



The Newly Created Texas Business Court – What You Need to Know

By Brian K. Tully

July 17, 2023

Texas recently passed legislation [creating a Business Court system](#) to hear certain disputes between or among businesses and their owners or controlling persons and management regarding breach of contract, breach of fiduciary duty, corporate governance, and the like. In doing so, Texas becomes the 31st state to create a specialized court to address complex business litigation with an eye toward quicker resolution of such disputes and more consistency across the state.

Businesses, as well as legal practitioners in Texas should know what to expect in the near future. This Alert provides the classic “5 Ws” – What? Why? Where? Who? When?.

What is the Texas Business Court?

The Texas Business Court is being established to hear a limited range of disputes. It will have the same powers as Texas District Courts (the courts of general jurisdiction in Texas), but the Texas Business Court will have no jurisdiction over claims by or against governmental entities, claims for personal injury, medical, or legal malpractice, violations of the Texas Deceptive Practice Act or the Texas Free Enterprise and Antitrust Act, state antitrust law claims involving governmental entities, foreclosure of liens, or claims arising out of the Texas Estate Code, Texas Family Code, Texas Insurance Code, or claims involving contractor’s or mechanic’s liens under the Texas Property Code.

The Texas Business Court will have concurrent jurisdiction over the following matters involving a publicly-traded company or in which the amount in controversy (exclusive of interest, attorneys’ fees, etc.) is \$5 million or more:

- Derivative proceedings
- Actions regarding the governance, governing documents, or internal affairs of an organization
- An action in which a violation of state or federal securities law is alleged against an organization, controlling persons or managers acting in that capacity, as well as underwriters or auditors
- An action by or between an organization or its owner alleging an act or omission by an owner, controlling person, or managerial official in that capacity
- An action alleging that an owner or controlling person/manager breached a duty “including the breach of a duty of loyalty or good faith” owed to the organization or its owner

- An action seeking to hold an owner or governing person of an organization liable for an organization's obligation (other than a written agreement to do so, such as a personal guarantee)
- An action arising out of the Texas Business Organizations Code

The Texas Business Court also has concurrent jurisdiction over the following matters with an amount in controversy (exclusive of interest, attorneys' fees, etc.) of \$10 million:

- An action arising out of a "qualified transaction" (defined as a transaction or a loan /credit arrangement for \$10 million or more, other than such loan/credit arrangement with a bank, credit union, etc.)
- An action in which the parties have agreed, either in the relevant contract or in a subsequent writing, that the Texas Business Court would have jurisdiction (though this would not apply to an action arising out of an insurance contract)
- An action arising out of the Texas Finance Code or the Texas Business & Commerce Code by an organization (or its officer or governing person) other than a bank, credit union, etc.

The Texas Business Court will also have the power to issue injunctive or declaratory relief in any matters over which it has concurrent jurisdiction. Unlike Texas District Courts, the Texas Business Court will be expected to issue written opinions pursuant to rules that the Supreme Court of Texas may develop.

The Texas Business Court will also have supplemental jurisdiction over all other claims arising out of the same case or controversy. But, any claims subject to this supplemental jurisdiction will only proceed in the Texas Business Court on the agreement of all the parties and the judge. Otherwise, the claim will proceed concurrently in another court of competent jurisdiction.

Lawsuits can be filed in the Texas Business Court directly or removed to them in a process similar to removal from state court to federal court. If all parties agree, the matter can be removed to the Texas Business Court at any time. If the parties do not all agree, the removal must occur within 30 days after the party discovered, or should have discovered, facts establishing that the matter could be removed to the Texas Business Court. Such removal does not constitute a general appearance or waive any defect in venue, so challenges to personal jurisdiction or venue could still be asserted. If the Texas Business Court determines that it does not have jurisdiction, the matter will be remanded to the original court. However, if the case was originally filed with the Texas Business Court, it will be (at the option of the filing party) transferred to a court of competent jurisdiction or dismissed without prejudice.

Appeals from decisions of the Texas Business Court and related original proceedings are taken to the newly-created Fifteenth Court of Appeals, which has exclusive jurisdiction over such matters. As with all other civil matters, the Supreme Court of Texas may exercise its jurisdiction on a Petition for Review or a mandamus petition.

Why was the Texas Business Court established?

The creation of a Business Court system was identified as a top legislative priority by the Texas Governor, Lieutenant Governor, and the Speaker of the Texas House. In his 2023 "State of the Texas Judiciary" address, the Chief Justice of the Supreme Court of Texas noted that the creation of this

system was “not without controversy,” but supported it due to the complexity of business disputes and the need for fairer and more efficient resolution of these issues, especially as the increased costs and uncertainties of complex commercial litigation have led businesses to turn to arbitration and other alternatives.

While those other means of dispute resolution promise speed and flexibility as compared to state courts, those alternatives can be opaque and can create a lack of precedent in an area preventing the substantive law from developing. Also, Texas District Courts are courts of general jurisdiction, but it is common in the more populated counties to separate the dockets and assign proceedings such that particular district courts that hear civil, criminal, or family law matters exclusively. Separating complex business disputes from other civil cases aims to eliminate some inefficiencies in the Texas courts.

