

107TH CONGRESS
2D SESSION

S. 3174

To permanently reenact chapter 12 of title 11, United States Code, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2002

Mr. GRASSLEY (for himself, Mr. LEAHY, Mr. FEINGOLD, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To permanently reenact chapter 12 of title 11, United States
Code, 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 “Protection of Family
5 Farmers and Family Fisherman Act of 2002”.

6 **SEC. 2. PERMANENT REENACTMENT OF CHAPTER 12.**

7 (a) REENACTMENT.—

8 (1) IN GENERAL.—Chapter 12 of title 11,
9 United States Code, as reenacted by section 149 of
10 division C of the Omnibus Consolidated and Emer-

1 gency Supplemental Appropriations Act, 1999
2 (Public Law 105–277), is hereby reenacted, and as
3 here reenacted is amended by this Act.

4 (2) EFFECTIVE DATE.—Subsection (a) shall
5 take effect on the date of the enactment of this Act.

6 (b) CONFORMING AMENDMENT.—Section 302 of the
7 Bankruptcy Judges, United States Trustees, and Family
8 Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is
9 amended by striking subsection (f).

10 **SEC. 3. DEBT LIMIT INCREASE.**

11 Section 104(b) of title 11, United States Code, as
12 amended by section 226, is amended by inserting
13 “101(18),” after “101(3),” each place it appears.

14 **SEC. 4. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.**

15 (a) CONTENTS OF PLAN.—Section 1222(a)(2) of title
16 11, United States Code, is amended to read as follows:

17 “(2) provide for the full payment, in deferred
18 cash payments, of all claims entitled to priority
19 under section 507, unless—

20 “(A) the claim is a claim owed to a govern-
21 mental unit that arises as a result of the sale,
22 transfer, exchange, or other disposition of any
23 farm asset used in the debtor’s farming oper-
24 ation, in which case the claim shall be treated
25 as an unsecured claim that is not entitled to

1 priority under section 507, but the debt shall be
2 treated in such manner only if the debtor re-
3 ceives a discharge; or

4 “(B) the holder of a particular claim
5 agrees to a different treatment of that claim;”.

6 (b) SPECIAL NOTICE PROVISIONS.—Section 1231(b)
7 of title 11, United States Code, as so designated by section
8 719, is amended by striking “a State or local govern-
9 mental unit” and inserting “any governmental unit”.

10 (c) EFFECTIVE DATE; APPLICATION OF AMEND-
11 MENTS.—This section and the amendments made by this
12 section shall take effect on the date of the enactment of
13 this Act and shall not apply with respect to cases com-
14 menced under title 11 of the United States Code before
15 such date.

16 **SEC. 5. DEFINITION OF FAMILY FARMER.**

17 Section 101(18) of title 11, United States Code, is
18 amended—

19 (1) in subparagraph (A)—

20 (A) by striking “\$1,500,000” and inserting
21 “\$3,237,000”; and

22 (B) by striking “80” and inserting “50”;
23 and

24 (2) in subparagraph (B)(ii)—

4 SEC. 6. ELIMINATION OF REQUIREMENT THAT FAMILY
5 FARMER AND SPOUSE RECEIVE OVER 50 PER-
6 CENT OF INCOME FROM FARMING OPER-
7 ATION IN YEAR PRIOR TO BANKRUPTCY.

8 Section 101(18)(A) of title 11, United States Code,
9 is amended by striking “for the taxable year preceding the
10 taxable year” and inserting the following:

11 “for—
12 “(i) the taxable year preceding; or
13 “(ii) each of the 2d and 3d taxable years
14 preceding;
15 the taxable year”.

16 SEC. 7. PROHIBITION OF RETROACTIVE ASSESSMENT OF
17 DISPOSABLE INCOME.

18 (a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of
19 title 11, United States Code, is amended—
20 (1) in subparagraph (A) by striking “or” at the
21 end;
22 (2) in subparagraph (B) by striking the period
23 at the end and inserting “; or”; and
24 (3) by adding at the end the following:

1 “(C) the value of the property to be distributed
2 under the plan in the 3-year period, or such longer
3 period as the court may approve under section
4 1222(c), beginning on the date that the first dis-
5 tribution is due under the plan is not less than the
6 debtor’s projected disposable income for such pe-
7 riod.”.

