

119TH CONGRESS
2D SESSION

S. _____

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.

IN THE SENATE OF THE UNITED STATES

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

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 “Consumer Protection
5 and Corporate Accountability in Bankruptcy Act of
6 2026”.

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

2 Section 1112 of title 11, United States Code, is
3 amended—

4 (1) in subsection (b)—

5 (A) in paragraph (2)(A), by striking “with-
6 in a reasonable period of time” and inserting
7 “not later than 24 months after the date of the
8 filing of the petition”; and

9 (B) in paragraph (4)—

10 (i) subparagraph (O), by striking
11 “and” at the end;

12 (ii) in subparagraph (P), by striking
13 the period at the end and inserting “;
14 and”; and

15 (iii) by adding at the end the fol-
16 lowing:

17 “(Q) with respect to the dismissal of a case
18 under this chapter, the filing of a petition for relief
19 or the continuation of a case under this title that
20 is—

21 “(i) objectively futile; or

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

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

24 “(g)(1) For the purpose of subsection (b)(4)(Q), the
25 court shall presume that a petition has been filed or that
26 a case is continuing under this title in subjective bad faith

1 if the court determines that the debtor manufactured the
2 venue for the case.

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

5 “(h)(1) For the purpose of subsection (b)(4)(Q), the
6 court shall conclusively presume that a petition has been
7 filed or that a case is continuing under this title in subjec-
8 tive bad faith if the court determines that—

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

11 “(i) gain a tactical litigation advantage;

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

13 “(iii) cap the total amount of the liability
14 of the debtor to 2 or more creditors holding
15 protected claims (as defined in section
16 362(p)(1)) that the debtor or any affiliate has
17 property of value sufficient to pay in full as
18 those claims would come due;

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

1 “(C) during the 4-year period preceding the
2 date of the filing of the petition, the debtor engaged
3 in a transfer of substantial assets to or for benefit
4 of or incurred substantial obligations from or for the
5 benefit of any insider or affiliate that, notwith-
6 standing subsections (e) through (g) and (j) of sec-
7 tion 546, is avoidable under section 544(b) or sub-
8 section (a)(1) or (e) of section 548; or

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

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

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

17 **SEC. 3. LIMITATIONS ON CERTAIN STAYS AND INJUNC-**
18 **TIONS.**

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

21 “(e) Notwithstanding subsection (a) of this section,
22 any provision of title 28, the Federal Rules of Bankruptcy
23 Procedure, or any applicable nonbankruptcy law, the court
24 may not issue any order, process, or judgment that has

1 the purpose or effect of overriding or nullifying section
2 362(b)(27) of this title.”.

3 **SEC. 4. AUTOMATIC STAY.**

4 Section 362 of title 11, United States Code, is
5 amended—

6 (1) in subsection (b)—

7 (A) by redesignating paragraphs (27),
8 (28), and (29) as paragraphs (28), (29), and
9 (30), respectively; and

10 (B) by inserting after paragraph (26) the
11 following:

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

1 transaction changing the corporate structure of, and
2 affecting the financial condition of, the debtor or an
3 affiliate;” and

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

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

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

7 “(A) a claim that—

8 “(i) is against a nondebtor entity or
9 against property of a nondebtor entity that
10 is alleged to be directly or indirectly liable
11 for a claim described in subparagraph (B)
12 against the debtor; and

13 “(ii) arises by reason of—

14 “(I) the nondebtor entity’s own-
15 ership of a financial interest in the
16 debtor, a past or present affiliate of
17 the debtor, or a predecessor in inter-
18 est of the debtor;

19 “(II) the nondebtor entity’s in-
20 volvement in the management of the
21 debtor or a predecessor in interest of
22 the debtor or the nondebtor entity’s
23 service as an officer, director, or em-
24 ployee of the debtor or a related
25 party;

1 “(III) the nondebtor entity’s pro-
2 vision of insurance to the debtor or a
3 related party; or

4 “(IV) the nondebtor entity’s in-
5 volvement in a transaction changing
6 the corporate structure, or in a loan
7 or other financial transaction affect-
8 ing the financial condition, of the
9 debtor or a related party, including—

10 “(aa) involvement in pro-
11 viding financing (debt or equity)
12 or advice to an entity involved in
13 such a transaction; or

14 “(bb) acquiring or selling a
15 financial interest in an entity as
16 part of such a transaction; or

17 “(B) a claim—

18 “(i) against the debtor or a nondebtor
19 entity or property of the debtor or a non-
20 debtor entity;

21 “(ii) relating to injury, contamination,
22 damage, or loss, including any claim for
23 reimbursement, indemnity, contribution, or
24 subrogation;

1 “(iii) affecting, directly or indirectly,
2 not fewer than 100 individuals on or after
3 the date of the filing of the petition;

4 “(iv) allegedly caused, directly or indi-
5 rectly, by the presence of, or exposure to,
6 a product, material, or substance designed,
7 marketed, manufactured, sold, modified,
8 extracted, serviced, or in any way used by
9 the debtor or the nondebtor entity; and

10 “(v) arising, directly or indirectly,
11 from acts or omissions, of the debtor, a
12 predecessor in interest of the debtor, or a
13 past or present affiliate of the debtor.

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

16 **SEC. 5. TECHNICAL AMENDMENTS.**

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

19 (1) in subsection (a)—

20 (A) in paragraph (2)(B)(ii), by striking
21 “362(b)(27)” and inserting “362(b)(28)”; and

22 (B) in paragraph (3)(C), by striking
23 “362(b)(27)” and inserting “362(b)(28)”; and

24 (2) in subsection (b)(1), by striking
25 “362(b)(27)” and inserting “362(b)(28)”.

1 (b) RELIEF THAT MAY BE GRANTED UPON FILING
2 PETITION FOR RECOGNITION.—Section 1519(f) of title
3 11, United States Code, is amended by striking “(27)”
4 and inserting “(28)”.

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

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

9 This Act and the amendments made by this Act
10 shall—

11 (1) apply with respect to any case under title
12 11, United States Code, filed or pending on or after
13 the date of enactment of this Act; and

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