

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3675

To amend chapter 11 of title 11, United States Code, to address reorganization of small businesses.

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IN THE SENATE OF THE UNITED STATES

JULY 29, 2010

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend chapter 11 of title 11, United States Code, to address reorganization of small businesses.

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 “Small Business Jobs  
5       Preservation Act of 2010”.

6       **SEC. 2. SMALL BUSINESS REORGANIZATION.**

7       Chapter 11 of title 11, United States Code, is amend-  
8       ed by adding at the end the following:

1 “SUBCHAPTER V—REORGANIZATION OF A  
2 SMALL BUSINESS ENTERPRISE DEBTOR

3 **“§ 1181 Applicability of subchapter**

4 “This subchapter shall apply only in those cases arising  
5 under this chapter in which a small business enterprise  
6 debtor elects that this subchapter shall apply.

7 **“§ 1182. Inapplicability of other sections**

8 “(a) IN GENERAL.—Sections 105(d), 1101(1), 1104,  
9 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8),  
10 1123(b)(5), 1123(c), 1127, 1129(a)(15), 1129(b),  
11 1129(c), 1129(e), and 1141(d)(5) of this title do not apply  
12 in a case under this subchapter.

13 “(b) COURT AUTHORITY.—Unless the court for cause  
14 orders otherwise, sections 1102, 1103, 1125 of this title  
15 do not apply in a case under this subchapter.

16 “(c) SPECIAL RULE FOR DISCHARGE.—If a plan is  
17 confirmed under section 1193(b), section 1141(d) of this  
18 title shall not apply, except as provided in section 1194.

19 **“§ 1183. Definitions**

20 “In this subchapter—

21 “(1) the term ‘small business enterprise debtor’  
22 means a debtor—

23 “(A) that is engaged in commercial or  
24 business activities; and

1           “(B) that has aggregate noncontingent,  
2           liquidated, secured, and unsecured debts as of  
3           the date of the order for relief—

4                   “(i) in an amount equal to not more  
5                   than \$7,500,000 (excluding debts owed to  
6                   1 or more affiliates or insiders); and

7                   “(ii) not less than 50 percent of which  
8                   arose from the commercial or business ac-  
9                   tivities of the debtor; and

10           “(2) the term ‘debtor in possession’ means the  
11           small business enterprise debtor, unless removed as  
12           debtor in possession under section 1186(a).

13   **“§ 1184. Trustee**

14           “(a) IN GENERAL.—If the United States trustee has  
15           appointed an individual under section 586(b) of title 28  
16           to serve as standing trustee in cases under this sub-  
17           chapter, and if such individual qualifies as a trustee under  
18           section 322, then such individual shall serve as trustee in  
19           any case under this subchapter. Otherwise, the United  
20           States trustee shall appoint one disinterested person to  
21           serve as trustee in the case or the United States trustee  
22           may serve as trustee in the case, as necessary.

23           “(b) DUTIES.—The trustee shall—

1           “(1) perform the duties specified in paragraphs  
2           (2), (5), (6), (7), and (9) of section 704(a) of this  
3           title;

4           “(2) perform the duties specified in paragraphs  
5           (3), (4), and (7) of section 1106(a) of this title, if  
6           the court, for cause and on request of a party in in-  
7           terest, the trustee, or the United States trustee, so  
8           orders;

9           “(3) appear and be heard at any hearing that  
10          concerns—

11                 “(A) the value of property subject to a  
12                 lien;

13                 “(B) confirmation of a plan filed under  
14                 this subchapter;

15                 “(C) modification of the plan after con-  
16                 firmation; or

17                 “(D) the sale of property of the estate;

18           “(4) ensure that the small business enterprise  
19           debtor commences making timely payments required  
20           by a plan confirmed under this subchapter;

21           “(5) if the small business enterprise debtor  
22           ceases to be a debtor in possession, perform the du-  
23           ties specified in section 704(a)(8), paragraphs (1),  
24           (2), and (6) of section 1106(a) of this title, includ-

1       ing operating the business of the small business en-  
2       terprise debtor;

3               “(6) if there is a claim for a domestic support  
4       obligation with respect to the small business enter-  
5       prise debtor, perform the duties specified in section  
6       704(c); and

7               “(7) facilitate the development of a consensual  
8       plan of reorganization.

