

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1239
By: Middleton
Business & Commerce
3/27/2025
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Sovereign debt refers to money that a country's government borrows to finance its spending beyond its revenue. This debt can be issued in the form of bonds or loans and is often held by foreign and US investors, banks, private creditors, and others. Historically, borrowing countries have often chosen to issue under the law of New York. This is largely an artifact of New York's historical primacy in financial markets and the significant financial industry presence. Recent proposed legislation in New York would create serious legal uncertainty for lenders and borrowers alike. The prospect of this legislation has prompted creditors to consider other jurisdictions. While the New York courts and financial sector presence have been appealing, Texas has been mentioned as an alternative jurisdiction for choice of governing law and jurisdiction.

The combination of financial industry growth and judicial strength makes Texas a compelling choice for managing complex sovereign debt issues that could rival traditional centers like New York.

S.B. 1239 seeks to position Texas to be a leader in sovereign debt cases by amending the Business & Commerce Code to make the state an acceptable, and reliable, venue. S.B. 1239 would ensure that causes of action relating to a security travel with that security and the parties may agree to modify the agreement to choose the law of a different jurisdiction, including Texas. The bill would state that if a security is determined to be invalid under the law of the issuer's jurisdiction, the law agreed in the governing documentation would govern the consequences of such invalidity. Additionally, S.B. 1239 would clarify that champerty, as defined in the New York statute prohibiting the purchase of securities "for the sole purpose of litigation," does not apply by codifying that Texas common law does not recognize the doctrine of champerty.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1239 amends current law relating to choice of law and assignment or acquisition of claims and demands in connection with certificated and uncertificated securities.

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 8.110, Business & Commerce Code, by adding Subsection (g) to provide that, if a security is determined not to be valid under the local law of the issuer's jurisdiction, the law of the jurisdiction agreed by the issuer of the security to govern the construction or interpretation of documents evidencing or containing the terms of the security and matters arising out of or relating to the security and documents, including the enforceability of the security and the rights and remedies available to a purchaser of such a security, governs the consequences to the issuer and the purchaser of the invalidity.

SECTION 2. Amends Section 8.302, Business & Commerce Code, by adding Subsections (d) and (e), as follows:

(d) Provides that the rights acquired by a purchaser of a certificated or uncertificated security issued by a foreign state as defined by 28 U.S.C. Section 1603, unless otherwise agreed in writing, include, without limitation, all of certain claims and demands of the transferor, regardless of whether the claims and demands are known to exist.

(e) Provides that, except as specifically provided by statute with respect to assignments of the claims and demands of a transferor to the purchaser of a certificated or uncertificated security issued by a foreign state as defined by 28 U.S.C. Section 1603, no issuer or other party subject to any obligation, or to any claim or demand for damages, with respect to any such security is authorized to assert a defense to such an obligation, claim, or demand, or assert a claim against the purchaser, based on the intent of the purchaser, or an assignor or assignee of the purchaser, to assert or pursue through litigation or other lawful means the enforcement of the purchaser's rights thereto.

SECTION 3. Amends Section 271.005, Business & Commerce Code, by adding Subsections (a-1) and (c), as follows:

(a-1) Provides that, unless otherwise agreed in writing, the choice of governing law specified in the terms applicable to a certificated or uncertificated security issued by a foreign state as defined by 28 U.S.C. Section 1603 in a qualified transaction, including any change in that governing law, applies retroactively to all issues relating to such security.

(c) Authorizes a security issued by a foreign state as defined by 28 U.S.C. Section 1603 in a qualified transaction to be modified or amended, in accordance with such security's terms, to permit amendment of the terms of the security by less than unanimous consent, and to choose the law of a different jurisdiction to govern the security. Provides that an amendment described by this subsection applies retroactively unless otherwise agreed by the parties in writing.

SECTION 4. Effective date: September 1, 2025.