

**SUBJECT:** Determining reasonable relation of transactions to particular jurisdictions

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 8 ayes — Deshotel, Orr, Bohac, Garza, Giddings, S. Miller, Quintanilla, Solomons

0 nays

1 absent — Workman

**WITNESSES:** For — Scott Night, Texas Business Law Foundation

Against — None

**BACKGROUND:** In Texas, parties to commercial business deals where the value of the consideration, loan, or money involved is at least \$1 million may decide the law that will apply to the transaction by agreeing to a jurisdiction's laws. Business and Commerce Code, sec. 271.004 governs these decisions and outlines standards to determine if a business transaction has a reasonable relation to a particular jurisdiction. A transaction is considered reasonably related to a jurisdiction if the transaction, its subject matter, or a party to the transaction is reasonably related to it. Specifically, a transaction bears a reasonable relation to a jurisdiction if:

- a party to the transaction resides in the jurisdiction;
- a party to the transaction has a place of business in the jurisdiction, or if the party has more than one place of business, its chief executive office or an office where the party performs a substantial part of the negotiations relating to the transaction is in the jurisdiction;
- all or part of the transaction's subject matter is in the jurisdiction;
- a party to the transaction performs a substantial part of its obligations relating to the transaction in the jurisdiction; or
- a substantial portion of negotiations relating to the transaction occurred in the jurisdiction, and an agreement relating to the transaction was signed by a party to the transaction in the jurisdiction.

**DIGEST:**

CSHB 2991 would expand the circumstances under which a transaction would be reasonably related to a particular jurisdiction. A transaction also would be reasonably related if a substantial part of the negotiations occurred from the jurisdiction, instead of only in the jurisdiction.

A transaction would be reasonably related if all or part of its subject matter was related to the governing documents or internal affairs of an entity formed under the laws of that jurisdiction. This would cover agreements among the entity's members or owners, agreements or options for attaining membership or ownership interest in the entity, and converting debt or other securities into an ownership interest in the entity. Also included would be any other matter associated with the rights or obligations concerning the entity's membership or ownership interests.

A transaction also would be reasonably related to a jurisdiction if:

- any or all of the subject matter was a loan or similar credit transaction where the aggregate value was at least \$25 million;
- at least three of the parties to the transaction were financial institutions, or other lenders or credit providers;
- the jurisdiction was in the United States; and
- a party to the transaction with several places of business had an office in the jurisdiction.

Under CSHB 2991, any reasonable relation established at the inception of the transaction would be preserved despite subsequent changes to the transaction's circumstances, subject matter, or parties. Additionally, the reasonable relation would be preserved regardless of any change to any agreement related to the transaction.

The bill would take effect September 1, 2011, and would apply only to transactions entered into on or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 2991 would assist parties to large transactions by granting more flexibility in negotiating choice of law for commercial business deals. By making the list of guidelines nonexclusive, the bill would expand the opportunity to establish a reasonable relation to a particular jurisdiction that would be more suitable for all involved parties. Additionally, parties would not be confined to physically conducting business in inconvenient locations and could engage in more efficient business practices.

CSHB 2991 would make Texas law more current and more reflective of modern business practices. Since parties to transactions of this scale often communicate and close deals via electronic means, current business law should reflect the current use of technology.

Supported by the Texas Business Law Foundation, the bill would address the needs of attorneys and their clients, who deal routinely in large-scale commercial transactions.

**OPPONENTS  
SAY:**

Although part of the bill's purpose would be to grant more flexibility in negotiating commercial business deals, CSHB 2991 could make it easier for parties to choose law that has a much looser connection to the transaction. Since \$25 million is a relatively low threshold in commercial transactions, particularly those involving several financial institutions, this bill could grant too much freedom to parties who would simply choose law that was favorable to them but did not necessarily have a connection to the transaction.

**NOTES:**

The committee substitute differs from the original version of the bill by making organizational changes.

The companion bill, SB 1456 by Carona, was considered in a public hearing by the Senate Business and Commerce Committee on April 12 and left pending.