

118TH CONGRESS  
2D SESSION

# S. 4746

To amend title 11, United States Code, to make the filing of a petition for relief under chapter 11 that is objectively futile or in subjective bad faith a cause for dismissal of the case, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 23, 2024

Mr. WHITEHOUSE (for himself, Mr. HAWLEY, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 11, United States Code, to make the filing of a petition for relief under chapter 11 that is objectively futile or in subjective bad faith a cause for dismissal of the case, and for other purposes.

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 “Ending Corporate  
5 Bankruptcy Abuse Act of 2024”.

6 **SEC. 2. CONVERSION OR DISMISSAL UNDER CHAPTER 11.**

7 Section 1112(b) of title 11, United States Code, is  
8 amended—

1           (1) in paragraph (2)(A), by striking “within a  
2 reasonable period of time” and inserting “not later  
3 than 24 months after the date of the filing of the  
4 petition”;

5           (2) in paragraph (4)—

6           (A) subparagraph (O), by striking “and”  
7 at the end;

8           (B) in subparagraph (P), by striking the  
9 period at the end and inserting “; and”; and

10          (C) by adding at the end the following:

11          “(Q) with respect to the dismissal of a case  
12 under this chapter, the filing of a petition for relief  
13 or the continuation of a case under this title that  
14 is—

15           “(i) objectively futile; or

16           “(ii) in subjective bad faith.”; and

17          (3) by adding at the end the following:

18          “(g)(1) For the purpose of subsection (b)(4)(Q), the  
19 court shall presume that a petition has been filed or that  
20 a case is continuing under this title in subjective bad faith  
21 if the court determines that the debtor manufactured the  
22 venue for the case.

23          “(2) The presumption under paragraph (1) may be  
24 rebutted only based on clear and convincing evidence.

1       “(h)(1) For the purpose of subsection (b)(4)(Q), the  
2 court shall conclusively presume that a petition has been  
3 filed or that a case under this title that is continuing in  
4 subjective bad faith if the court determines that—

5           “(A) a purpose or effect of the filing or con-  
6 tinuation is to—

7               “(i) gain a tactical litigation advantage;

8               “(ii) impose undue delay upon creditors; or

9               “(iii) cap the total amount of the liability  
10 of the debtor to 2 or more creditors holding  
11 protected claims (as defined in section  
12 362(p)(1)) that the debtor or any affiliate has  
13 property of value sufficient to pay in full as  
14 those claims would come due;

15           “(B) during the 4-year period preceding the  
16 date of the filing of the petition, the debtor was the  
17 subject of, or was formed or organized in connection  
18 with, a divisional merger or similar transaction  
19 changing the corporate structure of and affecting  
20 the financial condition of the debtor or an affiliate;

21           “(C) during the 4-year period preceding the  
22 date of the filing of the petition, the debtor engaged  
23 in a transfer of substantial assets to or for benefit  
24 of or incurred substantial obligations from or for the  
25 benefit of any insider or affiliate that, notwith-

1 standing subsections (e) through (g) and (j) of sec-  
2 tion 546, is avoidable under section 544(b) or sub-  
3 section (a)(1) or (e) of section 548; or

4 “(D) the debtor does not have a valid re-  
5 organizational purpose.

6 “(2) In making a determination under paragraph  
7 (1)(D), the court shall consider and give weight to whether  
8 any appointed creditors’ committee supports the dismissal  
9 of the case.

10 “(i) In a determination under subsection (g) or (h),  
11 the debtor shall have the burden of proof.”.

12 **SEC. 3. LIMITATIONS ON CERTAIN STAYS AND INJUNC-**  
13 **TIONS.**

14 Section 105 of title 11, United States Code, is  
15 amended by adding at the end the following:

16 “(e) Notwithstanding subsection (a) of this section,  
17 any provision of title 28, the Federal Rules of Bankruptcy  
18 Procedure, or any applicable nonbankruptcy law, the court  
19 may not issue any order, process, or judgment that has  
20 the purpose or effect of overriding or nullifying section  
21 362(b)(27) of this title.”.

