

109th CONGRESS
1st Session
S. 314

To protect consumers, creditors, workers, pensioners, shareholders, and small businesses, by reforming the rules governing venue in bankruptcy cases to combat forum shopping by corporate debtors.

IN THE SENATE OF THE UNITED STATES

February 8, 2005

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect consumers, creditors, workers, pensioners, shareholders, and small businesses, by reforming the rules governing venue in bankruptcy cases to combat forum shopping by corporate debtors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Fairness in Bankruptcy Litigation Act of 2005'.

SEC. 2. VENUE IN BANKRUPTCY CASES.

Section 1408 of title 28, United States Code, is amended--

- (1) by inserting '(a)' before 'Except';
- (2) in paragraph (1), by striking 'or' at the end; and
- (3) by striking paragraph (2) and inserting the following:
 - (2) in which a case under title 11 concerning the controlling corporation is pending, if--
 - (A) the debtor is controlled by another corporation;
 - (B) within the 730 days before the date of the debtor's filing under title 11, the financial statements of the debtor have been consolidated with those of the controlling

- corporation in 1 or more reports filed under section 13 or 15(d) of the Securities Exchange Act of 1934; and
- ` (C) the controlling corporation is a debtor in a proceeding under title 11; or
- ` (3) in which a case under title 11 concerning the controlling corporation is pending, if--
 - ` (A) the debtor is a corporation other than a corporation described in paragraph (2);
 - ` (B) the debtor has been controlled by another corporation for not less than 365 days before the date of the filing of the debtor's petition under title 11; and
 - ` (C) the controlling corporation is a debtor in a proceeding under title 11.
- ` (b) For purposes of subsection (a)--
 - ` (1) if the debtor is a corporation, the domicile and residence of the debtor are located where the debtor's principal place of business is located; and
 - ` (2) the term `control' has the meaning given that term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).'

SEC. 3. CURE OR WAIVER OF DEFECTS.

Section 1406(c) of title 28, United States Code, is amended to read as follows:

- ` (c) As used in this section--
 - ` (1) the term `district court'--
 - ` (A) includes the District Court of Guam, the District Court of the Northern Mariana Islands, and the District Court of the Virgin Islands; and
 - ` (B) with regard to cases pending before a bankruptcy court, includes a bankruptcy court; and
 - ` (2) the term `district' includes the territorial jurisdiction of each district court.'

END