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PRESS RELEASE

Attorney General Frosh Joins Coalition Supporting Bipartisan Legislation Limiting Forum Shopping in Corporate Bankruptcy Filings

BALTIMORE, MD (February 20, 2020) – Maryland Attorney General Brian E. Frosh today joined a bipartisan coalition of 42 state and territory attorneys general in supporting H.R. 4421, the Bankruptcy Venue Reform Act of 2019, bipartisan legislation that will prevent a corporation from filing for bankruptcy in a District that it believes would be more favorable on issues to the debtor's advantage—a practice known as "forum shopping"—when the corporation's principal place of business or assets are located in a different district, which imposes a burden on states and other creditors who may have to travel and incur significant expenses to pursue their claims.

Under current U.S. law 28 U.S.C. § 1408, individuals must file only in the district in which they have resided for a majority of the 180 days prior to filing. However, corporations are permitted to pursue bankruptcy in *any* district in which the corporation has a minor affiliated interest, no matter how small or recently created. In addition to conferring a distinct advantage to the corporation's interest, it encourages placing cases in some of the most expensive legal markets in the country, contributing to the ever-growing costs of these cases. Generally, businesses and consumers who interact with the debtor are located in areas where the debtor primarily operates, and having to travel to distant places makes it harder to protect their interests. The same applies to states that may be owed taxes or other payments, and may need to incur expenses to collect, that could wipe out any amounts collected through the bankruptcy.

Additionally, because each individual court currently sets its own requirements for allowing non-local attorneys to appear, including deciding whether to charge an admission fee in each case, and/or to require that local counsel must be associated to the case, financial burdens and unnecessary delays are virtually unavoidable. The attorneys general's letter encourages Congress to ensure that when government attorneys appear on behalf of their governments, they can participate in the bankruptcy without having to pay excessive fees or hire local counsel.

"Corporations shouldn't have a broader range of rights than individuals do when it comes to filing for bankruptcy," said Attorney General Frosh. "When the law allows a corporation to 'shop around' for a potentially favorable district court, it's much more difficult for our office to pursue justice on behalf of harmed consumers."

If passed, the Bankruptcy Venue Reform Act of 2019 will:

- Limit where businesses may file bankruptcy by ensuring that they will do so in a jurisdiction in which their “principal assets” or their “principal place of business” are located; and
- Require rules to be prescribed to allow all governmental attorneys (not just U.S. attorneys) to appear without charge and without being required to associate with local counsel.

In the letter, the attorneys general tender support to the Bankruptcy Venue Reform Act of 2019, and contend that passage of the legislation will:

- Reduce forum shopping in the bankruptcy system
- Strengthen the integrity of, and build public confidence and ensure fairness in, the bankruptcy system
- Help consumers and other parties to be represented in court without undue burden
- Level the playing field for state attorneys general to guard their states’ financial interests and enforce consumer protection laws

Attorney General Frosh, along with the attorneys general of Ohio, Texas, and Washington, co-sponsored today’s letter. They are joined by the attorneys general of Alabama, Alaska, Arizona, Arkansas, California, Colorado, the District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.