

112TH CONGRESS
1ST SESSION

S. 1054

To address remedies in bankruptcy for negligent, reckless, or fraudulent
assertion of claim.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2011

Mr. LEAHY (for himself, Mr. BLUMENTHAL, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To address remedies in bankruptcy for negligent, reckless,
or fraudulent assertion of claim.

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 “Fighting Fraud in
5 Bankruptcy Act of 2011”.

6 **SEC. 2. REMEDIES FOR NEGLIGENT, RECKLESS, OR FRAUD-**
7 **ULENT ASSERTION OF CLAIM.**

8 Chapter 1 of title 11, United States Code, is amended
9 by adding at the end the following:

1 **“§ 113. Remedies for negligent, reckless, or fraudu-**
2 **lent assertion of claim**

3 “(a) In this section—

4 “(1) a person ‘asserts a claim’ by, without limi-
5 tation, preparing, signing, filing, submitting, or later
6 advocating a proof of claim under section 501 of this
7 title, a motion seeking relief from the stay imposed
8 under section 362 of this title, or other paper, rep-
9 resenting to the court that a claim is owed or that
10 it is owed in a specific amount;

11 “(2) a person who assists another person in as-
12serting a claim shall also be deemed to have asserted
13 the claim, including—

14 “(A) any officer, director, employee, or
15 agent of the person asserting a claim; and

16 “(B) any attorney, accountant, or other
17 professional person who is employed by or is as-
18sisting the person asserting a claim; and

19 “(3) the term ‘relief’ means, without limitation,
20 and in addition to any legal, equitable, monetary or
21 injunctive relief otherwise available under any provi-
22sion of this title or other provision of law, or under
23 a court’s inherent powers—

24 “(A) an order or judgment imposing upon
25 a person in one or more cases, wherever situ-
26 ated, in which the person has asserted a claim

1 or claims in violation of subsection (b) a civil
2 penalty of not more than \$5,000 for each such
3 claim;

4 “(B) an order or judgment requiring a per-
5 son in one or more cases, wherever situated, in
6 which the person has asserted a claim or claims
7 in violation of subsection (b), to pay actual
8 damages to an injured debtor, or trustee; and

9 “(C) an order or judgment imposing upon
10 a person in one or more cases, wherever situ-
11 ated, in which the person has asserted, or could
12 assert, a claim or claims in violation of sub-
13 section (b) of this section, other prospective or
14 retrospective relief, including but not limited to
15 declaratory relief, injunctive relief, or an audit-
16 ing requirement.

17 “(b) Notwithstanding any other provision of Federal
18 or State law, and in addition to any other remedy provided
19 under Federal or State law, if a court, on its own motion
20 or on the motion of the United States trustee (or bank-
21 ruptcy administrator, if any), finds, based upon a prepon-
22 derance of the evidence, that a person has, through neg-
23 ligence, recklessness, or fraud, improperly asserted a claim
24 in any case under chapter 7 or chapter 13 of this title
25 before the court, the court may—

1 “(1) enter relief against the person in the case
2 before the court; and

3 “(2) enter relief against the person in any other
4 case under chapter 7 or chapter 13 that is pending
5 or might thereafter be filed under this title, wherever
6 situated, to the extent the court deems it nec-
7 essary—

8 “(A) to rectify the person’s negligent, reck-
9 less, or fraudulent assertion of a claim; or

10 “(B) to prevent the person from asserting
11 any negligent, reckless, or fraudulent claim.

12 “(c)(1) Civil penalties imposed under this section in
13 judicial districts served by United States trustees shall be
14 paid to the United States trustees, who shall deposit an
15 amount equal to such fines in the United States Trustee
16 Fund.

17 “(2) Civil penalties imposed under this section in ju-
18 dicial districts served by bankruptcy administrators shall
19 be deposited as offsetting receipts to the fund established
20 under section 1931 of title 28, and shall remain available
21 until expended to reimburse any appropriation for the
22 amount paid out of such appropriation for expenses of the
23 operation and maintenance of the courts of the United
24 States.”.

1 **SEC. 3. DUTY OF THE UNITED STATES TRUSTEE TO AD-**
2 **DRESS CLAIMS.**

3 Section 586(a) of title 28, United States Code, is
4 amended—

5 (1) in paragraph (7)(C), by striking “and” at
6 the end;

7 (2) in paragraph (8), by striking the period at
8 the end and inserting “; and”; and

9 (3) by adding at the end the following:

10 “(9) when the United States trustee deems it
11 appropriate—

12 “(A) monitor and investigate the conduct
13 of other parties in interest with respect to
14 claims; and

15 “(B) take action that the United States
16 trustee deems necessary to prevent or remedy
17 any negligent, reckless, or fraudulent assertion
18 of a claim, as defined in section 113(a) of title
19 11, by exercising any of the United States
20 trustee’s powers and authorities under this title
21 and under title 11 respecting claims, includ-
22 ing—

23 “(i) filing, pursuing, or commenting
24 upon any action brought under section 113
25 of title 11; and

1 “(ii) filing, pursuing, or commenting
 2 upon any civil action, or upon any civil
 3 proceeding arising under title 11, or arising
 4 in or related to a case under title 11.”.

