

117TH CONGRESS
1ST SESSION

S. _____

To amend title 11, United States Code, to prohibit nonconsensual release of a nondebtor entity’s liability to an entity other than the debtor, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. WARREN (for herself, Mr. DURBIN, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 11, United States Code, to prohibit non-consensual release of a nondebtor entity’s liability to an entity other than the debtor, 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 “Nondebtor Release
5 Prohibition Act of 2021”.

6 **SEC. 2. PROHIBITION OF NONDEBTOR RELEASES.**

7 (a) IN GENERAL.—Chapter 1 of title 11, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

1 **“§ 113. Prohibition of nondebtor releases**

2 “(a) Except as provided in subsection (b) of this sec-
3 tion, subsections (a)(3), (g), (h), or (i) of section 524, sec-
4 tion 1201, and section 1301, the court may not—

5 “(1) with respect to the liability of an entity
6 other than the debtor or the estate on, or the liabil-
7 ity of property of an entity other than the debtor or
8 the estate for, a claim or cause of action of an entity
9 other than the debtor or the estate—

10 “(A) approve any provision, in a plan of
11 reorganization or otherwise, for the discharge,
12 release, termination, or modification of such li-
13 ability; or

14 “(B) order the discharge, release, termi-
15 nation, or modification of such liability; or

16 “(2) with respect to a claim or cause of action
17 of an entity other than the debtor or the estate
18 against an entity other than the debtor or the estate,
19 or against property of an entity other than the debt-
20 or or the estate, enjoin—

21 “(A) the commencement or continuation
22 (including the issuance or employment of proc-
23 ess) of a judicial, administrative, or other action
24 or proceeding to assert, assess, collect, recover,
25 offset, recoup, or otherwise enforce such claim
26 or cause of action; or

1 “(B) any act to assert, assess, collect, re-
2 cover, offset, recoup, or otherwise enforce such
3 claim or cause of action.

4 “(b) Nothing in subsection (a) of this section shall
5 affect any power the court may have—

6 “(1) to authorize a sale, transfer, or other dis-
7 position of property free and clear of claims or inter-
8 ests;

9 “(2) to prevent an entity other than the debtor
10 or the estate from exercising control over or other-
11 wise interfering with a right or interest (including a
12 claim or cause of action) that is property of the es-
13 tate;

14 “(3) to bar a claim or cause of action for in-
15 demnity, reimbursement, contribution, or subroga-
16 tion against an entity that the estate has released
17 from a claim or cause of action for which the holder
18 of the barred claim or cause of action also is or may
19 be liable or has or may have secured;

20 “(4) under applicable nonbankruptcy law, title
21 28, or the Federal Rules of Bankruptcy Procedure,
22 with respect to any claim or cause of action the
23 court is hearing under section 157(a) or 1334(b) of
24 title 28;

1 “(5) to approve any disposition of a claim or
2 cause of action of an entity other than the debtor or
3 the estate to which such entity expressly consents in
4 a signed writing provided that—

5 “(A) such consent is given only after clear
6 and conspicuous notice to such entity of the
7 proposed disposition in language appropriate
8 for the typical holder of such claim or cause of
9 action;

10 “(B) such consent cannot be given by—

11 “(i) accepting a proposed plan; or

12 “(ii) failing to accept or reject a pro-
13 posed plan, failing to object to a proposed
14 plan, or any other silence or inaction; and

15 “(C) treatment of such entity, and any
16 claims or interests of such entity, under a plan
17 cannot be more or less favorable by reason of
18 such entity’s consent or failure to consent; or

19 “(6) to enjoin the commencement or continu-
20 ation (including the issuance or employment of proce-
21 ess) of a judicial, administrative, or other action or
22 proceeding against an entity appointed or employed
23 (or whose appointment or employment was ap-
24 proved) by or under the auspices of the court, in an-
25 other court and without leave of the court, with re-

1 spect to acts or omissions for which the entity was
2 so appointed or employed.

3 “(c) In a case under chapter 11 of this title, no order
4 or decree temporarily staying or enjoining, pursuant to
5 this title, the commencement or continuation (including
6 the issuance or employment of process) of a judicial, ad-
7 ministrative, or other action or proceeding to assert, as-
8 sess, collect, recover, offset, recoup, or otherwise enforce
9 a claim or cause of action against an entity other than
10 the debtor or the estate against an entity other than the
11 debtor or the estate, or against property of an entity other
12 than the debtor or the estate, shall extend (or be extended)
13 beyond 90 days after the date of the order for relief with-
14 out the express consent of the entity whose claim or cause
15 of action is stayed or enjoined.

