

116TH CONGRESS
2D SESSION

S. 5032

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2020

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 2020”.

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

1 title 11, United States Code, including, with respect
2 to the entity filing bankruptcy—

3 (A) any district in which the place of in-
4 corporation of the entity is located;

5 (B) any district in which the principal
6 place of business or principal assets of the enti-
7 ty are located; and

8 (C) any district in which an affiliate of the
9 entity has filed a pending case under title 11,
10 United States Code;

11 (2) the wide range of permissible bankruptcy
12 venue options has led to an increase in companies
13 filing for bankruptcy outside of their home States—
14 the district in which the principal place of business
15 or principal assets of the company is located;

16 (3) the practice described in paragraph (2) is
17 known as “forum shopping”;

18 (4) forum shopping has resulted in a concentra-
19 tion of bankruptcy cases in a limited number of dis-
20 tricts;

21 (5) forum shopping—

22 (A) prevents small businesses, employees,
23 retirees, creditors, and other important stake-
24 holders from fully participating in bankruptcy

1 cases that have tremendous impacts on their
2 lives, communities, and local economies; and

3 (B) deprives district courts of the United
4 States of the opportunity to contribute to the
5 development of bankruptcy law in the jurisdic-
6 tions of those district courts; and

7 (6) reducing forum shopping in the bankruptcy
8 system will strengthen the integrity of, and build
9 public confidence and ensure fairness in, the bank-
10 ruptcy system.

11 (b) PURPOSE.—The purpose of this Act is to prevent
12 the practice of forum shopping in cases filed under chapter
13 11 of title 11, United States Code.

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

15 Title 28, United States Code, is amended—

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

18 **“§ 1408. Venue of cases under title 11**

19 **“(a) PRINCIPAL PLACE OF BUSINESS WITH RE-**
20 **SPECT TO CERTAIN ENTITIES.—**

21 **“(1) IN GENERAL.—**Except as provided in para-
22 graph (2), for the purposes of this section, if an en-
23 tity is subject to the reporting requirements of sec-
24 tion 13 or 15(d) of the Securities Exchange Act of
25 1934 (15 U.S.C. 78m, 78o(d)), the term ‘principal

1 place of business’, with respect to the entity, means
2 the address of the principal executive office of the
3 entity as stated in the last annual report filed under
4 that Act before the commencement of a case under
5 title 11 of which the entity is the subject.

6 “(2) EXCEPTION.—With respect to an entity
7 described in paragraph (1), the definition of the
8 ‘principal place of business’ under that paragraph
9 shall apply for purposes of this section unless an-
10 other address is shown to be the principal place of
11 business of the entity by clear and convincing evi-
12 dence.

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

16 “(1) in which the domicile, residence, or prin-
17 cipal assets in the United States of an individual
18 who is the subject of the case have been located—

19 “(A) for the 180 days immediately pre-
20 ceding such commencement; or

21 “(B) for a longer portion of the 180-day
22 period immediately preceding such commence-
23 ment than the domicile, residence, or principal
24 assets in the United States of the individual
25 were located in any other district;

1 “(2) in which the principal place of business or
2 principal assets in the United States of an entity,
3 other than an individual, that is the subject of the
4 case have been located—

5 “(A) for the 180 days immediately pre-
6 ceding such commencement; or

7 “(B) for a longer portion of the 180-day
8 period immediately preceding such commence-
9 ment than the principal place of business or
10 principal assets in the United States of the en-
11 tity were located in any other district; or

12 “(3) in which there is pending a case under
13 title 11 concerning an affiliate that directly or indi-
14 rectly owns, controls, or holds 50 percent or more of
15 the outstanding voting securities of, or is the general
16 partner of, the entity that is the subject of the later
17 filed case, but only if the pending case was properly
18 filed in that district in accordance with this section.

19 “(c) LIMITATIONS.—

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

1 States of an entity that is the subject of the case,
2 or of an affiliate of the person entity, to another dis-
3 trict, that takes place—

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

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

7 “(2) PRINCIPAL ASSETS.—

8 “(A) PRINCIPAL ASSETS OF AN ENTITY
9 OTHER THAN AN INDIVIDUAL.—For the pur-
10 poses of subsection (b)(2) and paragraph (1) of
11 this subsection—

12 “(i) the term ‘principal assets’ does
13 not include cash or cash equivalents; and

14 “(ii) any equity interest in an affiliate
15 is located in the district in which the hold-
16 er of the equity interest has its principal
17 place of business in the United States, as
18 determined in accordance with subsection
19 (b)(2).

20 “(B) EQUITY INTERESTS OF INDIVID-
21 UALS.—For the purposes of subsection (b)(1),
22 if the holder of any equity interest in an affil-
23 iate is an individual, the equity interest is lo-
24 cated in the district in which the domicile or
25 residence in the United States of the holder of

1 the equity interest is located, as determined in
2 accordance with subsection (b)(1).

3 “(d) BURDEN.—On any objection to, or request to
4 change, venue under paragraph (2) or (3) of subsection
5 (b) of a case under title 11, the entity that commences
6 the case shall bear the burden of establishing by clear and
7 convincing evidence that venue is proper under this sec-
8 tion.

9 “(e) OUT-OF-STATE ADMISSION FOR GOVERNMENT
10 ATTORNEYS.—The Supreme Court shall prescribe rules,
11 in accordance with section 2075, for cases or proceedings
12 arising under title 11, or arising in or related to cases
13 under title 11, to allow any attorney representing a gov-
14 ernmental unit to be permitted to appear on behalf of the
15 governmental unit and intervene without charge, and with-
16 out meeting any requirement under any local court rule
17 relating to attorney appearances or the use of local coun-
18 sel, before any bankruptcy court, district court, or bank-
19 ruptcy appellate panel.”; and

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

22 **“§ 1412. Change of venue**

23 “(a) IN GENERAL.—Notwithstanding that a case or
24 proceeding under title 11, or arising in or related to a case
25 under title 11, is filed in the correct division or district,

1 a district court may transfer the case or proceeding to a
2 district court for another district or division—

3 “(1) in the interest of justice; or

4 “(2) for the convenience of the parties.

5 “(b) INCORRECTLY FILED CASES OR PRO-
6 CEEDINGS.—If a case or proceeding under title 11, or aris-
7 ing in or related to a case under title 11, is filed in a
8 division or district that is improper under section 1408(b),
9 the district court shall—

10 “(1) immediately dismiss the case or pro-
11 ceeding; or

12 “(2) if it is in the interest of justice, imme-
13 diately transfer the case or proceeding to any dis-
14 trict court for any district or division in which the
15 case or proceeding could have been brought.

16 “(c) OBJECTIONS AND REQUESTS RELATING TO
17 CHANGES IN VENUE.—Not later than 14 days after the
18 filing of an objection to, or a request to change, venue
19 of a case or proceeding under title 11, or arising in or
20 related to a case under title 11, the court shall enter an
21 order granting or denying the objection or request.”.

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