

Texas Business Courts: What You Need to Know

August 2024

Below are some key takeaways for what you need to know regarding the new Texas Business Courts.

By [Tom O'Brien](#), [Monica Smith](#)

QUESTION	ANSWER
What are the Business Courts?	In June 2023, Governor Greg Abbott signed legislation creating a new set of specialized trial courts to handle certain types of complex business disputes ("Business Courts"), and a new intermediate court of appeals to hear appeals from those courts ("15th Court of Appeals").
Why were the Business Courts created?	The Legislature wanted Texas to have a specialized forum for resolving complex commercial disputes more predictably and efficiently, following the example set by Delaware's specialized business court, the Delaware Court of Chancery. To that end, judges serving on the Texas Business Courts must have a certain level of experience with complex business matters. They must also issue written opinions (i) for any dispositive ruling if a party requests it, and (ii) for any ruling on an issue important to the jurisprudence of Texas. The legislation also contemplates that the Business Courts will create procedures to streamline and expedite case proceedings. All of these measures are intended to create more certainty for Texas businesses and draw more Fortune 500 companies to the State.
When do they open?	The Business Courts will accept cases filed on or after September 1, 2024.
What types of cases can be filed in the Business Courts?	<p>The Business Courts <u>share jurisdiction</u> with the district courts over certain commercial disputes, including:</p> <ol style="list-style-type: none">certain cases in which the amount in controversy exceeds \$5 million, including derivative proceedings, breach of fiduciary duty actions, and certain securities actions (however, the \$5 million amount-in-controversy threshold need not be met if one of the parties is a publicly traded company); andcertain cases in which the amount in controversy exceeds \$10 million and the claims arise out of a transaction. <p>The Business Courts also have <u>supplemental jurisdiction</u> over any other claim that forms part of the same "case or controversy" as a case within the court's jurisdiction, <u>but only if all parties and the judge agree</u>.</p> <p>The Business Courts <u>do not have jurisdiction</u> over certain types of claims (such as personal injury claims).</p>
How many Business Courts are there?	While the law creates 11 divisions, it only provides funding for 5 of those divisions to begin operating in 2024 (Dallas, Houston, Austin, San Antonio, and Fort Worth). The other divisions

	<p>must be funded by additional legislation. A party filing a case in the Business Court must plead facts to establish venue in a county within a division of the Business Court.</p>
<p>Can I get a case to the Business Courts if it wasn't filed there originally?</p>	<p>Yes. Cases filed in Texas district courts may be removed to the Business Courts, generally within 30 days after the party should have known the case could be removed, or if an application for temporary injunction is pending, within 30 days after the date the application is granted, denied, or denied by operation of law. However, if the case is in a county without an operating division of the Business Court, it cannot be removed. If the Business Court does not have jurisdiction over the action, it must remand the case.</p>
<p>Do I have a right to a jury trial in the Business Courts? Where will it be held?</p>	<p>Yes. Parties still have the right to a jury trial when required by the Texas Constitution. For cases originally filed in the Business Courts, the jury trial must be held in any county where the case could have otherwise been filed by the plaintiff under TCPRC § 15.002. For cases removed to the Business Courts, the trial must be held in the county where the lawsuit was originally filed. However, where a contract specifies a county as venue for the action, the trial will be held in that county. The parties and judge may also agree to hold the trial in any other county.</p>
<p>Who will the judges be?</p>	<p>Governor Abbott has appointed the following judges to serve on the Business Courts: Melissa Andrews and Patrick Sweeten for the Austin Division; Andrea Bouressa and William "Bill" Whitehill for the Dallas Division; Jerry Bullard and Brian Stagner for the Fort Worth Division; Sofia Adrogué and Grant Dorfman for the Houston Division; and Marialyn Barnard and Stacy Sharp for the San Antonio Division. These trial judges will serve 2-year terms and may be reappointed; they will not have to stand for re-election. The 15th Court of Appeals—which recently survived a constitutional challenge before the Supreme Court of Texas—will be led by Scott Brister, who will be joined by April Farris and Scott Field. These appellate judges will serve longer, 6-year terms and will have to stand for election on a statewide basis following their initial terms.</p>
<p>Can I include a provision choosing the Business Courts in my agreement?</p>	<p>Yes, in their agreements, parties can choose the Business Courts to decide their disputes. Here is an example of what such a provision might look like:</p> <p>Any claim, cause of action, action, complaint, dispute, or proceeding ("Claim") arising out of, in connection with, or relating to this Agreement or the performance or nonperformance of this Agreement, or, with the consent of the judge of the First Business Court Division of the State of Texas located in Dallas ("Dallas, Texas Business Court") (and the parties shall have an affirmative obligation to seek such judge's consent), any Claim related to a case or controversy within the jurisdiction of the Dallas, Texas Business Court that forms part of the same case or controversy, shall be exclusively brought and determined in the Dallas, Texas Business Court if the matter meets the jurisdictional requirements of such Dallas, Texas Business Court and such Dallas, Texas Business Court is then accepting new case filings; and, if the Claim does not meet the jurisdictional requirements of such Dallas, Texas Business Court or it is not then accepting new filings, then the matter shall be exclusively brought and determined in [_____].</p>