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Locke Lord QuickStudy: Texas Adopts Business Courts

Locke Lord LLP

WRITTEN BY

David E. Harrell

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Texas adopted legislation to create a business court. The bill fashioned the business court's jurisdiction to disputes between businesses, and among businesses and their owners, directors and management. The statute focuses on disputes such as breach of contract, breach of fiduciary duty, governance and control disputes, and violations of securities and trade regulation laws.

When will the court become effective?

The recently enacted Chapter 24A of the Texas Government Code expands Texas' judicial infrastructure by creating a new, specialized business court to resolve commercial disputes. While the Act becomes effective September 1, 2023, the business court will be created September 1, 2024, for actions commenced on or after that date. The Governor will appoint business court judges for two-year terms.

What claims are within the court's jurisdiction?

Subject to the limited jurisdiction created in the Act, the business court has powers similar to those enumerated for district courts by Chapter 24 of the Government Code. The business court has original jurisdiction, concurrent with district courts, over the following actions, subject to a $5 million minimum amount in controversy:

- derivative actions;
- disputes over an organization's governance, governing documents, or internal affairs;
- claims arising from state and federal securities or trade regulation laws;
- actions by an owner or organization against an owner of the organization acting in that capacity;
- actions alleging that an owner or control person breached a duty owed to the organization;
- actions alleging an owner's liability for an organization's debts (other than a contractual agreement to pay the debt); and,
- actions arising under the Texas Business Organizations Code.

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If a party to one of these actions is a publicly traded company listed on a national securities exchange, the amount in controversy requirement does not apply.

Subject to a minimum amount in controversy of $10 million, the new court has original jurisdiction over qualified transactions (as defined in the Act), contracts agreeing to business court jurisdiction (excluding insurance contracts), and actions alleging violations of the Finance Code or Business Organizations Code by an organization other than certain financial institutions.

The business court may also exercise supplemental jurisdiction. If all parties and the business court judge agree the court may exercise jurisdiction over several additional categories of claims if they are so closely connected to a case invoking the business court's primary jurisdiction as to make them part of the same case or controversy:

- civil actions involving governmental entities;
- lien foreclosures involving real or personal property, or Mechanics, Contractors, or Materialmen's liens;
- actions involving covenants not to compete or the Deceptive Trade Practices Act;
- actions under the Estates Code, Family Code, Texas Trust Code, or Insurance Code;
- claims involving farm products;
- claims related to consumer transactions; and,
- actions involving insurance policies.

The business court may not exercise jurisdiction over claims involving personal injury or death, legal malpractice, or medical liability.

How do cases reach the business court?

There is a variety of avenues for a dispute to reach the business court. Parties can file cases in the business courts. Parties may also remove actions to the court. Finally, district and county courts can request that the presiding judge of an administrative region transfer a case to the business court to "facilitate the fair and efficient administration of justice." Removal to a business court does not constitute an appearance that waives a special appearance to contest personal jurisdiction, nor is it subject to "due order of pleadings."

Where will the business court operate?

The business court can try jury cases in counties of proper venue within the court's division. Once venue is established, the business court shall enter an order declaring the county in which any trial of the matter shall take place. The Act directs the Texas Supreme Court to issue rules to facilitate written opinions by the business court. Appeals from a business court will be to the newly-created Fifteenth Court of Appeals.

Although the business court has statewide jurisdiction, it will first operate in only 80 of Texas' 254 counties. Texas is divided into eleven administrative judicial regions, and business courts will first operate in five of them: the First (Dallas and Plano area), Third (Austin area), Fourth (San Antonio area), Eighth (Fort Worth area) and Eleventh (Houston area) administrative judicial regions. Each of those five business courts will have two judges. Under the

Act, the Governor will appoint two business court judges in each of those divisions “as soon as practicable.” Business court judges must be a licensed attorney in Texas who has ten or more years of experience in practicing complex civil business litigation, business transaction law, and/or serving as a judge in Texas with civil jurisdiction, or any combination of those.

The remaining six judicial regions will have business courts created September 1, 2026, if the legislature funds a court in that region; those six divisions will have one judge each. Three Texas counties have populations of over 500,000 residents but will not have operative business courts until 2026, if at all: Hidalgo County, El Paso County, and Montgomery County.

Companies, organizers, owners, and managers should be aware of the new opportunities to have cases heard in the business court and should consider planning company formation and transactions to take advantage of this court. ?

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