

108TH CONGRESS  
1ST SESSION

# H. R. 2591

To amend the Internal Revenue Code of 1986 to provide for Small Business Protection Accounts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2003

Mr. PORTER introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for Small Business Protection Accounts, 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 “Small Business Protec-  
5       tion Act of 2003”.

6       **SEC. 2. FINDINGS.**

7       Congress hereby finds that—

- 1 (1) small businesses represent more than 99
- 2 percent of all employers,
- 3 (2) the majority of private sector employees
- 4 work for small businesses,
- 5 (3) more than half of all high-tech workers
- 6 work for small businesses,
- 7 (4) small businesses are responsible for the ma-
- 8 jority of net job creation in the United States,
- 9 (5) more than 12 million small businesses are
- 10 owned by women or minorities,
- 11 (6) small businesses face unique challenges in
- 12 accessing capital markets,
- 13 (7) small businesses are exposed to more mar-
- 14 ket volatility than larger employers,
- 15 (8) small businesses are hurt disproportionately
- 16 by costs imposed by government regulations, and
- 17 (9) small businesses are in need of reforms to
- 18 the tax code that reflect these unique challenges.

## 19 SEC. 3. PURPOSES.

20 The purposes of this Act are—

21 (1) to provide employees salaries and benefits,  
22 and to help ensure solvency of small businesses dur-  
23 ing times of recession,

24 (2) to encourage the formation, growth, and  
25 survival of small businesses,

## 6 SEC. 4. SMALL BUSINESS PROTECTION ACCOUNTS.

7 (a) IN GENERAL.—Subpart C of part II of sub-  
8 chapter E of chapter 1 of the Internal Revenue Code of  
9 1986 (relating to taxable year for which deductions taken)  
10 is amended by inserting after section 468B the following:

## 11. "SEC. 468C. SMALL BUSINESS PROTECTION ACCOUNTS.

12        "(a) DEDUCTION ALLOWED.—In the case of an indi-  
13 vidual engaged in an eligible small business, there shall  
14 be allowed as a deduction for any taxable year the amount  
15 paid in cash by the taxpayer during the taxable year to  
16 a Small Business Protection Account.

17        "(b) LIMITATION.—

18                 “(1) IN GENERAL.—The amount which a tax-  
19                 payer may pay into a Small Business Protection Ac-  
20                 count for any taxable year shall not exceed 50 per-  
21                 cent of so much of the net profit of the taxpayer  
22                 (determined without regard to this section) which is  
23                 attributable (determined in the manner applicable  
24                 under section 1301) to any trade or business.

1           “(2) CARRYOVER OF EXCESS LIMITATION.—If  
2       the limitation under paragraph (1) for any taxable  
3       year exceeds the amount paid by the taxpayer to the  
4       taxpayer’s Small Business Protection Account for  
5       such year, the limitation under paragraph (1) for  
6       the following taxable year (determined without re-  
7       gard to this paragraph) shall be increased by such  
8       excess.

9           “(c) ELIGIBLE SMALL BUSINESS.—For purposes of  
10   this section, the term ‘eligible small business’ means any  
11   trade or business if—

12           “(1) such trade or business (or any predecessor  
13       thereof) meets the gross receipts test of section  
14       448(c) for all prior taxable years,

15           “(2) such trade or business is not a passive ac-  
16       tivity (within the meaning of section 469(c)) of the  
17       taxpayer,

18           “(3) such trade or business is not a farming  
19       business (as defined in section 263A(e)(4)), and

20           “(4) such trade or business has never been de-  
21       termined by the United States Equal Employment  
22       Opportunity Commission to have engaged in job dis-  
23       crimination.

24           “(d) SMALL BUSINESS PROTECTION ACCOUNT.—For  
25       purposes of this section—

1           “(1) IN GENERAL.—The term ‘Small Business  
2       Protection Account’ means a trust created or orga-  
3       nized in the United States for the exclusive benefit  
4       of the taxpayer, but only if the written governing in-  
5       strument creating the trust meets the following re-  
6       quirements:

7           “(A) No contribution will be accepted for  
8       any taxable year in excess of the amount al-  
9       lowed as a deduction under subsection (a) for  
10       such year.

11           “(B) The trustee is a bank (as defined in  
12       section 408(n)) or another person who dem-  
13       onstrates to the satisfaction of the Secretary  
14       that the manner in which such person will ad-  
15       minister the trust will be consistent with the re-  
16       quirements of this section.