5 **SEC. 4. PROCEDURES FOR THE AUDITING OF PROOFS OF**
 6 **CLAIM.**

7 (a) TITLE 28.—Section 586 of title 28, United States
 8 Code, is amended by adding at the end the following:

9 “(g)(1) CLAIMS AUDIT PROCEDURES.—

10 “(A) The Director of the Executive Office for
 11 United States Trustees shall establish audit proce-
 12 dures to determine the accuracy, veracity, and com-
 13 pleteness of proofs of claim filed under section
 14 501(a) of title 11, with respect to cases filed under
 15 chapter 7 or 13 of title 11, in which the debtor is
 16 an individual.

17 “(B) The procedures established pursuant to
 18 subparagraph (A) shall—

19 “(i) establish a method of selecting appro-
 20 priate qualified persons to contract to perform
 21 audits;

22 “(ii) establish a method of selecting proofs
 23 of claim to be audited, except that the number
 24 of audits to be performed shall be within the

1 sole discretion of the Director of the Executive
2 Office for United States Trustees; and

3 “(iii) establish procedures for providing,
4 not less frequently than annually, public infor-
5 mation concerning the aggregate results of such
6 audits, including the percentage of cases, by
7 district, in which inaccurate, untrue, or incom-
8 plete proofs of claim were filed.

9 “(2) The United States trustee for each district is
10 authorized to contract with auditors to perform audits of
11 proofs of claim designated by the United States trustee,
12 in accordance with the procedures established under para-
13 graph (1). An audit may, in the discretion of the United
14 States trustee, encompass multiple proofs of claim filed
15 by the same entity in one case or multiple cases, whether
16 in the same district or multiple districts. The United
17 States trustees from multiple regions may contract with
18 a single auditor to audit proofs of claim filed by the same
19 entity in districts within their regions.

20 “(3)(A) The report of each audit performed pursuant
21 to paragraph (2) shall be filed with the court where the
22 case is pending and transmitted to the United States
23 trustee and to any trustee serving in the case. Each such
24 report shall clearly and conspicuously specify any findings
25 that the claim asserted in the proof of claim is—

1 “(i) not valid;

2 “(ii) not owed in the amount claimed; or

3 “(iii) not supported by adequate documentation.

4 “(B) If a claims audit report identifies deficiencies
5 in the proof of claim as described in paragraph (2)(A),
6 the United States trustee shall—

7 “(i) if appropriate, report the deficient filing to
8 the United States Attorney pursuant to section 3057
9 of title 18; and

10 “(ii) if advisable, take appropriate action, in-
11 cluding objecting to the proof of claim under section
12 502(b) of title 11, or commencing an action under
13 section 113(b) of title 11, against entities respon-
14 sible for the deficiencies.”.

15 (b) TITLE 11.—Section 502(b) of title 11, United
16 States Code, is amended—

17 (1) in paragraph (8), by striking “or” at the
18 end;

19 (2) in paragraph (9), by striking the period at
20 the end and inserting “; or”; and

21 (3) by adding at the end the following:

22 “(10) the court finds the entity filing a proof
23 of claim that was selected for audit under section
24 586(g) of title 28 failed to make available to the
25 auditor for inspection necessary accounts, papers,

1 documents, financial records, files, or other papers,
2 that were requested by the auditor.”.

3 **SEC. 5. TREATMENT OF SERVICEMEMBERS IN FORE-**
4 **CLOSURE.**

5 Section 362(d) of title 11, United States Code, is
6 amended by adding at the end of the undesignated matter
7 following paragraph (4) the following: “In any case under
8 this title involving a servicemember, as defined in section
9 101 of the Servicemembers Civil Relief Act, to whom sec-
10 tion 303 of that Act applies, no action may be taken under
11 this subsection unless the party in interest certifies, under
12 penalty of perjury, that the requirements of section 303
13 of the Servicemembers Civil Relief Act have been met.”.

14 **SEC. 6. EFFECTIVE DATES.**

15 (a) **REMEDIES; DUTY TO ADDRESS CLAIMS.**—The
16 provisions of section 113 and section 362(d) of title 11,
17 United States Code, and paragraph (9) of section 586(a)
18 of title 28, United States Code, added by this Act, shall
19 become effective with respect to all cases filed or pending
20 under title 11, United States Code, on or after the date
21 of enactment of this Act.

22 (b) **AUDITING OF PROOFS OF CLAIM.**—Section
23 586(g) of title 28, United States Code, as added by this
24 Act, shall become effective 18 months after the date of
25 enactment of this Act for all cases filed or pending on or

1 after that date of enactment, except that the Director of
2 the Executive Office for United States Trustees may, in
3 the sole discretion of the Director, establish an earlier ef-
4 fective date by publishing notice in the Federal Register
5 at least 2 weeks before the proposed effective date.

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