16 “(d) Nothing in subsection (b) or (c) shall be con-
17 strued to authorize relief within the scope of subsection
18 (b) or (c).”.

19 (b) CLERICAL AMENDMENT.—The table of sections
20 for chapter 1 of title 11, United States Code, is amended
21 by adding at the end the following:

“113. Prohibition of nondebtor releases.”.

22 **SEC. 3. APPEAL OF NONDEBTOR STAYS.**

23 Section 158 of title 28, United States Code, is
24 amended—

1 (1) in subsection (a), by striking “The” and in-
2 serting “Except as provided in subsection (d)(3),
3 the”; and

4 (2) by inserting after subsection (d)(2) the fol-
5 lowing:

6 “(3)(A) The appropriate court of appeals shall
7 have jurisdiction of appeals from all orders and de-
8 crees (whether interlocutory or final) temporarily
9 staying or enjoining (or increasing the duration of
10 any temporary stay or injunction of) the commence-
11 ment or continuation (including the issuance or em-
12 ployment of process) of a judicial, administrative, or
13 other action or proceeding to assert, assess, collect,
14 recover, offset, recoup, or otherwise enforce a claim
15 or cause of action of an entity other than the debtor
16 or the estate against an entity other than the debtor
17 or the estate, or against property of an entity other
18 than the debtor or the estate, entered in a case
19 under chapter 11 of title 11 by—

20 “(i) a bankruptcy judge under section 157
21 of this title; or

22 “(ii) a district court under section 1334 of
23 this title.

24 “(B) If an appeal is taken under subparagraph
25 (A), the stay order or decree shall immediately ter-

1 minate and dissolve and be of no further force or ef-
2 fect 90 days after its issuance by the bankruptcy
3 judge or district court, unless the appeal is dis-
4 missed or the court of appeals affirms the stay order
5 or decree before that date.”.

6 **SEC. 4. DIVISIONAL MERGERS.**

7 Section 1112 of title 11, United States Code, is
8 amended—

9 (1) by redesignating subsection (f) as sub-
10 section (g); and

11 (2) by inserting after subsection (e) the fol-
12 lowing:

13 “(f) On a request of a party in interest, and after
14 notice and a hearing, the court shall dismiss a case under
15 this chapter if the debtor or a predecessor of the debtor
16 was the subject of, or was formed or organized in connec-
17 tion with a divisional merger or equivalent transaction or
18 restructuring that—

19 “(1) had the intent or foreseeable effect of—

20 “(A) separating material assets from mate-
21 rial liabilities of an entity eligible to be a debtor
22 under this title; and

23 “(B) assigning or allocating all or a sub-
24 stantial portion of those liabilities to the debtor,

1 or the debtor assuming or retaining all or a
2 substantial portion of those liabilities; and

3 “(2) occurred during the 10-year period pre-
4 ceding the date of the filing of the petition.”.

5 **SEC. 5. RULE OF CONSTRUCTION.**

6 Nothing in this Act, or the amendments made by this
7 Act, shall be construed to independently grant the court
8 authority to issue nondebtor releases, injunctions, or stays
9 in connection with an order for relief under chapter 11
10 of title 11, United States Code, or in connection with an
11 order confirming a plan of reorganization, nor shall any-
12 thing in this Act or such amendments be construed to
13 imply that any other provision of title 11 of such Code
14 or of nonbankruptcy law grants such authority.

15 **SEC. 6. EFFECTIVE DATE.**

16 (a) IN GENERAL.—Except as provided in subsection
17 (b), this Act and the amendments made by this Act shall
18 take effect on the date of the enactment of this Act and
19 shall apply to any case under title 11, United States Code,
20 that is—

21 (1) pending in bankruptcy as of the date of the
22 enactment of this Act; or

23 (2) filed or reopened on or after the date of the
24 enactment of this Act.

1 (b) VALIDITY OF FINAL ORDERS.—Nothing in this
2 Act, or the amendments made by this Act, shall affect the
3 validity of any final judgment, order, or decree as applied
4 under section 158 of title 28, United States Code, entered
5 before the date of the enactment of this Act.