17           “(C) The assets of the trust consist en-  
18       tirely of cash or of obligations which have ade-  
19       quate stated interest (as defined in section  
20       1274(c)(2)) and which pay such interest not  
21       less often than annually.

22           “(D) All income of the trust is distributed  
23       currently to the grantor.

24           “(E) The assets of the trust will not be  
25       commingled with other property except in a

1 common trust fund or common investment  
2 fund.

3 “(2) ACCOUNT TAXED AS GRANTOR TRUST.—

4 The grantor of a Small Business Protection Account  
5 shall be treated for purposes of this title as the  
6 owner of such Account and shall be subject to tax  
7 thereon in accordance with subpart E of part I of  
8 subchapter J of this chapter (relating to grantors  
9 and others treated as substantial owners).

10 “(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

11 “(1) IN GENERAL.—Except as provided in para-  
12 graph (2), there shall be includible in the gross in-  
13 come of the taxpayer for any taxable year—

14 “(A) any amount distributed from a Small  
15 Business Protection Account of the taxpayer  
16 during such taxable year, and

17 “(B) any deemed distribution under—

18 “(i) subsection (f)(1) (relating to de-  
19 posits not distributed within 5 years),

20 “(ii) subsection (f)(2) (relating to ces-  
21 sation in eligible small business), and

22 “(iii) subparagraph (A) or (B) of sub-  
23 section (f)(3) (relating to prohibited trans-  
24 actions and pledging account as security).

1           “(2) EXCEPTIONS.—Paragraph (1)(A) shall not  
2        apply to—

3           “(A) any distribution to the extent attrib-  
4        utable to income of the Account, and

5           “(B) the distribution of any contribution  
6        paid during a taxable year to a Small Business  
7        Protection Account to the extent that such con-  
8        tribution exceeds the limitation applicable under  
9        subsection (b) if requirements similar to the re-  
10      quirements of section 408(d)(4) are met.

11      For purposes of subparagraph (A), distributions  
12      shall be treated as first attributable to income and  
13      then to other amounts.

14      “(f) SPECIAL RULES.—

15           “(1) TAX ON DEPOSITS IN ACCOUNT WHICH  
16      ARE NOT DISTRIBUTED WITHIN 5 YEARS.—

17           “(A) IN GENERAL.—If, at the close of any  
18      taxable year, there is a nonqualified balance in  
19      any Small Business Protection Account—

20           “(i) there shall be deemed distributed  
21      from such Account during such taxable  
22      year an amount equal to such balance, and

23           “(ii) the taxpayer’s tax imposed by  
24      this chapter for such taxable year shall be

16                             “(C) ORDERING RULE.—For purposes of  
17                             this paragraph, distributions from a Small  
18                             Business Protection Account (other than dis-  
19                             tributions of current income) shall be treated as  
20                             made from deposits in the order in which such  
21                             deposits were made, beginning with the earliest  
22                             deposits.

23               “(2) CESSATION IN ELIGIBLE BUSINESS.—At  
24               the close of the first disqualification period after a  
25               period for which the taxpayer was engaged in an eli-

1 gible small business, there shall be deemed distrib-  
2 uted from the Small Business Protection Account of  
3 the taxpayer an amount equal to the balance in such  
4 Account (if any) at the close of such disqualification  
5 period. For purposes of the preceding sentence, the  
6 term ‘disqualification period’ means any period of 2  
7 consecutive taxable years for which the taxpayer is  
8 not engaged in an eligible small business.

9 “(3) CERTAIN RULES TO APPLY.—Rules similar  
10 to the following rules shall apply for purposes of this  
11 section:

12 “(A) Section 220(f)(8) (relating to treat-  
13 ment on death).

14 “(B) Section 408(e)(2) (relating to loss of  
15 exemption of account where individual engages  
16 in prohibited transaction).

17 “(C) Section 408(e)(4) (relating to effect  
18 of pledging account as security).

19 “(D) Section 408(g) (relating to commu-  
20 nity property laws).

21 “(E) Section 408(h) (relating to custodial  
22 accounts).

23 “(4) TIME WHEN PAYMENTS DEEMED MADE.—  
24 For purposes of this section, a taxpayer shall be  
25 deemed to have made a payment to a Small Busi-

1       ness Protection Account on the last day of a taxable  
2       year if such payment is made on account of such  
3       taxable year and is made on or before the due date  
4       (without regard to extensions) for filing the return  
5       of tax for such taxable year.

