

## **BILL ANALYSIS**

C.S.H.B. 2991  
By: Deshotel  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Provisions of law were codified nearly two decades ago that clarified the types of relationships that may form the basis for a choice of law selection in commercial transactions of substantial size. Since that time, as the use of electronic communications to conduct business has grown, businesspeople no longer need to travel to a particular location to finalize a large business transaction and instead are able to prepare and negotiate the documentation evidencing the transaction through electronic means. In addition, groups of financiers involved in large transactions may wish to choose a governing law for the transaction based on a particular location in which one member of the group has an office other than the more traditional chief executive office.

Interested parties note that legislation is needed to make clear that a party may negotiate a transaction from a particular location, that the parties are not required to physically gather in a location for that location to be the transaction's choice of governing law, that transactions forming part of the governing documents of an entity may be governed by the law of the jurisdiction in which the entity is formed, and that parties to large financing transactions with three or more lenders may agree to choose the governing law of any jurisdiction in which any of the lenders has an office. C.S.H.B. 2991 seeks to address these matters by making statutory changes relating to the reasonable relation of qualified commercial transactions to particular jurisdictions.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2991 amends the Business & Commerce Code to expand the list of commercial transactions that bear a reasonable relation to a particular jurisdiction by including the following: a transaction in which all or part of the subject matter 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 a transaction in which all or part of the subject matter 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 is 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. The bill specifies that a transaction qualified as bearing a reasonable relation to a particular jurisdiction based on a substantial part of the negotiations occurring in that jurisdiction and an agreement relating to the transaction being signed in that

jurisdiction by a party to the transaction also qualifies as bearing a reasonable relation to a particular jurisdiction if a substantial part of the negotiations relating to the transaction occurred from that jurisdiction.

C.S.H.B. 2991 requires a transaction bearing a reasonable relation to a particular jurisdiction at the time the parties enter into the transaction to continue to bear a reasonable relation to that jurisdiction regardless of any subsequent change in facts or circumstances with respect to the transaction, the subject matter of the transaction, or any party to the transaction and regardless of any modification, amendment, renewal, extension, or restatement of any agreement relating to the transaction.

**EFFECTIVE DATE**

September 1, 2011.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2991 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions and making clarifying changes and technical corrections to the law.