

115TH CONGRESS
2D SESSION

S. 2282

To amend title 28, United States Code, to modify venue requirements relating to bankruptcy proceedings.

IN THE SENATE OF THE UNITED STATES

JANUARY 8, 2018

Mr. CORNYN (for himself and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to modify venue requirements relating to bankruptcy proceedings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bankruptcy Venue Re-
5 form Act of 2018”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) bankruptcy law provides a number of venue
9 options for filing bankruptcy under chapter 11 of
10 title 11, United States Code, including place of in-

1 corporation, principal place of business and assets,
2 or where an affiliate has filed a case under chapter
3 11;

4 (2) the wide range of permissible bankruptcy
5 venue options has led to an increase in companies
6 filing for bankruptcy outside of their home States,
7 or the district in which their principal place of busi-
8 ness or principal assets are located, a practice
9 known as forum shopping, and has resulted in a
10 concentration of bankruptcy cases in a few districts;

11 (3) bankruptcy forum shopping prevents small
12 businesses, employees, retirees, creditors, and other
13 important stakeholders from fully participating in
14 bankruptcy cases that will have tremendous impacts
15 on their lives, communities, and local economies, and
16 deprives district courts of the United States of the
17 opportunity to contribute to the development of
18 bankruptcy law in their jurisdictions; and

19 (4) reducing forum shopping and manipulation
20 in the bankruptcy system will strengthen the integ-
21 rity, build public confidence, and ensure fairness in
22 the bankruptcy system.

23 (b) PURPOSE.—The purpose of this Act is to prevent
24 the practice of forum shopping in cases filed under chapter
25 11 of title 11, United States Code.

1 **SEC. 3. VENUE OF CASES UNDER TITLE 11.**

2 Title 28, United States Code, is amended—

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

5 **“§ 1408. Venue of cases under title 11**

6 “(a) DEFINITION.—In this section, the term ‘prin-
7 cipal place of business’ means, with respect to a person
8 or entity that is subject to the reporting requirements of
9 section 13 or 15(d) of the Securities Exchange Act of
10 1934 (15 U.S.C. 78m, 78o(d)), the address of the prin-
11 cipal executive office of the person or entity as stated in
12 the last annual report filed under that Act prior to the
13 commencement of a case under title 11 by the person or
14 entity, unless another address is shown to be the principal
15 place of business by clear and convincing evidence.

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

19 “(1) in which the domicile, residence, or prin-
20 cipal assets in the United States of an individual
21 who is the subject of the case have been located for
22 the 180 days immediately preceding such commence-
23 ment, or for a longer portion of the 180-day period
24 than the domicile, residence, or principal assets in
25 the United States of the individual were located in
26 any other district;

1 “(2) in which the principal assets or principal
2 place of business in the United States of a person
3 or entity, other than an individual, that is the sub-
4 ject of the case have been located for the 180 days
5 immediately preceding the commencement, or for a
6 longer portion of the 180-day period than the prin-
7 cipal place of business or principal assets in the
8 United States of the person or entity were located
9 in any other district; or

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

17 “(c) LIMITATIONS.—

18 “(1) IN GENERAL.—For the purposes of para-
19 graphs (2) and (3) of subsection (b), no effect shall
20 be given to a change in the ownership or control of
21 a person or entity that is the subject of the case or
22 its affiliate, or to a transfer of the principal assets
23 or principal place of business of a person or entity
24 that is the subject of the case or its affiliate to an-
25 other district, that takes place—

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

3 “(B) for the purpose of establishing venue.

4 “(2) PRINCIPAL ASSETS.—For the purposes of
5 subsection (b)(2) and paragraph (1) of this sub-
6 section, principal assets do not include cash or cash
7 equivalents.

8 “(d) BURDEN.—The person or entity that com-
9 mences a case under title 11 shall bear the burden of es-
10 tablishing by clear and convincing evidence that venue is
11 proper under this section.”; and

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

14 **“§ 1412. Change of venue**

15 “Notwithstanding that a case or proceeding under
16 title 11 is filed in the correct division or district, a district
17 court may nevertheless transfer a case or proceeding
18 under title 11 to a district court for another district or
19 division, in the interest of justice or for the convenience
20 of the parties. If a case or proceeding under title 11 is
21 filed in the wrong division or district, the district court
22 shall transfer, dismiss the case or proceeding, or, if it be
23 in the interest of justice, transfer the case or proceeding
24 under title 11 to any district or division in which it could
25 have been brought. The court shall enter an order on any

1 objection to or request to change venue of a case or pro-
2 ceeding under title 11 not later than 14 days after the
3 filing of such objection or request.”.

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