

SUBJECT: Allowing specification of venue for major transactions

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Bosse, Janek, Dutton, Goodman, Hope, Nixon

0 nays

3 absent — Alvarado, Smithee, Zbranek

WITNESSES: For — Arthur Perkins, Texas Business Law Foundation

Against — None

BACKGROUND: Venue, the location of the court in which an action may be filed, is generally set under sec. 15.002 of the Civil Practice and Remedies Code in one of four locations:

- ! the county in which all or part of the cause of action occurred,
- ! the county of the defendant's residence at the time the cause of action accrued,
- ! the county of the defendant's principal office, or
- ! if no other location is available, the county in which the plaintiff resided at the accrual of the cause of action.

Numerous mandatory venue provisions specify venue for certain actions.

DIGEST: CSHB 1272 would provide that in certain major transactions, parties could specify in writing venue for a cause of action arising from that transaction. The parties could specify which locations were proper for venue, which locations were improper, or both. Major transactions would be defined as those involving consideration of at least \$1 million and would not include personal, family, or household transactions nor agreements to settle personal injury or wrongful death claims.

Agreements specifying venue would not be enforceable if they were unconscionable when made, voidable under sec. 35.52 of the Business and Commerce Code, which relates to construction contracts, or if mandatory

venue were required by another statute.

CSHB 1272 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house and would apply to causes of action that accrued on or after the effective date.

**SUPPORTERS
SAY:**

In the course of conducting major transactions, both parties almost always are represented by legal counsel and can determine for themselves whether or not they should submit to an agreed venue for any cause of action arising from the transaction. Many courts around the country, including the U.S. Supreme Court, have accepted that parties can agree to select their own venue, but Texas case law is unclear about whether parties can override the venue statutes by agreement. CSHB 1272 would clear up that confusion by allowing parties in major transactions to select a convenient location to resolve disputes between them.

In many major transactions, the parties specify venue simply for convenience, to ensure that if a dispute arises, the parties can be reasonably sure where the case will be filed. The intent of CSHB 1272 is not to deny venue that is proper, but in major cases, in which a party could file suit in any one of numerous jurisdictions, to establish some certainty of venue.

CSHB 1272 would clearly limit to major transactions the types of business dealings in which the parties could select venue. Venue selections would not be valid for any personal matters, including personal injury or wrongful death suits, regardless of the amount involved. Such agreements also would not be valid if they were unenforceable under contract law.

**OPPONENTS
SAY:**

CSHB 1272 would allow large corporations to require mandatory venue in any contracts they made so long as the total series of transactions involved reached \$1 million. This bill would not ensure that parties would be on an equal footing when coming to the bargaining table, but would set the transactional amount so low that it would allow a larger firm to force a smaller one to accept or exclude a particular venue or else risk losing the larger firm's business.

The 74th Legislature undertook a major overhaul of the venue statutes through SB 32 by Montford in an effort to eliminate the numerous special exceptions to the general venue rule and to create a system that is fairer and

more predictable. Allowing this venue exception could open the door to permitting other special interests to get their own special venue rule enacted.

NOTES:

The committee substitute modified the original bill's definition of major transactions to exclude wrongful death actions.

The companion bill, SB 648 by Wentworth, passed the Senate by voice vote on April 13 and was reported favorably, without amendment, by the House Licensing and Administrative Procedure Committee on April 21, making it eligible to be considered in lieu of HB 1272.

During the 75th Legislature, a similar bill, HB 2547 by Dutton, was reported favorably by the House Civil Practices Committee but died in the House Calendars Committee.