



TEXAS ASSOCIATION OF  
DEFENSE COUNSEL



**TEX-ABOTA**  
The Texas Chapters of ABOTA



March 26, 2021

The Honorable Jeff Leach  
Judiciary and Civil Jurisprudence Committee  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

*Via Hand Delivery*

RE: House Bill 1875

Dear Chairman Leach and Committee Members:

The Texas Chapters of the American Board of Trial Advocates, Texas Association of Defense Counsel, and Texas Trial Lawyers Association collectively represent over 4,000 civil trial lawyers representing individuals, small and large businesses, and commercial interests of all types in state and federal courts of Texas and other jurisdictions. Our members have sustained experience with, and our organizations have a long history of working to support reform that strengthens the Texas civil justice system. In this instance, however, we jointly come forward to respectfully oppose HB 1875. There has been no assessment and there is no crisis or urgent need for such a serious, costly, and problematic overhaul of our civil justice system.

### **Texas v. Delaware**

Past bills similar to HB 1875 have had the apparent intent to create a chancery court fashioned after the Delaware Court of Chancery for the purpose of replacing Delaware as the preferred state for incorporation of businesses. HB 1875 appears to carry forward this expressed, but never studied purpose. There are vast differences between the State of Delaware and the State of Texas, which makes it somewhat unlikely that we could replicate what has been done in Delaware. Delaware is the second smallest state in the Union with only 1,954 square miles of land area. Further, it is the sixth least populated state, with only 994,735 citizens (less than one-half the population of Austin). There are only three counties in Delaware, and it does not have a single city with a population over 100,000. On the other hand, Texas is the second most populous state with over 27.5 million residents. It has a land area of 268,820 square miles and is comprised of 254 counties. Delaware's size and population means there are little or no concerns arising from the

location of the Chancery Court within the state as it is easily accessible to any resident. Delaware is less than 100 miles long and 39 miles wide. Again, in contrast, Texas is 790 miles long and over 800 miles across at its widest point. Similarly, Delaware has a simple judicial system for civil commercial disputes, which is comprised of a Supreme Court, the Court of Chancery, and three Superior Courts (one per county). The latter is Delaware's general jurisdiction trial court (similar to Texas District Courts) and it is comprised of just nine justices. There are more than 119 district courts in just Houston, Dallas, and Bexar counties alone. And Texas, of course, has 14 intermediate appellate courts. The two judicial systems bear no resemblance.

The Delaware Court of Chancery has jurisdiction over equity cases; currently the vast majority of those cases concern corporate disputes, many relating to mergers and acquisitions. The Delaware General Corporation Law governing Delaware's Chancery Court is based on a hybrid of constitutional provisions, statutes, and case law. "Equity" and "law" jurisdiction in Delaware is split and the Chancery Court only has equity jurisdiction. As a result, there are no jury trials in the Chancery Court. If there are any facts that must be tried, they are referred to the Superior Court. Many of the issues that come before the Chancery Court are based solely in equity, therefore the court may address them quickly because they do not involve a jury. That is not the case in Texas where equity and law are combined, and issues arising in either are subject to the constitutionally-protected right of trial by jury.

Under HB 1875, the Texas business trial courts would still be law and equity courts, and the business disputes brought there would still be subject to trial in all 254 counties of the State. When a similar bill was considered during the 2015 legislative session, supporters claimed that businesses don't trust the Texas court system to fairly and expeditiously resolve business disputes. This lack of trust was termed a "crisis of confidence." Then and now, there is no evidence such a crisis exists. Second, the purported crisis was said to be based on two aspects of the current Texas judicial system: (1) election of judges, and (2) the right to trial by jury. While HB 1875 sets up a system of appointed judges to resolve business disputes (which is likely unconstitutional and ignores the extended hearings and results of the specially formed 2020 Texas Judicial Selection Commission organized to study attitudes toward various methods of judicial selection), the right to trial by jury is acknowledged in the bill and it remains constitutionally guaranteed. As a result, business lawyers could not advise their business clients that being in Texas courts would be just like being in the Delaware Chancery Court.