6           “(5) INDIVIDUAL.—For purposes of this sec-  
7       tion, the term ‘individual’ shall not include an estate  
8       or trust.

9           “(6) DEDUCTION NOT ALLOWED FOR SELF-EM-  
10       PLOYMENT TAX.—The deduction allowable by reason  
11       of subsection (a) shall not be taken into account in  
12       determining an individual’s net earnings from self-  
13       employment (within the meaning of section 1402(a))  
14       for purposes of chapter 2.

15           “(g) REPORTS.—The trustee of a Small Business  
16       Protection Account shall make such reports regarding  
17       such Account to the Secretary and to the person for whose  
18       benefit the Account is maintained with respect to contribu-  
19       tions, distributions, and such other matters as the Sec-  
20       retary may require under regulations. The reports re-  
21       quired by this subsection shall be filed at such time and  
22       in such manner and furnished to such persons at such  
23       time and in such manner as may be required by such regu-  
24       lations.”.

25           (b) TAX ON EXCESS CONTRIBUTIONS.—

7                   “(4) a Small Business Protection Account  
8                   (within the meaning of section 468C(d)), or”.

“(g) EXCESS CONTRIBUTIONS TO SMALL BUSINESS PROTECTION ACCOUNT.—For purposes of this section, in the case of a Small Business Protection Account (within the meaning of section 468C(d)), the term ‘excess contributions’ means the amount by which the amount contributed for the taxable year to the Account exceeds the amount which may be contributed to the Account under section 468C(b) for such taxable year. For purposes of this subsection, any contribution which is distributed out of the Small Business Protection Account in a distribution to which section 468C(e)(2)(B) applies shall be treated as an amount not contributed.”.

23 (3) The section heading for section 4973 of  
24 such Code is amended to read as follows:

1 "SEC. 4973. EXCESS CONTRIBUTIONS TO CERTAIN AC-  
2 COUNTS, ANNUITIES, ETC.".

“Sec. 4973. Excess contributions to certain accounts, annuities, etc.”.

## 6 (c) TAX ON PROHIBITED TRANSACTIONS.—

“(6) SPECIAL RULE FOR SMALL BUSINESS PROTECTION ACCOUNT.—A person for whose benefit a Small Business Protection Account (within the meaning of section 468C(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a Small Business Protection Account by reason of the application of section 468C(f)(3)(A) to such account.”.

21 (2) Paragraph (1) of section 4975(e) of such  
22 Code is amended by redesignating subparagraphs  
23 (E) and (F) as subparagraphs (F) and (G), respec-

1       tively, and by inserting after subparagraph (D) the  
2       following:

3               “(E) a Small Business Protection Account  
4               described in section 468C(d),”.

5       (d) FAILURE TO PROVIDE REPORTS ON SMALL  
6 BUSINESS PROTECTION ACCOUNTS.—Paragraph (2) of  
7 section 6693(a) of such Code (relating to failure to provide  
8 reports on certain tax-favored accounts or annuities) is  
9 amended by redesignating subparagraphs (C) and (D) as  
10 subparagraphs (D) and (E), respectively, and by inserting  
11 after subparagraph (B) the following:

12               “(C) section 468C(g) (relating to Small  
13 Business Protection Accounts),”.

14       (e) CLERICAL AMENDMENT.—The table of sections  
15 for subpart C of part II of subchapter E of chapter 1 of  
16 such Code is amended by inserting after the item relating  
17 to section 468B the following:

“Sec. 468C. Small Business Protection Accounts.”.

18       (f) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years beginning after  
20 the date of the enactment of this Act.

21       (g) REPORT.—Not later than 1 year after the date  
22 of the enactment of this Act, the Administrator of the  
23 Small Business Administration shall submit a report on  
24 the implementation and effectiveness of section 468C of  
25 the Internal Revenue Code of 1986 (as added by this sec-

1 tion), with emphasis on the impact of Small Business Pro-  
2 tection Accounts in enterprise and similar zones, to the  
3 Committee on Small Business of the House of Representa-  
4 tives and the Committee on Small Business and Entrepre-  
5 neurship of the Senate.

6 **SEC. 5. ADMINISTRATIVE AUTHORITY.**

7 The Administrator of the Small Business Administra-  
8 tion shall designate the Small Business Development Cen-  
9 ter Program as the lead agency for assisting small busi-  
10 nesses in establishing and operating Small Business Pro-  
11 tection Accounts. The Internal Revenue Service shall pro-  
12 vide such assistance to the Small Business Administration  
13 as necessary for the purposes of this section.