22 **SEC. 4. AUTOMATIC STAY.**

23 Section 362 of title 11, United States Code, is  
24 amended—

25 (1) in subsection (b)—

1 (A) by redesignating paragraphs (27),  
2 (28), and (29) as paragraphs (28), (29), and  
3 (30), respectively; and

4 (B) by inserting after paragraph (26) the  
5 following:

6 “(27) under subsection (a) of this section, of  
7 the commencement or continuation, including the  
8 issuance or employment of process, of a judicial, ad-  
9 ministrative, or other action or proceeding against  
10 an entity that is not a debtor in a case under this  
11 title, or any act to obtain or recover property of such  
12 entity, on account of or with respect to a protected  
13 claim against such entity, the debtor, or the estate  
14 (including a protected claim that is property of the  
15 debtor or the estate against such entity), if, during  
16 the 4-year period preceding the date of the filing of  
17 the petition, the debtor was the subject of, or was  
18 formed or organized in connection with, a divisional  
19 merger, spinoff, corporate restructuring, or other  
20 transaction changing the corporate structure of, and  
21 affecting the financial condition of, the debtor or an  
22 affiliate;” and

23 (2) by adding at the end the following:

24 “(p) For the purposes of paragraph (27):

25 “(1) The term ‘protected claim’ means—

1 “(A) a claim that—

2 “(i) is against a nondebtor entity or  
3 against property of a nondebtor entity that  
4 is alleged to be directly or indirectly liable  
5 for a claim described in subparagraph (B)  
6 against the debtor; and

7 “(ii) arises by reason of—

8 “(I) the nondebtor entity’s own-  
9 ership of a financial interest in the  
10 debtor, a past or present affiliate of  
11 the debtor, or a predecessor in inter-  
12 est of the debtor;

13 “(II) the nondebtor entity’s in-  
14 volvement in the management of the  
15 debtor or a predecessor in interest of  
16 the debtor or the nondebtor entity’s  
17 service as an officer, director, or em-  
18 ployee of the debtor or a related  
19 party;

20 “(III) the nondebtor entity’s pro-  
21 vision of insurance to the debtor or a  
22 related party; or

23 “(IV) the nondebtor entity’s in-  
24 volvement in a transaction changing  
25 the corporate structure, or in a loan

1 or other financial transaction affect-  
2 ing the financial condition, of the  
3 debtor or a related party, including—

4 “(aa) involvement in pro-  
5 viding financing (debt or equity)  
6 or advice to an entity involved in  
7 such a transaction; or

8 “(bb) acquiring or selling a  
9 financial interest in an entity as  
10 part of such a transaction; or

11 “(B) a claim—

12 “(i) against the debtor or a nondebtor  
13 entity or property of the debtor or a non-  
14 debtor entity;

15 “(ii) relating to injury, contamination,  
16 damage, or loss, including any claim for  
17 reimbursement, indemnity, contribution, or  
18 subrogation;

19 “(iii) affecting, directly or indirectly,  
20 not less than 100 individuals on or after  
21 the date of the filing of the petition;

22 “(iv) allegedly caused, directly or indi-  
23 rectly, by the presence of, or exposure to,  
24 a product, material, or substance designed,  
25 marketed, manufactured, sold, modified,

1 extracted, serviced, or in any way used by  
 2 the debtor or the nondebtor entity; and

3 “(v) arising, directly or indirectly,  
 4 from acts or omissions, of the debtor, a  
 5 predecessor in interest of the debtor, or a  
 6 past or present affiliate of the debtor.

7 “(2) The term ‘related party’ has the meaning  
 8 given the term in section 524(g)(4)(A)(iii).”.

9 **SEC. 5. TECHNICAL AMENDMENTS.**

10 (a) SETOFF.—Section 553 of title 11, United States  
 11 Code, is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (2)(B)(ii), by striking  
 14 “362(b)(27)” and inserting “362(b)(28)”; and

15 (B) in paragraph (3)(C), “362(b)(27)”  
 16 and inserting “362(b)(28)”; and

17 (2) in subsection (b)(1), “362(b)(27)” and in-  
 18 serting “362(b)(28)”.

19 (b) RELIEF THAT MAY BE GRANTED UPON FILING  
 20 PETITION FOR RECOGNITION.—Section 1519(f) of title  
 21 11, United States Code, is amended by striking “(27)”  
 22 and inserting “(28)”.

23 (c) RELIEF THAT MAY BE GRANTED UPON REC-  
 24 COGNITION.—Section 1521(f) of title 11, United States  
 25 Code, is amended by striking “(27)” and inserting “(28)”.



1 **SEC. 6. APPLICATION AND RULE OF CONSTRUCTION.**

2 This Act and the amendments made by this Act  
3 shall—

4 (1) apply with respect to any case under title  
5 11, United States Code, filed or pending on or after  
6 the date of enactment of this Act; and

7 (2) not be construed to affect the validity of  
8 any final judgment or order confirming a plan under  
9 chapter 11 of title 11, United States Code, that was  
10 entered before the date of enactment of this Act.

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