

112TH CONGRESS
1ST SESSION

S. 1512

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.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 2011

Mr. CARDIN (for himself, Mr. ROBERTS, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Finance

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 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

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

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

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

19 (4) while estimates show that 40 percent of
20 working Americans have no formal retirement ac-
21 count at all, every United States worker who is an
22 employee-owner of an S corporation company
23 through an ESOP has a valuable qualified retire-
24 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 **EMPLOYER 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 (defin-
7 ing qualified securities) is amended by striking “domestic
8 C corporation” and inserting “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 TREASURY TECHNICAL ASSIST-**
13 **ANCE 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 Treasury shall establish the S
17 Corporation Employee Ownership Assistance Office to fos-
18 ter 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 45 as section 46;

6 and

7 (2) by inserting after section 44 the following:

8 **“SEC. 45. 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 or to participate in a con-

17 tracting assistance or business development program

18 under this Act before the date on which more than

19 49 percent of the business concern was acquired by

20 an ESOP.

21 “(b) CONTINUED ELIGIBILITY.—In determining

22 whether an ESOP business concern qualifies as a small

23 business concern for purposes of a loan, preference, or

24 other program under this Act, each ESOP participant

25 shall be treated as directly owning his or her proportionate

1 share of the stock in the ESOP business concern owned
2 by the ESOP.”.

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

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