

CBA LPRC POSITION REQUEST FORM

The CBA Section of International Law **position request** is as follows:

- 1) Proposed legislative or regulatory concept:

Support the enactment of a commercial choice of law statute.

- 2) A plain language explanation and rationale for advancing this position:

This draft bill substantially tracks New York general obligation §5-1401¹ and §5-1402.² The predictability of contractual provisions is very important in commercial transactions, including international trade. A commercial contractual provision between parties of equal bargaining position should mean what it says. Currently under Connecticut law, such a provision might not be enforced because a transaction has no “reasonable relationship” to Connecticut.³

For the past thirty years, the Connecticut legislature has worked hard to modernize its law to face the challenges of today’s multinational commerce. Parties can recognize this and elect to choose Connecticut law to govern their relationship, even though Connecticut has no other role in the transaction. Connecticut should not thwart the power of commercial parties to choose Connecticut law to govern their transaction.

¹ §5-1401. Choice of law. 1. The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars, including a transaction otherwise covered by subsection one of section 1-105 of the uniform commercial code, may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not such contract, agreement or undertaking bears a reasonable relation to this state. This section shall not apply to any contract, agreement or undertaking (a) for labor or personal services, (b) relating to any transaction for personal, family or household services, or (c) to the extent provided to the contrary in subsection two of section 1-105 of the uniform commercial code.

2. Nothing contained in this section shall be construed to limit or deny the enforcement of any provision respecting choice of law in any other contract, agreement or undertaking.

² §5-1402. Choice of Forum. 1. Notwithstanding any act which limits or affects the right of a person to maintain an action or proceeding, including, but not limited to, paragraph (b) of section thirteen hundred fourteen of the business corporation law and subdivision two of section two hundred-b of the banking law, any person may maintain an action or proceeding against a foreign corporation, non-resident, or foreign state where the action or proceeding arises out of or relates to any contract, agreement or undertaking for which a choice of New York law has been made in whole or in part pursuant to section 5-1401 and which (a) is a contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate, not less than one million dollars, and (b) which contains a provision or provisions whereby such foreign corporation or non-resident agrees to submit to the jurisdiction of the courts of this state.

2. Nothing contained in this section shall be construed to affect the enforcement of any provision respecting choice of forum in any other contract, agreement or undertaking.

³ Uniform Commercial Code §1-0301(a) provides: “Except as otherwise provided in this section, ***when a transaction bears a reasonable relation to this state*** and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.” [emphasis added]

Other major commercial states have similar legislation, such as California Civil Code §1646.5,⁴ Delaware Code §2708(a),⁵ Florida §685.101,⁶ and 735 Ill. Compiled Statutes §105/5-5.⁷

Section 2 provides Connecticut courts have jurisdiction to determine commercial disputes in excess of \$500,000.00 between the parties if they have selected Connecticut law to govern their transaction. In such cases, the Connecticut courts have the most experience in interpreting Connecticut law. This bill will implement Connecticut's obligations under the Hague Convention on Choice of Court Agreements (which has been signed by the United States but not yet ratified).

3) Is draft regulation, legislation or proposed bill included?

⁴ Notwithstanding Section 1646, the parties to any contract, agreement, or undertaking, contingent or otherwise, relating to a transaction involving in the aggregate not less than two hundred fifty thousand dollars (\$250,000), including a transaction otherwise covered by subdivision (a) of Section 1301 of the Commercial Code, may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not the contract, agreement, or undertaking or transaction bears a reasonable relation to this state. This section does not apply to any contract, agreement, or undertaking (a) for labor or personal services, (b) relating to any transaction primarily for personal, family, or household purposes, or (c) to the extent provided to the contrary in subdivision (c) of Section 1301 of the Commercial Code.

This section applies to contracts, agreements, and undertakings entered into before, on, or after its effective date; it shall be fully retroactive. Contracts, agreements, and undertakings selecting California law entered into before the effective date of this section shall be valid, enforceable, and effective as if this section had been in effect on the date they were entered into; and actions and proceedings commencing in a court of this state before the effective date of this section may be maintained as if this section were in effect on the date they were commenced.

⁵ The parties to any contract, agreement or other undertaking, contingent or otherwise, may agree in writing that the contract, agreement or other undertaking shall be governed by or construed under the laws of this State, without regard to principles of conflict of laws, or that the laws of this State shall govern, in whole or in part, any or all of their rights, remedies, liabilities, powers and duties if the parties, either as provided by law or in the manner specified in such writing are, (i) subject to the jurisdiction of the courts of, or arbitration in, Delaware and, (ii) may be served with legal process. The foregoing shall conclusively be presumed to be a significant, material and reasonable relationship with this State and shall be enforced whether or not there are other relationships with this State.

⁶ (1) The parties to any contract, agreement, or undertaking, contingent or otherwise, in consideration of or relating to any obligation arising out of a transaction involving in the aggregate not less than \$250,000, the equivalent thereof in any foreign currency, or services or tangible or intangible property, or both, of equivalent value, including a transaction otherwise covered by s. 671.105(1), may, to the extent permitted under the United States Constitution, agree that the law of this state will govern such contract, agreement, or undertaking, the effect thereof and their rights and duties thereunder, in whole or in part, whether or not such contract, agreement, or undertaking bears any relation to this state.

⁷ §5-5. Choice of law. The parties to any contract, agreement, or undertaking, contingent or otherwise, in consideration of or relating to any obligation arising out of a transaction covering in the aggregate not less than \$250,000, including a transaction otherwise covered by subsection (1) of Section 1-105 of the Uniform Commercial Code, may agree that the law of this State shall govern their rights and duties in whole or in part, whether or not the contract, agreement, or undertaking bears a reasonable relation to this State. This Section shall not apply to any contract, agreement, or undertaking (i) for labor or personal services, (ii) relating to any transaction for personal, family, or household services, or (iii) to the extent provided to the contrary in subsection (2) of Section 1-105 of the Uniform Commercial Code. Nothing contained in this Section shall be construed to limit or deny the enforcement of any provision respecting choice of law in any other contract, agreement, or undertaking.

Attached.

4) What is the date of any legislative hearing, if known?

Not applicable

5) Was this position previously approved by the CBA? If so, when does/did it expire?

No.

6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position?

No.

7) Potential or actual CBA opposition from another CBA section or committee?

None noted.

8) Strength of section position (including process and results of section vote taken on issue):

Our section is small, but the vote was unanimous. The material was circulated twice to the entire section, with no objections noted.

9) Fiscal impact (on the state): Minimal. The costs incurred for the potential additional lawsuits are minimal.

10) Are you seeking "fast-track" approval?⁸ No.

⁸ A "fast track" recommendation will be submitted to the House of Delegates (HOD) or Board of Governors (BOG) at its next scheduled meeting (or, if between meetings of the HOD or BOG and during the legislative session, to the Executive Committee), and is warranted only when the Legislative Policy & Review Committee concludes that further analysis and study is unnecessary and where there is legitimate time pressure to address pending legislation.