

BILL ANALYSIS

Senate Research Center

H.B. 2991
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A "choice of law" clause is a contract term stating that any dispute arising under the contract shall be handled in accordance with the law of a particular jurisdiction. Prior to legislation passed in 1993, Texas relied on two principles for determining the enforceability of a choice of law provision in a contract. A provision of the Uniform Commercial Code (UCC) governed certain transactions and required a "reasonable relationship" between the parties and the chosen jurisdiction to exist for that jurisdiction's law to be applied. All remaining transactions were governed by the common law Restatement (Second) of Conflict of Laws, Section 187, which provides that, with certain exceptions, a contractual choice of law will be enforced unless there is no reasonable basis for the choice.

In 1993, Section 35.51 (now located in Chapter 271) was added to the Business and Commerce Code to govern certain choice of law provisions. Under this provision, with certain exceptions, the parties to a qualified transaction may agree that the law of a particular jurisdiction governs a particular issue relating to the transaction, including the validity or the enforceability of an agreement relating to the transaction or a provision of the agreement. If the transaction bears a reasonable relation to the chosen jurisdiction, then the laws of that jurisdiction (other than conflict laws rules) shall govern the particular issue. In addition, the statute contains specific factual criteria or "safe harbors," the presence of any one of which will satisfy the "reasonable relation" test.

That provision was based upon customary business practices at the time of the statute's passage in 1993. In the 17 years since that date, this provision has become outdated and needs to be revised to be compatible with current business practices and technology.

H.B. 2991 updates Chapter 271 (Rights of Parties to Choose Law Applicable to Certain Transactions), Business and Commerce Code, to reflect modern business practices in large transactions of at least \$1 million.

H.B. 2991 amends current law relating to a determination of the reasonable relation of certain transactions to particular jurisdictions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 271.004, Business & Commerce Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that a transaction bearing a reasonable relation to a particular jurisdiction includes, rather than provides that a transaction bears a reasonable relation to a particular jurisdiction if:

(1) a transaction in which a substantial part of the negotiations relating to the transaction occurred in or from that jurisdiction and an agreement to the

transaction was signed in that jurisdiction by a party to the transaction; or all or part of the subject matter of the transaction is related to the governing documents or internal affairs of an entity formed under the laws of that jurisdiction, such as an agreement among members or owners of the entity, an agreement or option to acquire a membership or ownership interest in the entity, and the conversion of debt or other securities into an ownership interest in the entity; and any other matter relating to rights or obligations with respect to the entity's membership or ownership interests; and

(2) a transaction in which all or part of the subject matter of the transaction is a loan or other extension of credit in which a party lends, advances, borrows, or receives, or is obligated to lend or advance or entitled to borrow or receive, money or credit with an aggregate value of at least \$25 million; at least three financial institutions or other lenders or providers of credit are parties to the transaction; the particular jurisdiction is in the United States; and a party to the transaction has more than one place of business and has an office in that particular jurisdiction.

Makes nonsubstantive changes.

(c) Requires that the transaction, if a transaction bears a reasonable relation to a particular jurisdiction at the time the parties enter into the transaction, continue to bear a reasonable relation to that jurisdiction regardless of:

(1) any subsequent change in facts or circumstances with respect to the transaction, the subject matter of the transaction, or any party to the transaction; or

(2) any modification, amendment, renewal, extension, or restatement of any agreement relating to the transaction.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2011.