9       “(c) **TERMINATION OF TRUSTEE SERVICE.**—If the  
10     plan of the small business enterprise debtor is confirmed  
11     under section 1193(a), the service of the trustee in the  
12     case shall terminate when the plan has been substantially  
13     consummated.

14     **“§ 1185. Rights and powers of a debtor in possession**

15       “Subject to such limitations or conditions as the  
16     court may prescribe, a debtor in possession shall have all  
17     the rights, other than the right to compensation under sec-  
18     tion 330 of this title, and powers, and shall perform all  
19     functions and duties, except the duties specified in para-  
20     graphs (2), (3), (4), and (6) of section 1106(a) of this  
21     title, of a trustee serving in a case under this chapter,  
22     including operating the business of the small business en-  
23     terprise debtor.

1 **“§ 1186. Removal of debtor in possession**

2 “(a) IN GENERAL.—On request of a party in interest,  
3 and after notice and a hearing, the court shall order that  
4 the debtor shall not be a debtor in possession for cause,  
5 including fraud, dishonesty, incompetence, or gross mis-  
6 management of the affairs of the debtor, either before or  
7 after the date of commencement of the case, or for failure  
8 to perform the obligations of the debtor under a confirmed  
9 plan.

10 “(b) REINSTATEMENT.—On request of a party in in-  
11 terest, and after notice and a hearing, the court may rein-  
12 state the debtor in possession.

13 **“§ 1187. Property of the estate**

14 “(a) INCLUSIONS.—If a plan is confirmed under sec-  
15 tion 1193(b) of this title, property of the estate includes,  
16 in addition to the property specified in section 541 of this  
17 title—

18 “(1) all property of the kind specified in such  
19 section that the debtor acquires after the date of  
20 commencement of the case, but before the case is  
21 closed, dismissed, or converted to a case under chap-  
22 ter 7 of this title, whichever occurs first; and

23 “(2) earnings from services performed by the  
24 debtor after the date of commencement of the case,  
25 but before the case is closed, dismissed, or converted

1 to a case under chapter 7 of this title, whichever oc-  
2 curs first.

3 “(b) DEBTOR REMAINING IN POSSESSION.—Except  
4 as provided in section 1186 of this title, a confirmed plan,  
5 or an order confirming a plan, the small business enter-  
6 prise debtor shall remain in possession of all property of  
7 the estate.

8 **“§ 1188. Duties and reporting requirements of small**  
9 **business enterprise debtor**

10 “(a) FILING REQUIREMENTS.—Upon electing to be  
11 a debtor under this subchapter, the small business enter-  
12 prise debtor shall file the documents required by subpara-  
13 graphs (A) and (B) of section 1116(1) of this title, wheth-  
14 er or not such debtor is a small business debtor.

15 “(b) OTHER APPLICABLE PROVISIONS.—A small  
16 business enterprise debtor, in addition to the duties pro-  
17 vided in this title and as otherwise required by law, shall  
18 comply with the requirements of sections 308 and para-  
19 graphs (2), (3), (4), (5), (6), and (7) of section 1116 of  
20 this title, whether or not such debtor is a small business  
21 debtor.

22 “(c) SEPARATE DISCLOSURE STATEMENT EXEMP-  
23 TION.—If the court orders under section 1182(b) that sec-  
24 tion 1125 of this title applies, section 1125(f) of this title

1 shall apply whether or not such debtor is a small business  
2 debtor.

3 **“§ 1189. Filing of the plan**

4 “(a) WHO MAY FILE A PLAN.—Only the small busi-  
5 ness enterprise debtor may file a plan under this sub-  
6 chapter.

7 “(b) DEADLINE.—The small business enterprise  
8 debtor shall file a plan not later than 90 days after the  
9 order for relief under this chapter, except that the court  
10 may extend that period if the need for an extension is at-  
11 tributable to circumstances for which the small business  
12 enterprise debtor should not justly be held accountable.

