



The Bankruptcy Venue Reform Act of 2018

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In January 2018, Senators John Cornyn (R-TX) and Elizabeth Warren (D-MA) introduced a bill that would require corporate debtors to file for bankruptcy protection in the district in which their principal assets or principal place of business is located. In other words, the [Bankruptcy Venue Reform Act of 2018](#) would eliminate a corporate debtor's ability to commence a case in its state of incorporation if the state of incorporation is neither the debtor's principal place of business nor the location of its principal assets. Moreover, the bill would do away with the so-called "Affiliate Rule" that allows corporate debtors to file in any district where an affiliate has a pending bankruptcy case. If signed into law, the act would also put an end to protracted, expensive battles over venue: judges would be required to make a decision on a venue transfer request within fourteen days of the objecting party's request.

Currently, a corporation is permitted to file in the district where it is domiciled (consistent with general rules governing the proper venue for litigation in federal courts, a corporation's "domicile" is generally held to be its state of incorporation), the district where its principal assets are located, or in any district where an affiliate has a pending bankruptcy case. As a result, many cases are filed in the District of Delaware. Since at least the early 1900s, Delaware's courts, tax system, laws, and policies have made it an attractive option for businesses looking to incorporate. Although Delaware has a population of only 952,065 (as of July 1, 2016), over a million businesses—more than fifty percent of publicly traded companies in the U.S. and more than sixty-five percent of Fortune 500 companies—are incorporated in Delaware.

The Southern District of New York is another magnet for chapter 11 business filings. Statistics released by [USCourts.gov](#) show that in the twelve-month period ending December 31, 2017, the Southern District of New York saw 555 chapter 11 business filings, or eight percent of such filings nationwide. Likewise, the District of Delaware had 682 chapter 11 business filings, or ten percent of such filings in 2017. Lately, the Southern District of Texas has been another hotbed of activity, seeing 532 chapter 11 business filings over the same period, accounting for another eight percent of filings. Thus, out of ninety-four federal judicial districts, over twenty-five percent of chapter 11 business filings in 2017 were in one of those three districts.

Critics of the Bankruptcy Venue Reform Act say it would hurt businesses across the country and deal a weighty blow to Delaware's economy. "Many American companies, large and small, choose to incorporate in Delaware because of the expertise and experience of our judges, attorneys, and business leaders. Denying American businesses the ability to file for bankruptcy in the courts of their choice would not only hurt Delaware's economy but also hurt businesses of all sizes and the national economy as a whole," Governor Carney and Delaware's Congressional Delegation said in a joint statement. "Our economy thrives when the bankruptcy system is fair, predictable, and efficient. Experienced bankruptcy judges are critical to ensuring that companies can restructure in a way that saves jobs and preserves value. Scrapping the venue laws that have been in place for decades and replacing them with restrictions flies in the face of well-settled principles of corporate law, threatens jobs, and hurts our economy."

Proponents of bankruptcy venue reform say the change in law would be advantageous to small businesses, employees, retirees, creditors, and other important stakeholders by ensuring that local debtors are reorganized in local bankruptcy courts. Advocates believe local judges, lawyers, and bankruptcy professionals are in the best position to help apply and enforce rights and remedies of all parties involved. Indeed, Senator Cornyn noted that the bill is meant to "clos[e] the loophole that allows corporations to 'forum shop' for districts sympathetic to their interests." Bankruptcy Courts would be required to dismiss or transfer cases filed in the wrong district, preventing debtors from "cherry-picking courts that they think will rule in their favor," according to Senator Warren.

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The bill is in the first stage of the legislative process. It was introduced into Congress and referred to the Senate Judiciary Committee on January 8, 2018. It will be considered by committee before it is possibly sent on to the House or Senate as a whole.

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