractice.

### **How Will Removal and Remand Work?**

The legislation includes rules for initial filing, including the requirements to establish jurisdiction and venue, and also provides for removal (within 30 days unless agreed to by all parties). The legislation also provides for remand in the event there is no jurisdiction.

### **Who Will Be the Judges?**

The legislation sets forth requirements to be a business court judge. A business court judge must be an American citizen, at least 35 years old, a resident of the county in which the judge will sit and have at least 10 years' experience practicing "complex" business litigation, business transactional law or otherwise serving as a civil judge. Further, the judges will be appointed by the governor to serve two-year terms.

Certain more populous regions of Texas will have two business court judges (including the Dallas, Houston, Austin, San Antonio and Fort Worth regions), while others will have only one business court judge.

The legislation provides for the creation of a new appellate court – the Fifteenth Court of Appeals – to hear appeals from the business courts.

### **What's Next and What Should Companies Do?**

Questions remain as to whether the legislation will now face Constitutional challenge. Depending on the outcome of any such challenges, the law would go into effect Sept. 1, 2023, and apply to cases commenced on or after Sept. 1, 2024.

Companies should fully understand the rights and dispute-resolution implications that the law will bring, particularly if the business includes Texas forum-selection clauses in its contracts. Companies also should consider to what extent, if any, they may want to designate Texas business courts in their transactional forum-selection clauses and to fully understand the reach of the courts to all manner of claims, including non-business claims that may be litigated by the business courts pursuant to their statutory supplemental jurisdiction.

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## CONTACTS

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