8 (b) MODIFICATION OF PLAN.—Section 1229 of title
9 11, United States Code, is amended by adding at the end
10 the following:

11 “(d) A plan may not be modified under this section—
12 “(1) to increase the amount of any payment
13 due before the plan as modified becomes the plan;
14 “(2) by anyone except the debtor, based on an
15 increase in the debtor’s disposable income, to in-
16 crease the amount of payments to unsecured credi-
17 tors required for a particular month so that the ag-
18 gregate of such payments exceeds the debtor’s dis-
19 posable income for such month; or
20 “(3) in the last year of the plan by anyone ex-
21 cept the debtor, to require payments that would
22 leave the debtor with insufficient funds to carry on
23 the farming operation after the plan is completed.”.

1 **SEC. 8. FAMILY FISHERMEN.**2 (a) DEFINITIONS.—Section 101 of title 11, United
3 States Code, is amended—4 (1) by inserting after paragraph (7) the fol-
5 lowing:

6 “(7A) ‘commercial fishing operation’ means—

7 “(A) the catching or harvesting of fish,
8 shrimp, lobsters, urchins, seaweed, shellfish, or
9 other aquatic species or products of such spe-
10 cies; or11 “(B) for purposes of section 109 and chap-
12 ter 12, aquaculture activities consisting of rais-
13 ing for market any species or product described
14 in subparagraph (A);15 “(7B) ‘commercial fishing vessel’ means a ves-
16 sel used by a family fisherman to carry out a com-
17 mercial fishing operation;”; and18 (2) by inserting after paragraph (19) the fol-
19 lowing:

20 “(19A) ‘family fisherman’ means—

21 “(A) an individual or individual and spouse
22 engaged in a commercial fishing operation—23 “(i) whose aggregate debts do not ex-
24 ceed \$1,500,000 and not less than 80 per-
25 cent of whose aggregate noncontingent, liq-
26 uidated debts (excluding a debt for the

1 principal residence of such individual or
2 such individual and spouse, unless such
3 debt arises out of a commercial fishing op-
4 eration), on the date the case is filed, arise
5 out of a commercial fishing operation
6 owned or operated by such individual or
7 such individual and spouse; and

1 “(ii)(I) more than 80 percent of the
2 value of its assets consists of assets related
3 to the commercial fishing operation;

4 “(II) its aggregate debts do not ex-
5 ceed \$1,500,000 and not less than 80 per-
6 cent of its aggregate noncontingent, liq-
7 uidated debts (excluding a debt for 1
8 dwelling which is owned by such corpora-
9 tion or partnership and which a share-
10 holder or partner maintains as a principal
11 residence, unless such debt arises out of a
12 commercial fishing operation), on the date
13 the case is filed, arise out of a commercial
14 fishing operation owned or operated by
15 such corporation or such partnership; and

16 “(III) if such corporation issues stock,
17 such stock is not publicly traded;

18 “(19B) ‘family fisherman with regular annual
19 income’ means a family fisherman whose annual in-
20 come is sufficiently stable and regular to enable such
21 family fisherman to make payments under a plan
22 under chapter 12 of this title;”.

23 (b) WHO MAY BE A DEBTOR.—Section 109(f) of title
24 11, United States Code, is amended by inserting “or fam-
25 ily fisherman” after “family farmer”.

1 (c) CHAPTER 12.—Chapter 12 of title 11, United
2 States Code, is amended—

3 (1) in the chapter heading, by inserting “**OR**
4 **FISHERMAN**” after “**FAMILY FARMER**”;

5 (2) in section 1203, by inserting “or commer-
6 cial fishing operation” after “farm”; and

7 (3) in section 1206, by striking “if the property
8 is farmland or farm equipment” and inserting “if
9 the property is farmland, farm equipment, or prop-
10 erty used to carry out a commercial fishing oper-
11 ation (including a commercial fishing vessel)”.

12 (d) CLERICAL AMENDMENT.—In the table of chap-
13 ters for title 11, United States Code, the item relating to
14 chapter 12, is amended to read as follows:

**“12. Adjustments of Debts of a Family Farmer or Family
Fisherman with Regular Annual Income 1201”.**

15 (e) APPLICABILITY.—Nothing in this section shall
16 change, affect, or amend the Fishery Conservation and
17 Management Act of 1976 (16 U.S.C. 1801, et seq.).

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