13 **“§ 1190. Contents of plan**

14 “A plan filed under this subchapter shall include a  
15 brief history of the business operations of the small busi-  
16 ness enterprise debtor, a liquidation analysis, and projec-  
17 tions with respect to the ability of the small business en-  
18 terprise debtor to make payments under the proposed plan  
19 of reorganization.

20 **“§ 1191. Deemed acceptance of plan**

21 “For purposes of subsection (c) or (d) of section 1126  
22 of this title, a holder of a claim or interest shall be deemed  
23 to have accepted a plan, if the holder fails to file a timely  
24 ballot after being notified by the small business enterprise  
25 debtor of—

1           “(1) the treatment that such holder will receive  
2           under the proposed plan; and

3           “(2) the consequence under this section of the  
4           failure by the holder to file a timely ballot.

5   **“§ 1192. Status conference**

6           “The court shall hold a status conference to further  
7           the expeditious and economical resolution of a case under  
8           this subchapter, and to encourage and facilitate the attain-  
9           ment of a consensual plan of reorganization.

10   **“§ 1193. Confirmation of plan**

11           “(a) TERMS.—The court shall confirm a plan under  
12           this subchapter only if all of the requirements of section  
13           1129(a), other than section 1129(a)(15), of this title are  
14           met.

15           “(b) EXCEPTION.—Notwithstanding section 510(a)  
16           of this title, if all of the applicable requirements of section  
17           1129(a), other than paragraphs (8), (10), and (15) there-  
18           of, are met with respect to a plan, the court, on request  
19           of the small business enterprise debtor, shall confirm the  
20           plan notwithstanding the requirements of such para-  
21           graphs, if the plan does not discriminate unfairly, and is  
22           fair and equitable, with respect to each class of claims or  
23           interests that is impaired under, and has not accepted,  
24           the plan.

1       “(c) RULE OF CONSTRUCTION.—For purposes of this  
2 subsection, the condition that a plan be fair and equitable  
3 with respect to each class of claims or interests includes  
4 the following requirements:

5           “(1) With respect to a class of secured claims,  
6 the plan meets the requirements of section  
7 1129(b)(2)(A).

8           “(2) As of the effective date of the plan—

9           “(A) the plan provides that all of the debt-  
10 or’s projected disposable income to be received  
11 in the 3-year period, or such longer period not  
12 to exceed 5 years as the court may fix, begin-  
13 ning on the date that the first payment is due  
14 under the plan will be applied to make pay-  
15 ments under the plan; or

16           “(B) the value of the property to be dis-  
17 tributed under the plan in the 3-year period, or  
18 longer period not to exceed 5 years as the court  
19 may fix, beginning on the date on which the  
20 first distribution is due under the plan is not  
21 less than the projected disposable income of the  
22 debtor.

23           “(3) The small business enterprise debtor will  
24 be able to make all payments under the plan, or  
25 there is a reasonable likelihood that the small busi-

1       ness enterprise debtor will be able to make all pay-  
2       ments under the plan, and the plan provides appro-  
3       priate remedies, that may include the liquidation of  
4       nonexempt assets, to protect the holders of claims or  
5       interests in the event that the payments are not  
6       made.

7       “(d) DEFINITION OF DISPOSABLE INCOME.—For  
8       purposes of this subsection, the term ‘disposable income’  
9       means the income which is received by the small business  
10      enterprise debtor and which is not reasonably necessary  
11      to be expended—

12             “(1) for the maintenance or support of the  
13      debtor or a dependent of the debtor or for a domes-  
14      tic support obligation that first becomes payable  
15      after the date of the filing of the petition; or

16             “(2) for the payment of expenditures necessary  
17      for the continuation, preservation, or operation of  
18      the business of the debtor.

19       “(e) SPECIAL RULE.—Notwithstanding section  
20      1129(a)(9)(A) of this title, a plan that provides for the  
21      payment through the plan of a claim of a kind specified  
22      in paragraph (2) or (3) of section 507(a) of this title may  
23      be confirmed under section 1193(b) of this title.