Where will the Texas Business Court be located?

The Texas Business Court system will ultimately have statewide jurisdiction, but it is being created in two stages. Texas is divided into 11 Administrative Judicial Regions.

The first stage (opening September 1, 2024) will create Texas Business Courts in the Administrative Judicial Regions encompassing the Dallas, Austin, San Antonio, Fort Worth, and Houston areas. Two judges will be appointed to each of these divisions.

The second stage (opening September 1, 2026, but only if authorized in the 2025 Texas Legislative Session) will create Texas Business Courts in the Administrative Judicial Regions encompassing the Beaumont, McAllen, El Paso, Midland/Odessa, Amarillo, and Tyler areas. One judge will be appointed to each of these divisions, if created.

The Clerk of the Texas Business Court and other supporting administrative offices will be in Travis County. Judges of the Texas Business Court are allowed to establish chambers in state or county facilities in any county within the borders of the division of the Texas Business Court that they serve.

Early in any proceeding before the Texas Business Court, the judge must issue an order specifying the venue where any jury trial will be held. Other court proceedings can be held in any courtroom within the division, and it is expected that preliminary hearings will be held remotely “through the use of technology.” Thus, it is likely that preliminary hearings would be held by videoconference while the right to an in-person jury trial will be preserved.

Who will sit on the Texas Business Court?

Judges on the Texas District Courts hold four-year terms and must be elected. Judges on the Texas Business Courts, however, will hold only two-year terms and will be appointed by the Texas Governor, subject to confirmation by two-thirds of the Texas Senate. To be qualified to serve as a Business Court Judge, one must be at least 35 years old, have been a resident of a county of the division of the particular Business Court, be a member of the Texas Bar in good standing (with no past disciplinary issue such as disbarment or suspension), and have at least 10 years of experience in complex commercial litigation, business transactions, or service as a state court judge with civil jurisdiction. Each judge of the Texas Business Court will have a staff attorney, presumably assisting with the preparation of written opinions as required by forthcoming rules to be adopted by the Supreme Court of Texas. Judges of the Texas Business Courts must also refrain from the private practice of law during their term of office.

The newly-created Fifteenth Court of Appeals, which has exclusive jurisdiction over appeals from the Texas Business Courts, will initially be composed of three justices serving staggered six-year terms.

After the initial appointments by the Texas Governor, these seats will be determined by statewide elections, and this court will expand to five justices in 2027.

When will the Texas Business Court start?

The Texas Business Court can exercise jurisdiction over civil actions filed on or after September 1, 2024.

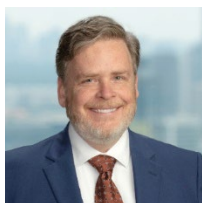
The statutes (HB 19 creating the Texas Business Courts and SB 1045 creating the Fifteenth Court of Appeals) were signed by the Texas Governor on June 9, 2023, and both take effect on September 1, 2023. The Business Courts and the Fifteenth Court of Appeals will be created and can begin accepting case filings on September 1, 2024. This one-year delay between the statute’s effective date and the actual creation of the Business Courts will allow the Governor, the Supreme Court of Texas, and the Office of Court Administration to complete the necessary administrative steps associated with a new branch of the court system.

Similarly, the delay between the creation of the first round of the Business Courts (starting in 2024) and the second round (starting in 2026, as discussed above) will allow the Texas Legislature to consider in the 2025 Legislative Session the need to establish additional Business Courts in the less populated areas of the state.

Texas Businesses and Litigators Should Be Prepared and Be Ready

If the Texas Business Court can realize its promise of an efficient and specialized court that is tailored to decide issues that commonly arise in complex commercial litigation, it may be able to add to the legal landscape by providing the best of all worlds – combining the supposed speed of arbitration with the lower costs often found in courts while allowing the substantive law of Texas to continue to develop with reported decisions and reasoned opinions of important legal issues.

Texas businesses and attorneys practicing in Texas should be aware of the Texas Business Court and what it can and cannot do. By doing so, they can determine whether it would be an appropriate forum to resolve some or all of a dispute. As part of this same analysis, they should also be prepared to consider contractual provisions or post-dispute agreements agreeing to jurisdiction in the Texas Business Court. Thus, the Texas Business Court may become a useful alternative to referral to arbitration or removal to federal court.



Brian K. Tully
346-200-6017
btully@gablelaw.com

The author would like to thank shareholder [Craig Fitzgerald](#) and summer associate Gavin Boone for their contributions to this piece.

This alert is provided as a summary for information purposes. It does not contain legal advice or create an attorney-client relationship. It is not intended or written to be used and may not be used by any person to avoid penalties imposed under Oklahoma laws. The information provided should not be taken as an indication of future legal results; any stated information should not be acted upon without consulting legal counsel.