

## **Texas (Texac)**

### **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.

**CHAPTER 272. LAW APPLICABLE TO CERTAIN CONSTRUCTION CONTRACTS**

**Sec. 272.0001. Definition**

In this chapter, "construction contract" means a contract, subcontract, or agreement entered into or made by an owner, architect, engineer, contractor, construction manager, subcontractor, supplier, or material or equipment lessor for the design, construction, alteration, renovation, remodeling, or repair of, or for the furnishing of material or equipment for, a building, structure, appurtenance, or other improvement to or on public or private real property, including moving, demolition, and excavation connected with the real property. The term includes an agreement to which an architect, engineer, or contractor and an owner's lender are parties regarding an assignment of the construction contract or other modifications thereto.

Added by Acts 2017, 85th Leg., R.S., Ch. 580 (S.B. 807), Sec. 2, eff. September 1, 2017.

### **Sec. 272.001. Voidable contract provision**

(a) This section applies only to a construction contract concerning real property located in this state.

(b) If a construction contract or an agreement collateral to or affecting the construction contract contains a provision making the contract or agreement or any conflict arising under the contract or agreement subject to another state's law, litigation in the courts of another state, or arbitration in another state, that provision is voidable by a party obligated by the contract or agreement to perform the work that is the subject of the construction contract.

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

Amended by: Acts 2017, 85th Leg., R.S., Ch. 580 (S.B. 807), Sec. 2, eff. September 1, 2017.

### **Sec. 272.002. Inapplicability of chapter**

This chapter does not apply to a construction contract that:

(1) is a partnership agreement or other agreement governing an entity or trust;

(2) provides for a loan or other extension of credit and the party promising to perform the work that is the subject of the construction contract is doing so as part of the party's agreements with the lender or other person who extends credit; or

(3) is for the management of real property or improvements and the obligation to perform the work that is the subject of the construction contract is part of that management.

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

Amended by: Acts 2017, 85th Leg., R.S., Ch. 580 (S.B. 807), Sec. 2, eff. September 1, 2017.

## **CHAPTER 273. LAW OR FORUM APPLICABLE TO CERTAIN CONTRACTS FOR DISPOSITION OF GOODS**

### **Sec. 273.001. Contracts subject to chapter**

This chapter applies to a contract only if:

(1) the contract is for the sale, lease, exchange, or other disposition for value of goods for the price, rental, or other consideration of \$50,000 or less;

(2) any element of the contract's execution occurred in this state;

(3) a party to the contract is:

(A) an individual resident of this state; or

(B) an association or corporation that is created under the laws of this state or has its principal place of business in this state; and

(4) Section 1.301 does not apply to the contract.

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

### **Sec. 273.002. Notice of applicable law or forum**

If a contract contains a provision making the contract or any conflict arising under the contract subject

to another state's laws, litigation in the courts of another state, or arbitration in another state, that provision must be set out conspicuously in print, type, or other form of writing that is boldfaced, capitalized, underlined, or otherwise set out in such a manner that a reasonable person against whom the provision may operate would notice the provision.

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

**Sec. 273.003. Failure to provide notice**

A contract provision that does not comply with Section 273.002 is voidable by a party against whom the provision is sought to be enforced.

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

**CHAPTER 274. LAW APPLICABLE TO CONTRACT MADE OVER INTERNET**

**Sec. 274.001. Definition**

In this chapter, "Internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet.

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

**Sec. 274.002. Applicability of chapter; exception**

(a) Except as provided by Subsection (b), this chapter applies only to a contract made solely over the Internet between a person located in this state and a person located outside this state who does not maintain an office or agent in this state for transacting business in this state.

(b) This chapter does not apply to a contract to which Chapter 271 applies.

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

**Sec. 274.003. State law governing contract; burden of proof**

(a) A contract is governed by the law of this state unless each party to the contract who is located in this state:

(1) is given notice that the law of the state in which another party to the contract is located applies to the contract; and

(2) agrees to the application of that state's law.

(b) A person asserting that the law of another state governs a contract has the burden of proving that notice was given and agreement was obtained as specified by Subsection (a).

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

**Sec. 274.004. Applicability of other law to contract**

Section 1.031 and Chapter 273 do not apply to a contract to which this chapter applies.

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