

## Texas Banking Brief: All The Notable Legal Updates In Q2

By **Meaghan Connors and Brian Cohen** (July 15, 2025, 5:19 PM EDT)

*In this Expert Analysis series, attorneys provide quarterly recaps discussing the biggest developments in Texas banking regulation and policymaking.*

In Texas, the second quarter of 2025 saw changes to litigant strategy in the new Texas Business Court and amendments to key Texas Finance Code regulations affecting Texas banks.

First, another quarter of data about filings in the Texas Business Court suggests that the frequent transfer of cases from the Houston-based Eleventh Division to other Business Court divisions may have indirectly dissuaded potential parties from filing there.[1]

Second, the Texas Department of Banking requested that several bills be passed to amend the Texas Finance Code to "correct drafting errors." [2] One such bill, H.B. 3804, was passed near unanimously by the Texas Legislature and came into immediate effect on June 20. [3] This bill narrows an existing exception to change of control requirements for Texas state banks and closes a cryptocurrency-related loophole on dividends payments.

### Filing Discrepancies at the Texas Business Court

The new Texas Business Court's promise of efficient resolution of complex financial disputes — involving disputes over fiduciary duties, securities and more — has already made it an invaluable tool for the state's finance lawyers. [4]

However, as the Texas Business Court continues to come into its own — with the Third Division even launching its internship program this quarter [5] — a good bit of attention has been paid by Texas lawyers to the staggering discrepancies in the number of cases filed across the Texas Business Court's five currently up-and-running divisions. Indeed, as of late March, one Mayer Brown analysis found that over half of all cases filed in the Texas Business Court were filed in the Houston-based Eleventh Division. [6]

This breakdown across divisions will have a much greater impact than initially contemplated. Because all



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five divisions are equally staffed, discrepancies in filings can be expected to compound over time as different divisions work through their backlogs at similar speeds, even as those backlogs grow at vastly different paces.

To counter this, the Texas Business Court has turned to issuing orders for "exchanges of benches,"[7] reassigning cases to the judges of lower-volume divisions in order to "alleviate the load" created by the "Eleventh Division's relatively busy docket." [8] At the start of April, it was reported that 15 cases had become subject to an order for exchange of benches; all 15 of those cases were initially filed in the Eleventh Division.[9]

Authors of the March Mayer Brown report speculated that the prospect of an unpredictable reassignment across divisions could reduce "some of the certainty of opting for Business Court." [10] If this reduced certainty indeed brought down the demand for the new Texas Business Court among parties otherwise inclined to file in the Eleventh Division, orders for exchanges of benches would create an indirect load reduction as well as a direct one.

The second quarter's case filing numbers offer support for such a trend. In the second quarter of 2025, without taking orders for exchanges of benches into account, only 39% of new Texas Business Court cases were filed in the Eleventh Division — a significant slide from the 50% of cases it had hosted until the start of the second quarter.[11]

This reduction is fortunate, because H.B. 40, a law passed by the Legislature on June 2, is likely to significantly increase the number of cases before the Texas Business Court once it comes into effect.[12]

First, the bill will expand the Texas Business Court's jurisdiction to include enforcement of arbitration agreements, review of arbitration awards, and matters relating to intellectual property and trade secret disputes.[13] Though the bill excludes consumer transactions from the Texas Business Court's jurisdiction,[14] this is unlikely to create any appreciable reduction in caseload; exactly zero natural persons filed consumer transaction cases in any division of the Texas Business Court in the entire second quarter of 2025.[15]

Second, the bill lowers the amount-in-controversy requirement for the Texas Business Court's jurisdiction to \$5 million and specifies that the qualified transaction giving rise to the Texas Business Court claim can be either a single transaction or a series of related transactions.[16]

Third, it establishes, but does not fund, six additional Texas Business Court divisions. The Legislature's included fiscal note implies that these divisions, unlike the five existing divisions, might be staffed with only one judge apiece. [17]

H.B. 40 will likely be celebrated by lawyers who work extensively in the areas of IP, trade secrets or other complex matters for which a judge with specific expertise might be welcome. For Texas finance lawyers, though, H.B. 40 may come with mixed benefits.

Though the reduced amount-in-controversy requirement means that more plaintiffs will have recourse to the Texas Business Court, it also means that those cases and others will enter a backlog further lengthened by smaller cases and other matters newly ensconced within the Texas Business Court's expanded jurisdiction.

While the Texas Business Court's fledgling and likely low-demand new divisions will, once operational,

help ameliorate the Eleventh Division backlog by providing new places to send excess cases through orders of exchanges of benches,[18] the prospect of being sent to these new divisions will likely only further reduce certainty, an implicit price for speedier resolution that not all parties might be pleased to pay.