1 **“§ 1194. Discharge**

2 “If the plan of the small business enterprise debtor  
3 is confirmed under section 1193(b) of this title, as soon  
4 as practicable after completion by the debtor of all pay-  
5 ments due within the first 3 years of the plan, or such  
6 longer period not to exceed 5 years as the court may fix,  
7 unless the court approves a written waiver of discharge  
8 executed by the debtor after the order for relief under this  
9 chapter, the court shall grant the small business enterprise  
10 debtor a discharge of all debts provided in section  
11 1141(d)(1)(A) of this title, and all other debts allowed  
12 under section 503 of this title and provided for in the plan,  
13 except any debt—

14 “(1) on which the last payment is due after the  
15 first 3 years of the plan, or such other time not to  
16 exceed 5 years fixed by the court; or

17 “(2) of the kind specified in section 523(a) of  
18 this title.

19 **“§ 1195. Modification of plan**

20 “(a) MODIFICATION BEFORE CONFIRMATION.—The  
21 small business enterprise debtor may modify a plan at any  
22 time before confirmation of the plan, but may not modify  
23 such plan so that such plan as modified fails to meet the  
24 requirements of section 1122 and section 1123 of this  
25 title, with the exception of subsection (a)(8) of such sec-

1 tion 1123. After the modification is filed with the court,  
2 the plan, as modified, becomes the plan.

3       “(b) MODIFICATION AFTER CONFIRMATION.—If a  
4 plan has been confirmed under section 1193(a), the small  
5 business enterprise debtor may modify such plan at any  
6 time after confirmation of such plan and before substan-  
7 tial consummation of such plan, but may not modify such  
8 plan so that such plan as modified fails to meet the re-  
9 quirements of section 1122 and section 1123 of this title,  
10 with the exception of subsection (a)(8) of such section  
11 1123. Such plan, as modified under this subsection, be-  
12 comes the plan only if circumstances warrant such modi-  
13 fication and the court, after notice and a hearing, confirms  
14 such plan, as modified, under section 1193(a) of this title.

15       “(c) CERTAIN OTHER MODIFICATIONS.—If a plan  
16 has been confirmed under section 1193(b), the small busi-  
17 ness enterprise debtor may modify such plan at any time  
18 within 3 years, or such longer time not to exceed 5 years,  
19 as fixed by the court, but may not modify such plan so  
20 that such plan as modified fails to meet the requirements  
21 of section 1193(b) of this title. Such plan, as modified  
22 under this subsection, becomes the plan only if cir-  
23 cumstances warrant such modification and the court, after  
24 notice and a hearing, confirms such plan, as modified,  
25 under section 1193(b) of this title.

1       “(d) HOLDERS OF A CLAIM OR INTEREST.—If a plan  
2 has been confirmed under section 1193(a), any holder of  
3 a claim or interest that has accepted or rejected such plan  
4 is deemed to have accepted or rejected, as the case may  
5 be, such plan as modified, unless, within the time fixed  
6 by the court, such holder changes the previous acceptance  
7 or rejection of such holder.

8       **“§ 1196. Payments**

9       “(a) RETENTION AND DISTRIBUTION BY TRUST-  
10 EE.—Payments and funds received by the trustee shall be  
11 retained by the trustee until confirmation or denial of con-  
12 firmation of a plan. If a plan is confirmed, the trustee  
13 shall distribute any such payment in accordance with the  
14 plan. If a plan is not confirmed, the trustee shall return  
15 any such payments to the small business enterprise debt-  
16 or, after deducting—

17               “(1) any unpaid claim allowed under section  
18               503(b) of this title;

19               “(2) any payment made for the purpose of pro-  
20               viding adequate protection of an interest in property  
21               due to the holder of a secured claim; and

22               “(3) any fee owing to the trustee.

23       “(b) OTHER PLANS.—If a plan is confirmed under  
24 section 1193(b) of this title, except as otherwise provided

1 in the plan or in the order confirming the plan, the trustee  
2 shall make payments to creditors under the plan.

3 “(c) PAYMENTS PRIOR TO CONFIRMATION.—Prior to  
4 confirmation of a plan, the court, after notice and a hear-  
5 ing, may authorize the trustee to make payments to the  
6 holder of a secured claim for the purpose of providing ade-  
7 quate protection of an interest in property.

