

111TH CONGRESS
2D SESSION

S. 3675

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

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

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 aris-
5 ing 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-

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

“(b) MODIFICATION AFTER CONFIRMATION.—If a plan has been confirmed under section 1193(a), the small business enterprise debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of section 1122 and section 1123 of this title, with the exception of subsection (a)(8) of such section 1123. Such plan, as modified under this subsection, becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan, as modified, under section 1193(a) of this title.

“(c) CERTAIN OTHER MODIFICATIONS.—If a plan has been confirmed under section 1193(b), the small business enterprise debtor may modify such plan at any time within 3 years, or such longer time not to exceed 5 years, as fixed by the court, but may not modify such plan so that such plan as modified fails to meet the requirements of section 1193(b) of this title. Such plan, as modified under this subsection, becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan, as modified, 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”.