While the backlog at the Eleventh Division may not be as great as might have been feared earlier this quarter, we are not out of the storm yet. Even now, the interdivision discrepancies remain sizable. The Fourth Division, for example, received less than 25% as many new filings as the Eleventh Division in the second quarter.[19]

In the absence of legislative action to vary staffing across existing divisions, orders of exchanges of benches are likely here to stay.

### **Texas Finance Code Amendments: A Tougher Line on Change of Control**

Unless prospective acquirers have the written consent of the Texas banking commissioner, Section 33.001 of the Texas Finance Code bars anyone from acquiring interests in voting securities that would give the acquiring party control of a Texas state bank.[20]

Important to note, though, is that several other clauses of the Texas Finance Code grant exemptions to this provision. For example, prior to the new H.B. 3804 taking effect, Section 33.005 gave an exemption to:

- Any party that had been "identified as a controlling person in a state bank in a prior application filed with and approved by the [Texas] banking commissioner," with no statutory limit on when that prior application was approved, meaning that very old and very recent applications alike qualified individuals listed as controlling persons for the exemption;
- Any party that has "continuously held the power to vote 25% or more of any class of voting securities of the state bank" from the time that the banking commissioner approved the acquisition; or
- Any party that has, since the receipt of the banking commissioner's prior approval, maintained continuous control of the state bank.[21]

H.B. 3804 makes two changes to these requirements. First, it changes the "controlling person in a state bank" requirement to "controlling person in the state bank," restricting Section 33.001 exemptions to those that were identified as controlling persons in the same state bank they now seek to obtain control over.[22]

Second, it replaces the individual exemptions with a single, narrower exemption for parties that have already been identified as controlling persons in the state bank at issue and have continuously held power to vote 25% or more of voting securities or already controlled the bank.[23]

In short, H.B. 3804 closes the door on two previously viable practices: (1) obtaining Section 33.001 exemptions for all state bank acquisitions through being identified as a controlling person for any state bank, and (2) obtaining such exemptions through continuously holding control of any state bank or voting rights over 25% of the shares of any state bank, even without being identified as a controlling person in an application approved by the banking commissioner.

## Texas Finance Code Amendments: Texas Regulators Continue Adjusting to Crypto

Under Texas law, prior to the enactment of H.B. 3804, Section 35.106 of the Texas Finance Code provided that banks under a Texas Department of Banking order of supervision, to which the department resorts when it determines that a bank is in a financially precarious position, could not, among other limitations, issue cash dividends unless the banking commissioner consented to such issuance or the order of supervision was otherwise tailored to permit such cash dividends.

Yet this cash dividend language, as the Texas Senate Research Center report on H.B. 3804 observed, allowed banks under supervision to distribute dividends denominated in highly liquid cryptocurrencies, such as bitcoin, freely and without complying with the limitations of Section 35.106.[24]

This loophole was one of many created by the widespread adoption of cryptocurrencies, including stablecoins such as Tether and USDC. This adoption introduced a class of assets that were readily convertible to and from cash and, because of their newness, nowhere referenced in the long-standing regulations that far predated cryptocurrencies' appearance on the financial stage. H.B. 3804, which closes the loophole simply by removing the word "cash," could be considered the latest remedial plug on a crypto-enabled workaround to existing regulatory law.[25]

Texas' regulatory authorities and Legislature continue to adapt the laws governing the transfer of cash to include the transfer of cash-like crypto assets. For example, the Money Services Modernization Act of 2023 expanded the definition of "money" and "monetary value," for the purposes of regulation of money transmission services under the Texas Finance Code Section 152, to include stablecoins "pegged to a sovereign currency; ... fully backed by assets held in reserve; and ... grant[ing] a holder of the stablecoin the right to redeem the stablecoin for sovereign currency from the issuer." [26]

This expansion could be seen as looking forward to future potential loopholes, extending beyond dominant U.S. dollar-indexed stablecoins to include emerging international stablecoins such as the Euro-indexed EURR. On a micro level, H.B. 3804 means that banks under supervision will no longer be able to use cryptocurrency to pay dividends without the prior approval of the Texas banking commissioner. On a macro level, H.B. 3804 potentially serves as additional evidence that long-term reliance on differential regulatory treatment between cash and cash-like cryptocurrencies may be inadvisable.

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[1] Data pulled from re:SearchTX at <https://research.txcourts.gov/CourtRecordsSearch/>.

[2] H.B. 3804 House Bill Analysis — Pensions, Investments & Financial Services Committee Report at <https://capitol.texas.gov/tlodocs/89R/analysis/pdf/HB03804H.pdf>.

[3] FastDemocracy bill tracking for H.B. 3804 at <https://fastdemocracy.com/bill-search/tx/89/bills/TXB00077386/>.

