

Senate Bill 2282 »

Wednesday, January 10, 2018

Senate Bill 2282 » On January 8, 2018, Senator John Cornyn from Texas, for himself and Senator Elizabeth Warren from Massachusetts, introduced S. 2282 to amend title 28 of the U.S. Code to modify venue requirements in bankruptcy proceedings. The amendment requires debtors to file for bankruptcy in the district where their principal assets, domicile or residents is located restricting an individual debtor from filing in a district on the basis of state of incorporation alone.

The purpose of the bill in part, is to minimize forum shopping that would prevent small business, employees, retirees, and stakeholders from actively and fully participating in bankruptcy proceedings taking place in a district that has little knowledge as to how the local economy and community will be impacted by the decision.

The text of the Bill as introduced is as follows:

SEC. 3. VENUE OF CASES UNDER TITLE 11.

Title 28, United States Code, is amended—

(1) by striking section 1408 and inserting the following:

- **1408. Venue of cases under title 11**

“(a) DEFINITION.—In this section, the term ‘principal place of business’ means, with respect to a person or entity that is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), the address of the principal executive office of the person or entity as stated in the last annual report filed under that Act prior to the commencement of a case under title 11 by the person or entity, unless another address is shown to be the principal place of business by clear and convincing evidence.

“(b) VENUE.—Except as provided in section 1410, a case under title 11 may be commenced only in the district court for the district—

“(1) in which the domicile, residence, or principal assets in the United States of an individual who is the subject of the case have been located for the 180 days immediately preceding such commencement, or for a longer portion of the 180-day period than the domicile, residence, or principal assets in the United States of the individual were located in any other district;

“(2) in which the principal assets or principal place of business in the United States of a person or entity, other than an individual, that is the subject of the case have been located for the 180 days immediately preceding the commencement, or for a longer portion of the 180-day period than the principal place of business or principal assets in the United States of the person or entity were located in any other district; or

“(3) in which there is already pending a case under title 11 concerning an affiliate that directly or indirectly owns, controls, is the general partner, or holds 50 percent or more of the outstanding voting securities, of the person or entity that is the subject of the later filed case if the pending case was properly filed in that district under this section.

“(c) LIMITATIONS.—

“(1) IN GENERAL.—For the purposes of paragraphs (2) and (3) of subsection (b), no effect shall be given to a change in the ownership or control of a person or entity that is the subject of the case or its affiliate, or to a transfer of the principal assets or principal place of business of a person or entity that is the subject of the case or its affiliate to another district, that takes place—

“(A) within 1 year before the date on which the case is commenced; or

“(B) for the purpose of establishing venue. “(2) PRINCIPAL ASSETS.—For the purposes of subsection (b)(2) and paragraph (1) of this subsection, principal assets do not include cash or cash equivalents.

“(d) BURDEN.—The person or entity that commences a case under title 11 shall bear the burden of establishing by clear and convincing evidence that venue is proper under this section.”;

and (2) by striking section 1412 and inserting the following:

“§ 1412. Change of venue

“Notwithstanding that a case or proceeding under title 11 is filed in the correct division or district, a district court may nevertheless transfer a case or proceeding under title 11 to a district court for another district or division, in the interest of justice or for the convenience of the parties. If a case or proceeding under title 11 is filed in the wrong division or district, the district court shall transfer, dismiss the case or proceeding, or, if it be in the interest of justice, transfer the case or proceeding under title 11 to any district or division in which it could have been brought. The court shall enter an order on any objection to or request to change venue of a case or proceeding under title 11 not later than 14 days after the filing of such objection or request.”.