

116TH CONGRESS  
1ST SESSION

# S. 177

To amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2019

Mr. ROBERTS (for himself, Mr. CARDIN, Mr. TILLIS, Mr. PORTMAN, Mr. CRAPO, Ms. CANTWELL, Mr. RISCH, Mr. WHITEHOUSE, Mr. LEAHY, Ms. KLOBUCHAR, Ms. STABENOW, Ms. BALDWIN, Mr. CASEY, Mr. MORAN, Mr. VAN HOLLEN, Mr. PETERS, Ms. ERNST, Mr. ISAKSON, Mr. REED, Mr. HOEVEN, Mr. THUNE, Mrs. MURRAY, Ms. DUCKWORTH, Mr. TESTER, Ms. COLLINS, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, 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 “Promotion and Expan-  
5 sion of Private Employee Ownership Act of 2019”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) on January 1, 1998—nearly 25 years after  
4 the Employee Retirement Income Security Act of  
5 1974 was enacted and the employee stock ownership  
6 plan (hereafter in this section referred to as an  
7 “ESOP”) was created—employees were first per-  
8 mitted to be owners of subchapter S corporations  
9 pursuant to the Small Business Job Protection Act  
10 of 1996 (Public Law 104–188);

11 (2) with the passage of the Taxpayer Relief Act  
12 of 1997 (Public Law 105–34), Congress designed in-  
13 centives to encourage businesses to become ESOP-  
14 owned S corporations;

15 (3) since that time, several thousand companies  
16 have become ESOP-owned S corporations, creating  
17 an ownership interest for several million Americans  
18 in companies in every State in the country, in indus-  
19 tries ranging from heavy manufacturing to tech-  
20 nology development to services;

21 (4) while estimates show that 40 percent of  
22 working Americans have no formal retirement ac-  
23 count at all, every United States worker who is an  
24 employee-owner of an S corporation company  
25 through an ESOP has a valuable qualified retire-  
26 ment savings account;

1           (5) recent studies have shown that employees of  
2       ESOP-owned S corporations enjoy greater job sta-  
3       bility than employees of comparable companies;

4           (6) studies also show that employee-owners of S  
5       corporation ESOP companies have amassed mean-  
6       ingful retirement savings through their S ESOP ac-  
7       counts that will give them the means to retire with  
8       dignity;

9           (7) under the Small Business Act (15 U.S.C.  
10      631 et seq.) and the regulations promulgated by the  
11      Administrator of the Small Business Administration,  
12      a small business concern that was eligible under the  
13      Small Business Act for the numerous preferences of  
14      the Act is denied treatment as a small business con-  
15      cern after an ESOP acquires more than 49 percent  
16      of the business, even if the number of employees, the  
17      revenue of the small business concern, and the ra-  
18      cial, gender, or other criteria used under the Act to  
19      determine whether the small business concern is eli-  
20      gible for benefits under the Act remain the same,  
21      solely because of the acquisition by the ESOP; and  
22           (8) it is the goal of Congress to both preserve  
23      and foster employee ownership of S corporations  
24      through ESOPs.

1 **SEC. 3. DEFERRAL OF TAX FOR CERTAIN SALES OF EM-**  
 2 **PLOYER STOCK TO EMPLOYEE STOCK OWN-**  
 3 **ERSHIP PLAN SPONSORED BY S CORPORA-**  
 4 **TION.**

5 (a) IN GENERAL.—Subparagraph (A) of section  
 6 1042(c)(1) of the Internal Revenue Code of 1986 is  
 7 amended by striking “domestic C corporation” and insert-  
 8 ing “domestic corporation”.

9 (b) EFFECTIVE DATE.—The amendment made by  
 10 subsection (a) shall apply to sales after the date of the  
 11 enactment of this Act.

12 **SEC. 4. DEPARTMENT OF THE TREASURY TECHNICAL AS-**  
 13 **SISTANCE OFFICE.**

14 (a) ESTABLISHMENT REQUIRED.—Before the end of  
 15 the 90-day period beginning on the date of enactment of  
 16 this Act, the Secretary of the Treasury shall establish the  
 17 S Corporation Employee Ownership Assistance Office to  
 18 foster increased employee ownership of S corporations.

19 (b) DUTIES OF THE OFFICE.—The S Corporation  
 20 Employee Ownership Assistance Office shall provide—

21 (1) education and outreach to inform companies  
 22 and individuals about the possibilities and benefits of  
 23 employee ownership of S corporations; and

24 (2) technical assistance to assist S corporations  
 25 in sponsoring employee stock ownership plans.

1 **SEC. 5. SMALL BUSINESS AND EMPLOYEE STOCK OWNER-**  
 2 **SHIP.**

3 (a) IN GENERAL.—The Small Business Act (15  
 4 U.S.C. 631 et seq.) is amended—

5 (1) by redesignating section 49 as section 50;

6 and

7 (2) by inserting after section 48 the following:

8 **“SEC. 49. EMPLOYEE STOCK OWNERSHIP PLANS.**

9 “(a) DEFINITIONS.—In this section—

10 “(1) the term ‘ESOP’ means an employee stock  
 11 ownership plan, as defined in section 4975(e)(7) of  
 12 the Internal Revenue Code of 1986, as amended;  
 13 and

14 “(2) the term ‘ESOP business concern’ means  
 15 a business concern that was a small business con-  
 16 cern eligible for a loan, preference, or other program  
 17 under this Act before the date on which more than  
 18 49 percent of the business concern was acquired by  
 19 an ESOP.

20 “(b) CONTINUED ELIGIBILITY.—In determining  
 21 whether an ESOP business concern qualifies as a small  
 22 business concern for purposes of a loan, preference, or  
 23 other program under this Act, each ESOP participant  
 24 shall be treated as directly owning his or her proportionate  
 25 share of the stock in the ESOP business concern owned  
 26 by the ESOP.”.

1       (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on January 1 of the first cal-  
3 endar year beginning after the date of the enactment of  
4 this Act.

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