[4] A Closer Look at the New Texas Business Court: Key Developments and Insights | Insights | Vinson & Elkins LLP. <https://www.velaw.com/insights/a-closer-look-at-the-new-texas-business-court-key-developments-and-insights>.

[5] Texas Business Court Third Division internship application. <https://www.txcourts.gov/media/1460199/texas-business-court-third-division-internships.pdf>.

[6] Six Months of the Texas Business Court: Looking Back as Court of Appeals Weighs in on Jurisdiction | Mayer Brown. <https://www.mayerbrown.com/en/insights/publications/2025/03/six-months-of-the-texas-business-court-looking-back-as-court-of-appeals-weighs-in-on-jurisdiction>.

[7] Case filings and docket equalization | Norton Rose Fulbright. <https://www.nortonrosefulbright.com/en/knowledge/publications/a60655fd/case-filings-and-docket-equalization>.

[8] Six Months of the Texas Business Court: Looking Back as Court of Appeals Weighs in on Jurisdiction | Mayer Brown. <https://www.mayerbrown.com/en/insights/publications/2025/03/six-months-of-the-texas-business-court-looking-back-as-court-of-appeals-weighs-in-on-jurisdiction>.

[9] Case filings and docket equalization | Norton Rose Fulbright. <https://www.nortonrosefulbright.com/en/knowledge/publications/a60655fd/case-filings-and-docket-equalization>.

[10] Six Months of the Texas Business Court: Looking Back as Court of Appeals Weighs in on Jurisdiction | Mayer Brown. <https://www.mayerbrown.com/en/insights/publications/2025/03/six-months-of-the-texas-business-court-looking-back-as-court-of-appeals-weighs-in-on-jurisdiction>.

[11] Data pulled from re:SearchTX at <https://research.txcourts.gov/CourtRecordsSearch/>.

[12] H.B. 40 expands the Texas Business Court's jurisdiction and geography | Norton Rose Fulbright. <https://www.nortonrosefulbright.com/en-us/knowledge/publications/bf956aa2/hb-40-expands-the-texas-business-courts-jurisdiction-and-geography>.

[13] H.B. 40 expands the Texas Business Court's jurisdiction and geography | Norton Rose Fulbright. <https://www.nortonrosefulbright.com/en-us/knowledge/publications/bf956aa2/hb-40-expands-the-texas-business-courts-jurisdiction-and-geography>.

[14] Bipartisan Passage of House Bill 40 Clarifies Texas Business Court's Jurisdiction | Pillsbury. <https://www.pillsburylaw.com/en/news-and-insights/bipartisan-passage-house-bill-texas-business-court-jurisdiction.html>.

[15] Data pulled from re:SearchTX. <https://research.txcourts.gov/CourtRecordsSearch/>.

[16] Bipartisan Passage of House Bill 40 Clarifies Texas Business Court's Jurisdiction | Pillsbury. <https://www.pillsburylaw.com/en/news-and-insights/bipartisan-passage-house-bill-texas-business-court-jurisdiction.html>.

[17] H.B. 40 expands the Texas Business Court's jurisdiction and geography | Norton Rose

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[18] Six Months of the Texas Business Court: Looking Back as Court of Appeals Weighs in on Jurisdiction | Mayer Brown. <https://www.mayerbrown.com/en/insights/publications/2025/03/six-months-of-the-texas-business-court-looking-back-as-court-of-appeals-weighs-in-on-jurisdiction>.

[19] Data pulled from re:SearchTX. <https://research.txcourts.gov/CourtRecordsSearch/>.

[20] Texas Finance Code Chapter 33: Ownership and Management of State Bank. <https://statutes.capitol.texas.gov/Docs/FI/htm/FI.33.htm>.

[21] Texas Finance Code Chapter 33: Ownership and Management of State Bank. <https://statutes.capitol.texas.gov/Docs/FI/htm/FI.33.htm>.

[22] H.B. 3804 Senate Research Center Analysis. <https://capitol.texas.gov/tlodocs/89R/analysis/pdf/HB03804E.pdf>.

[23] H.B. 3804 Senate Research Center Analysis. <https://capitol.texas.gov/tlodocs/89R/analysis/pdf/HB03804E.pdf>.

[24] H.B. 3804 Senate Research Center Analysis. <https://capitol.texas.gov/tlodocs/89R/analysis/pdf/HB03804E.pdf>.

[25] H.B. 3804 Senate Research Center Analysis. <https://capitol.texas.gov/tlodocs/89R/analysis/pdf/HB03804E.pdf>.

[26] Texas Finance Code Chapter 152: Regulation of Money Services Businesses. <https://statutes.capitol.texas.gov/Docs/FI/htm/FI.152.htm>.