

BUSINESS AND COMMERCE CODE

TITLE 9. APPLICABILITY OF LAW TO COMMERCIAL TRANSACTIONS

CHAPTER 271. RIGHTS OF PARTIES TO CHOOSE LAW APPLICABLE

TO CERTAIN TRANSACTIONS

Sec. 271.001. DEFINITION. In this chapter, "qualified transaction" means a transaction under which a party:

(1) pays or receives, or is obligated to pay or is entitled to receive, consideration with an aggregate value of at least \$1 million; or

(2) 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 \$1 million.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.002. SUBSTANTIALLY SIMILAR OR RELATED TRANSACTIONS. For purposes of this chapter, two or more substantially similar or related transactions are considered a single transaction if the transactions:

(1) are entered into contemporaneously; and

(2) have at least one common party.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.003. CONFLICT-OF-LAWS RULES. For purposes of this chapter, a reference to the law of a particular jurisdiction does not include that jurisdiction's conflict-of-laws rules.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.004. DETERMINATION OF REASONABLE RELATION OF TRANSACTION TO PARTICULAR JURISDICTION. (a) 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) A transaction bearing a reasonable relation to a particular jurisdiction includes:

(1) a transaction in which:

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

(B) 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;

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

(D) 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;

(E) 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; or

(F) 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:

(i) 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

(ii) any other matter relating to rights or obligations with respect to the entity's membership or ownership interests; and

(2) a transaction in which:

(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 entitled to borrow or receive, money or credit with an aggregate value of at least \$25 million;

(B) at least three financial institutions or other lenders or providers of credit are parties to the transaction;

(C) the particular jurisdiction is in the United States; and

(D) a party to the transaction has more than one place of business and has an office in that particular jurisdiction.

(c) If a transaction bears a reasonable relation to a particular jurisdiction at the time the parties enter into the transaction, the transaction shall 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.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 132 (H.B. [2991](#)), Sec. 1, eff. September 1, 2011.

Sec. 271.005. LAW GOVERNING ISSUE RELATING TO QUALIFIED TRANSACTION. (a) Except as provided by Section [271.007](#), [271.008](#)(b), [271.009](#), [271.010](#), or [271.011](#) or by Chapter [272](#), the law of a particular jurisdiction governs an issue relating to a qualified transaction if:

(1) the parties to the transaction agree in writing that the law of that jurisdiction governs the issue, including the validity or enforceability of an agreement relating to the transaction or a provision of the agreement; and

(2) the transaction bears a reasonable relation to that jurisdiction.

(b) The law of a particular jurisdiction governs an issue described by this section regardless of whether the application of that law is contrary to a fundamental or public policy of this state

or of any other jurisdiction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.006. LAW GOVERNING INTERPRETATION OR CONSTRUCTION OF AGREEMENT RELATING TO QUALIFIED TRANSACTION. Except as provided by Section 271.008(b), 271.009, 271.010, or 271.011 and by Chapter 272, if the parties to a qualified transaction agree in writing that the law of a particular jurisdiction governs the interpretation or construction of an agreement relating to the transaction or a provision of the agreement, the law of that jurisdiction governs that issue regardless of whether the transaction bears a reasonable relation to that jurisdiction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.007. LAW GOVERNING VALIDITY OR ENFORCEABILITY OF TERM OF AGREEMENT RELATING TO QUALIFIED TRANSACTION. (a) Except as provided by Section 271.008(b), 271.009, 271.010, or 271.011 or by Chapter 272, this section applies if:

(1) the parties to a qualified transaction agree in writing that the law of a particular jurisdiction governs the validity or enforceability of an agreement relating to the transaction or a provision of the agreement;

(2) the transaction bears a reasonable relation to that jurisdiction; and

(3) a term of the agreement or of that provision is invalid or unenforceable under the law of that jurisdiction but is valid or enforceable under the law of the jurisdiction that has the most significant relation to the transaction, the subject matter of the transaction, and the parties.

(b) If this section applies:

(1) the law of the jurisdiction that has the most significant relation to the transaction, the subject matter of the transaction, and the parties governs the validity or enforceability of a term described by Subsection (a)(3); and

(2) the law of the jurisdiction that the parties agree

would govern the validity or enforceability of the agreement or provision governs the validity or enforceability of the other terms of the agreement or provision.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 271.008. APPLICABILITY TO CERTAIN REAL PROPERTY TRANSACTIONS; EXCEPTIONS. (a) Sections 271.004-271.007 apply to the determination of the law that governs an issue relating to a transaction involving real property other than a matter described by Subsection (b), including the validity or enforceability of an indebtedness incurred in consideration for the transfer of, or the payment of which is secured by a lien on, real property.

(b) Sections 271.004-271.007 do not apply to the determination of the law that governs:

(1) whether a transaction transfers or creates an interest in real property for security purposes or otherwise;

(2) the nature of an interest in real property that is transferred or created by a transaction;

(3) the method for foreclosure of a lien on real property;

(4) the nature of an interest in real property that results from foreclosure; or

(5) the manner and effect of recording or failing to record evidence of a transaction that transfers or creates an interest in real property.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 271.009. EXCEPTION: MARRIAGE OR ADOPTION. Sections 271.004-271.007 do not apply to the determination of the law that governs:

(1) the validity of a marriage or an adoption;

(2) whether a marriage has been terminated; or

(3) the effect of a marriage on property owned by a spouse at the time of the marriage or acquired by either spouse during the marriage.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 271.010. EXCEPTION: DECEDENT'S ESTATE. Sections 271.004-271.007 do not apply to the determination of the law that governs:

- (1) whether an instrument is a will;
- (2) the rights of persons under a will; or
- (3) the rights of persons in the absence of a will.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.

Sec. 271.011. EXCEPTION: OTHER STATUTE SPECIFYING GOVERNING LAW. Sections 271.004-271.007 do not apply to the determination of the law that governs an issue that another statute of this state or a statute of the United States provides is governed by the law of a particular jurisdiction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.01, eff. April 1, 2009.