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## **Bill May End Delaware Bankruptcy Capital Status**

The Chapter 11 Bankruptcy Venue Reform Act of 2011 proposed by leaders of the House Judiciary Committee seeks to prevent court-shopping and compel companies to file for bankruptcy in the primary district they do business or where most of their assets are located, not in the state they are incorporated in. Lamar Smith and John Conyers, the Texas Republican and the Michigan Democrat respectively, who introduced the bipartisan bill, said in a statement that the bill is “to ensure maximum input from all affected stakeholders.” If this bill is passed, Delaware may lose its status as the foremost venue of US bankruptcy cases, which would cost the state approximately \$100 million per year in lost revenue.

But Delaware’s Congressional delegation disagreed based on the experience and expertise of the bankruptcy courts at Wilmington, Delaware. Representative John Carney, a Democrat, said in an e-mail, “Delaware’s courts are our nation’s bankruptcy specialists.” Delaware’s two US senators, Democrats Thomas Carper and Chris Coons, also oppose the bill.

63% of all Fortune 500 companies are incorporated in Delaware. Delaware first became the center for bankruptcy filings about a century ago in response to New Jersey’s quest to become America’s corporation capital. The state passed the Delaware General Corporation Law 1899 with the aim of making state regulations less burdensome and

develop a more predictable basis of court procedures for business disputes. Since then, courts in Delaware have set the pace and established authoritative precedents for corporate governance in America.

155 public companies with assets of more than \$500 million filed for bankruptcy in Delaware between 2000 and 2011. This constitutes 38% of the nation's total of 405 cases.

Since 2006, more than 90 public companies have sought protection from creditors in US Bankruptcy Court in Wilmington, where they are incorporated. The proposed bill would rule most of these companies out.

Other lawmakers supporting the bill are Howard Coble, the Republican representing North Carolina who chairs the House subcommittee on courts and Steve Cohen, the Democrat representative of Tennessee.

Samuel Gerdano, the executive chairman of the American Bankruptcy Institute made his thoughts clear when he said the bill "has no chance of passing in my opinion".

Said Gerdano, "Delaware has many supporters within the bankruptcy community, including creditor interests and major banks who have come to rely on the predictability and reliability of practicing there."

Retired federal judge Joseph J. Farnan Jr., who presided over bankruptcy cases in Wilmington, said the proposed bill may come from a desire of bankruptcy judges outside of Delaware to bring business to their areas.