8 **“§ 1197. Transactions with professionals**

9 “Notwithstanding section 327(a) of this title, a per-  
10 son is not disqualified for employment under section 327  
11 of this title, by a small business enterprise debtor solely  
12 because such person holds a claim of less than \$5,000 that  
13 arose prior to commencement of the case.”.

14 **SEC. 3. CONFORMING AMENDMENTS.**

15 (a) TITLE 11.—Title 11, United States Code, is  
16 amended—

17 (1) in section 103(h)—

18 (A) by striking “Subchapter IV of” and in-  
19 serting the following: “Subchapter—

20 “(1) IV of”; and

21 (B) by striking the period at the end and  
22 inserting the following: “; and

23 “(2) V of chapter 11 of this title applies only  
24 in a case under chapter 11 concerning a small busi-  
25 ness enterprise debtor (as defined in section 1183)

1 in which such debtor elects that subchapter V of  
2 chapter 11 shall apply.”;

3 (2) in section 322(a), by inserting “1184,”  
4 after “1163,”;

5 (3) in section 326(a) insert “, other than a case  
6 under subchapter V of chapter 11” after “7 or 11”;

7 (4) in section 326(b) insert “subchapter V of  
8 chapter 11 or under” after “In a case under”;

9 (5) in section 347—

10 (A) in subsection (a)—

11 (i) by inserting “1196,” after “726,”;

12 and

13 (ii) by inserting “subchapter V of  
14 chapter 11,” after “chapter 7,”; and

15 (B) in subsection (b), by inserting “1196,”  
16 after “1173,”;

17 (6) in section 363(c)(1), by inserting “1184,  
18 1185,” after “1108,”;

19 (7) in section 364(a), by inserting “1184,  
20 1185” after “1108,”;

21 (8) in section 523(a), by inserting “1194,”  
22 after “1141,”;

23 (9) in section 524—

24 (A) in subsection (a)—

1 (i) in paragraph (1), by inserting  
2 “1194,” after “1141,”; and

3 (ii) in paragraph (3), by inserting  
4 “1194” after “523,”;

5 (B) in subsection (c)(1), by inserting  
6 “1194,” after “1141,”; and

7 (C) in subsection (d), by inserting “1194,”  
8 after “1141,”;

9 (10) in section 557(d)(3), by inserting “1184,”  
10 after “1104,”; and

11 (11) in section 1146(a), by inserting “or 1193”  
12 after “1129”.

13 (b) TITLE 28.—Title 28 United States Code, is  
14 amended—

15 (1) in section 586(a)(3), by inserting “(includ-  
16 ing subchapter V of chapter 11)” after “7, 11”;

17 (2) in section 586(b), by inserting “subchapter  
18 V of chapter 11 or under” after “cases under”;

19 (3) in section 586(d)(1), by inserting “sub-  
20 chapter V of chapter 11 or under” after “cases  
21 under” each place that term appears;

22 (4) in section 586(e)—

23 (A) in paragraph (1), by inserting “sub-  
24 chapter V of chapter 11 or under” after “cases  
25 under”;

1 (B) in paragraph (2), by inserting “sub-  
2 chapter V of chapter 11 or under” after “cases  
3 under” each place that term appears; and

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

5 “(5) In the event that the services of the trustee are  
6 terminated upon substantial consummation under section  
7 1184(c) of title 11, the court shall award compensation  
8 to the trustee consistent with services performed by the  
9 trustee and the limits on the compensation of the trustee  
10 established pursuant to section 586(e)(1) of this title.”;

11 (5) in section 589b—

12 (A) in subsection (a)(1), by inserting “sub-  
13 chapter V of chapter 11 or under” after “cases  
14 under”; and

15 (B) in subsection (d)—

16 (i) by inserting “subchapter V of  
17 chapter 11 or under” after “trustees  
18 under”; and

19 (ii) in the undesignated matter fol-  
20 lowing paragraph (8), by inserting “sub-  
21 chapter V of chapter 11 or under” after  
22 “cases under”; and

1           (6) in section 1930(a)(6), by inserting “, other  
2           than under subchapter V of that chapter 11,” after  
3           “chapter 11 of title 11”.

○