

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.

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 “Fairness in Bank-

5 ruptcy Litigation Act of 2005”.

6 **SEC. 2. VENUE IN BANKRUPTCY CASES.**

7 Section 1408 of title 28, United States Code, is

8 amended—

1 (1) by inserting “(a)” before “Except”;

2 (2) in paragraph (1), by striking “or” at the
3 end; and

4 (3) by striking paragraph (2) and inserting the
5 following:

6 “(2) in which a case under title 11 concerning
7 the controlling corporation is pending, if—

8 “(A) the debtor is controlled by another
9 corporation;

10 “(B) within the 730 days before the date
11 of the debtor’s filing under title 11, the finan-
12 cial statements of the debtor have been consoli-
13 dated with those of the controlling corporation
14 in 1 or more reports filed under section 13 or
15 15(d) of the Securities Exchange Act of 1934;
16 and

17 “(C) the controlling corporation is a debtor
18 in a proceeding under title 11; or

19 “(3) in which a case under title 11 concerning
20 the controlling corporation is pending, if—

21 “(A) the debtor is a corporation other than
22 a corporation described in paragraph (2);

23 “(B) the debtor has been controlled by an-
24 other corporation for not less than 365 days be-

1 fore the date of the filing of the debtor’s peti-
 2 tion under title 11; and

3 “(C) the controlling corporation is a debtor
 4 in a proceeding under title 11.

5 “(b) For purposes of subsection (a)—

6 “(1) if the debtor is a corporation, the domicile
 7 and residence of the debtor are located where the
 8 debtor’s principal place of business is located; and

9 “(2) the term ‘control’ has the meaning given
 10 that term in section 2 of the Bank Holding Com-
 11 pany Act of 1956 (12 U.S.C. 1841).”.

12 **SEC. 3. CURE OR WAIVER OF DEFECTS.**

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

15 “(c) As used in this section—

16 “(1) the term ‘district court’—

17 “(A) includes the District Court of Guam,
 18 the District Court of the Northern Mariana Is-
 19 lands, and the District Court of the Virgin Is-
 20 lands; and

21 “(B) with regard to cases pending before a
 22 bankruptcy court, includes a bankruptcy court;
 23 and

1 “(2) the term ‘district’ includes the territorial
2 jurisdiction of each district court.”.

○