BILL ANALYSIS

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 principals for determining the enforceability of a choice of law provision in a contrtact. 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 In the 17 years since that date, this provision has become outdated and needs to be revised to be compatible with current business practices and technology.

S.B. 1456 updates Chapter 271 (Rights of Parties to Choose Law Applicable), Business and Commerce Code, to reflect modern business practices in large transactions of at least $1 million.

As proposed, S.B. 1456 amends current law relating to the reasonable relation of qualified 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 and Commerce Code, as follows:

Sec. 271.004. DETERMINATION OF REASONABLE RELATION OF TRANSACTION TO PARTICULAR JURISDICTION. (a) Provides that, for purposes of this chapter, a transaction bears a reasonable relation to a particular jurisdiction if the transaction, the subject matter of the transaction, or a party to the transaction is reasonably related to that jurisdiction.

(b) Provides that transactions bearing a reasonable relation to a particular jurisdiction include those in which:

(1) a party to the transaction is a resident of that jurisdiction;

(2) a party to the transaction has the party's place of business or, if that party has more than one place of business, the party's chief executive office or an office from which the party conducts a substantial part of the negotiations relating to the transaction, in that jurisdiction;

(3) all or part of the subject matter of the transaction is located in that jurisdiction;

(4) a party to the transaction is required to perform in that jurisdiction a substantial part of the party's obligations relating to the transaction, such as delivering payments; or

(5) a substantial part of the negotiations relating to the transaction occurred in or from that jurisdiction and an agreement relating to the transaction was signed in that jurisdiction by a party to the transaction;

(6) all or part of the subject matter of the transaction relates to the governing documents or internal affairs of an entity formed under the laws of that jurisdiction, such as matters relating to rights or obligations with respect to that entity's membership or ownership interests, including agreements among members or owners, agreements or options to acquire membership or ownership interests, and debt or other securities convertible into ownership interests; or

(7) all of the following are true: (A) 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 is entitled to borrow or receive, funds or credit with an aggregate value of at least $25,000,000, (B) there are at least three financial institutions or other lenders or providers of credit party to the transaction, (C) a party to the transaction has more than one place of business and has an office in that particular jurisdiction, and (D) that particular jurisdiction is part of the United States.

(c) Provides that if a transaction bears a reasonable relation to a jurisdiction at the time that the parties enter into the transaction, then the transaction continues 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.

SECTION 2. Effective date: September 1, 2011.