

TEXAS BUSINESS COURTS

By

BYRON F. EGAN
Jackson Walker L.L.P.
Dallas, Texas
began@jw.com



UT LAW CLE
19TH ANNUAL MERGERS AND ACQUISITIONS INSTITUTE

DALLAS, TEXAS • OCTOBER 5, 2023

Copyright© 2023 by Byron F. Egan. All rights reserved.

37324914v.3

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	JUDGES WITH EXPERTISE AND TRAINING IN COMPLEX BUSINESS MATTERS.....	2
III.	OPINIONS, PROCEDURES AND POWERS.....	2
IV.	JURIES.	3
V.	GEOGRAPHIC DIVISIONS.....	3
VI.	JURISDICTION OF BUSINESS COURTS.....	4
VII.	APPOINTMENT and terms OF BUSINESS COURT JUDGES	7
VIII.	INITIAL FILING, REMOVAL AND REMAND.....	7
IX.	APPEALS	9
X.	ADMINISTRATION OF THE BUSINESS COURT	9
XI.	CHALLENGES TO CONSTITUTIONALITY OF BUSINESS COURTS.....	10
XII.	Sample contractual provision.....	11
XIII.	CONCLUSION.....	11
XIV.	Exhibit A.....	12

TEXAS BUSINESS COURTS

BY

BYRON F. EGAN*

I. INTRODUCTION

Texas in 2023 created a new system of specialty trial courts (“*Business Courts*”) to hear significant business related disputes and a special intermediate court of appeals to hear appeals from Business Courts. Legislation to create such courts was passed by the 88th Texas Legislative Session which ended on May 29, 2023 and was signed on June 9, 2023 by Governor Greg Abbott. The Business Courts were created by House Bill 19 (“*HB 19*”)¹ as a new chapter 25A (“§ 25A.001 *et seq*” or “*Chapter 25A*”) to the Texas Government Code (the “*Government Code*” or “*Gov. Code*”) with judges to be appointed by the Governor with the consent of the Senate. A separate bill (“*SB 1045*”) amended § 22.201 of the Government Code to create a Fifteenth Court of Appeals (“*15th Court of Appeals*”) to hear appeals from Business Courts. Both HB 19 and SB 1045 became effective September 1, 2023, but will be operational only for actions commenced on or after September 1, 2024 to allow time for the appointment and confirmation of their judges and adopt procedural rules for the operation of the courts.²

The Business Courts will initially be in the major metropolitan areas (see map attached as *Appendix A*) with the expectation that the Texas Legislature will ultimately create Business Courts for the rest of Texas. The creation of the Texas Business Courts has followed a long and winding road which commenced in 2015,³ has from the beginning been strongly supported by the Texas Business Law Foundation (“*TBLF*”),⁴ but prior efforts stalled in previous legislative sessions due largely to opposition from trial lawyer-focused organizations. HB 19, which ultimately garnered bipartisan support, addresses the growing need for specialized Texas state courts to handle complex business litigation.

The Business Courts are designed to handle a wide range of commercial disputes, including contract disputes, fiduciary duty claims, and other corporate governance issues. By creating a dedicated venue for these cases, the Legislature sought to expedite proceedings, enhance judicial expertise, deliver more predictable outcomes for business disputes, and attract more businesses to Texas by offering a favorable environment for resolving commercial disputes. Any challenges to

* Copyright © 2023 by Byron F. Egan. All rights reserved.

Byron F. Egan is a partner of Jackson Walker L.L.P. in Dallas, Texas. Mr. Egan is Senior Vice Chair and Chair of the Executive Council of the ABA Business Law Section’s Mergers & Acquisitions Committee and former Chair of its Asset Acquisition Agreement Task Force, and a member of the American Law Institute. Mr. Egan is a former Chairman of the Texas Business Law Foundation and is also former Chairman of the Business Law Section of the State Bar of Texas and of that Section’s Corporation Law Committee.

The author wishes to acknowledge the contributions of his Jackson Walker LLP colleagues Christopher R. Bankler and J. Scott Rose in preparing this paper.

¹ The final enrolled version of HB 19 as signed into law by Governor Greg Abbott and its legislative history can be found at: <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=88R&Bill=HB19>.

² HB 19 §§ 5, 6.

³ See Byron F. Egan, Texas Chancery Courts: The Missing Link to More Texas Entities, *Texas Bar Journal*, Vol. 79, No. 2 at 98 (Feb. 2016).

⁴ For further information on the TBLF, see: <https://www.jw.com/wp-content/uploads/2016/09/1239.pdf>.

the constitutionality of the Business Courts will be decided by the Texas Supreme Court, which has been given exclusive and original jurisdiction over any such disputes.

The major components of HB 19 and SB 1045 include:

II. JUDGES WITH EXPERTISE AND TRAINING IN COMPLEX BUSINESS MATTERS

2.1 The Business Courts are to be staffed with judges appointed by the Governor as soon as practicable after September 1, 2023, with the advice and consent of the Senate, who possess specialized knowledge and expertise in handling complex business disputes. Judges are appointed for a two year initial term and may be reappointed by the Governor.⁵ By fostering a high level of expertise among the judiciary, the objective is to improve the quality of decisions and instill confidence in the Texas judiciary's ability to handle complex business disputes.

2.2 A Business Court judge must be at least 35 years of age, a United States citizen and have been a resident of a county within the Division of the Business Court to which the judge is appointed for at least five years before appointment and must be a licensed attorney in Texas who has 10 or more years of experience in: (a) practicing complex civil business litigation; (b) practicing business transaction law; (c) serving as a judge of a court in Texas with civil jurisdiction; or (d) any combination of such experience.⁶ A Business Court judge may not have had his or her license to practice law revoked, suspended or subject to a probated suspension.⁷

III. OPINIONS, PROCEDURES AND POWERS

3.1 The Supreme Court is required to adopt rules for the issuance of written opinions by the Business Court and to set fees for filings and actions in the Business Court in amounts sufficient to cover the cost of administering the Business Court, taking into account fee waivers necessary for the interest of justice.⁸ The Supreme Court must also adopt rules of civil procedure for the Business Court as the Supreme Court determines necessary, including rules providing for 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.⁹ The Business Court itself may adopt rules of practice and procedure consistent with the Texas Rules of Civil Procedure and the Texas Rules of Evidence. Except as otherwise provided in Chapter 25A, the practices, procedures, 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 are governed by the laws and rules prescribed for Texas district courts.

3.2 It is anticipated that the Business Courts judges will issue written opinions explaining their decisions, a departure from the standard practice of most Texas civil district courts. These opinions are intended to enhance the predictability of legal issues for Texas businesses by providing concrete guidance for critical issues of Texas corporate governance, fiduciary duties of officers,

⁵ HB 19 § 6; §§ 25A.008, 25A.009.

⁶ § 25A.008(a).

⁷ § 25A.008(b).

⁸ S 25A.016.

⁹ § 25A.020.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Texas Business Courts

First appeared as part of the conference materials for the
19th Annual Mergers and Acquisitions Institute session
"Texas Business Courts: The Dawn of a New Era"