### **Chancery Courts v. Business Courts**

When this concept was considered during the 2015 legislative session, it was also argued that the proposed chancery court would mimic "business courts" in other states, including Delaware. However, this argument glosses over the differences between the Delaware Chancery Court and the business courts. Some states have specialized courts for business disputes, but they are part of the regular civil court system. They simply have their own dockets. This would be like family law or drug courts in Texas. HB 1875 would create an entirely separate, redundant court system that would be completely distinct from courts in the state's regular court system, with

different procedures, personnel, and judges selected through a different method. As a result, the proposed court system raises, and does not answer significant questions about the practical mechanics of operating that are likely to make trying cases within the system *less* rather than more efficient.

### **Would a Texas Chancery Court Improve the Texas Business Climate and Economy?**

It has been suggested that if this new court system were to be created, it would improve the Texas business climate and economy. Indeed, COVID-19 aside, Texas already has an outstanding business climate and economy. On January 26, 2021, Governor Greg Abbott remarked: “Despite the challenges our state has faced over the past year, Texas remains the economic engine of America.” For over a decade, that has been the finding of Chief Executive Magazine’s annual survey of the nation’s top CEO’s, with the CFO for AT&T recently explaining, “Its friendly business climate, high quality of life and robust economy are just some of the many reasons AT&T, along with more than 50 other Fortune 500 companies, is proud to call Texas home.” That remark was made despite the lack of any Chancery or, indeed, business courts in Texas.

### **No Budget Forecast and not Self-Funding**

There is no fiscal note shown for this bill. In the past, proponents of similar bills have asserted it would be revenue neutral by generating enough income through filing fees to cover the expenses of an entirely new court system. Such a forecast is either naive or misleading.

Looking at the Delaware Chancery Court is instructive. Only a portion of that court’s funding comes from filing fees. The rest comes from Delaware’s general revenue. The conclusion is clear: If the Delaware Chancery Court is not self-funding and requires support from the state’s general revenue, it is unlikely that the proposed Texas system, which is both larger and more complex, could fund itself solely with filing fees. In addition, Texas is already facing severe funding challenges for the existing civil justice system as well as other agencies and services due to the adverse impact of COVID-19 on the economy. Now would seem like the worst of all times to further burden State revenues with an entirely new redundant (the new courts have concurrent jurisdiction with existing courts) judicial system.

### **Special Courts for Special People**

The philosophy behind a bill that, in essence, crates special courts for special people should also be a reason to question its virtue. We live in a society that values the rule of law and allows that all citizens should be treated equally under the law. This concept of creating a special court outside our historic justice system runs contrary to the precepts and principles of equal justice for all. No Texas citizen, whether corporate or human being, should be set apart from others and be treated “preferentially” over any other citizen. A separate, markedly different judicial system for just high-dollar business disputes would send a message to Texas citizens that their disputes are less worthy. That, quite simply, runs contrary to the principles of our republic.

### Conclusion

The reasons are clear why HB 1875 should not be supported by the Judiciary and Jurisprudence Committee. First, it will not accomplish the perceived goal of placing Texas on equal footing with Delaware. Second, its provisions would make the efficient resolution of certain business disputes less, rather than more efficient. Third, there is simply no proof whatsoever that it would improve the Texas economy or business development. Fourth, it will not pay for itself and very well could necessitate a tax increase to cover its operating expenses at a time when the legislature must already make difficult funding decisions. Finally, the concept of creating a special court system for big business is contrary to our basic philosophy of equal justice under the law for all citizens. For these reasons, we urge the Committee to reject HB 1875.

Texas Chapters of the American Board of Trial Advocates



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By: Eileen O'Neill, President

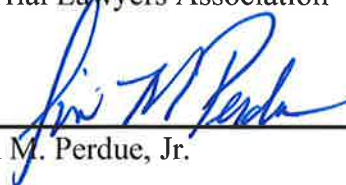
Texas Association of Defense Counsel



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