

108TH CONGRESS  
1ST SESSION

# S. 2004

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

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IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2003

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

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## 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 2003”.

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 agency Supplemental Appropriations Act, 1999 (Pub-  
2 lic Law 105–277), is hereby reenacted, and as here  
3 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)—

1 (A) by striking “\$1,500,000” and inserting  
 2 “\$3,237,000”; and

3 (B) by striking “80” and inserting “50”.

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(e), 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; or

11 “(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;”; and

18 (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

principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

“(ii) who receive from such commercial fishing operation more than 50 percent of such individual’s or such individual’s and spouse’s gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

“(B) a corporation or partnership—

“(i) in which more than 50 percent of the outstanding stock or equity is held by—

“(I) 1 family that conducts the commercial fishing operation; or

“(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; 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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