

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5348

To amend title 11 of the United States Code to protect family farmers  
and family fishermen.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 2002

Ms. BALDWIN (for herself, Mr. DELAHUNT, Mr. SHOWS, Mr. BARRETT of Wisconsin, Mr. TIERNEY, Mr. ALLEN, Mr. FROST, Mr. CONYERS, Mr. SANDERS, Mr. HOLDEN, Mr. PHELPS, and Mr. HILLIARD) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 11 of the United States Code to protect  
family farmers and family fishermen.

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 “Family Farmers and  
5       Family Fishermen Protection 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

1 division C of the Omnibus Consolidated and Emer-  
2 gency Supplemental Appropriations Act, 1999 (Pub-  
3 lic Law 105–277), is hereby reenacted, and as here  
4 reenacted is amended by this Act.

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

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

11 **SEC. 3. DEBT LIMIT INCREASE.**

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

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

16 (a) CONTENTS OF PLAN.—Section 1222(a)(2) of title  
17 11, United States Code, is amended to read as follows:

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

21 “(A) the claim is a claim owed to a govern-  
22 mental unit that arises as a result of the sale,  
23 transfer, exchange, or other disposition of any  
24 farm asset used in the debtor’s farming oper-  
25 ation, in which case the claim shall be treated

1 as an unsecured claim that is not entitled to  
2 priority under section 507, but the debt shall be  
3 treated in such manner only if the debtor re-  
4 ceives a discharge; or

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

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

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

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

14 (1) in subparagraph (A)—

15 (A) by striking “\$1,500,000” and inserting  
16 “\$3,237,000”; and

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

18 and

19 (2) in subparagraph (B)(ii)—

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

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

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

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

8 “for—

9 “(i) the taxable year preceding; or

10 “(ii) each of the 2d and 3d taxable years  
11 preceding;

12 the taxable year”.

13 **SEC. 7. PROHIBITION OF RETROACTIVE ASSESSMENT OF**  
14 **DISPOSABLE INCOME.**

15 (a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of  
16 title 11, United States Code, is amended—

17 (1) in subparagraph (A) by striking “or” at the  
18 end;

19 (2) in subparagraph (B) by striking the period  
20 at the end and inserting “; or”; and

21 (3) by adding at the end the following:

22 “(C) the value of the property to be distributed  
23 under the plan in the 3-year period, or such longer  
24 period as the court may approve under section  
25 1222(e), beginning on the date that the first dis-  
26 tribution is due under the plan is not less than the

1 debtor's projected disposable income for such pe-  
2 riod.”.

3 (b) MODIFICATION OF PLAN.—Section 1229 of title  
4 11, United States Code, is amended by adding at the end  
5 the following:

6 “(d) A plan may not be modified under this section—

7 “(1) to increase the amount of any payment  
8 due before the plan as modified becomes the plan;

9 “(2) by anyone except the debtor, based on an  
10 increase in the debtor's disposable income, to in-  
11 crease the amount of payments to unsecured credi-  
12 tors required for a particular month so that the ag-  
13 gregate of such payments exceeds the debtor's dis-  
14 posable income for such month; or

15 “(3) in the last year of the plan by anyone ex-  
16 cept the debtor, to require payments that would  
17 leave the debtor with insufficient funds to carry on  
18 the farming operation after the plan is completed.”.

19 **SEC. 8. FAMILY FISHERMEN.**

20 (a) DEFINITIONS.—Section 101 of title 11, United  
21 States Code, is amended—

22 (1) by inserting after paragraph (7) the fol-  
23 lowing:

24 “(7A) ‘commercial fishing operation’ means—

1           “(A) the catching or harvesting of fish,  
2           shrimp, lobsters, urchins, seaweed, shellfish, or  
3           other aquatic species or products of such spe-  
4           cies; or

5           “(B) for purposes of section 109 and chap-  
6           ter 12, aquaculture activities consisting of rais-  
7           ing for market any species or product described  
8           in subparagraph (A);

9           “(7B) ‘commercial fishing vessel’ means a ves-  
10          sel used by a family fisherman to carry out a com-  
11          mercial fishing operation;” and

12          (2) by inserting after paragraph (19) the fol-  
13          lowing:

14          “(19A) ‘family fisherman’ means—

15                 “(A) an individual or individual and spouse  
16                 engaged in a commercial fishing operation—

17                         “(i) whose aggregate debts do not ex-  
18                         ceed \$1,500,000 and not less than 80 per-  
19                         cent of whose aggregate noncontingent, liq-  
20                         uidated debts (excluding a debt for the  
21                         principal residence of such individual or  
22                         such individual and spouse, unless such  
23                         debt arises out of a commercial fishing op-  
24                         eration), on the date the case is filed, arise  
25                         out of a commercial fishing operation

1 owned or operated by such individual or  
2 such individual and spouse; and

3 “(ii) who receive from such commer-  
4 cial fishing operation more than 50 percent  
5 of such individual’s or such individual’s  
6 and spouse’s gross income for the taxable  
7 year preceding the taxable year in which  
8 the case concerning such individual or such  
9 individual and spouse was filed; or

10 “(B) a corporation or partnership—

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

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

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

20 “(ii)(I) more than 80 percent of the  
21 value of its assets consists of assets related  
22 to the commercial fishing operation;

23 “(II) its aggregate debts do not ex-  
24 ceed \$1,500,000 and not less than 80 per-  
25 cent of its aggregate noncontingent, liq-

1           uidated debts (excluding a debt for 1  
 2           dwelling which is owned by such corpora-  
 3           tion or partnership and which a share-  
 4           holder or partner maintains as a principal  
 5           residence, unless such debt arises out of a  
 6           commercial fishing operation), on the date  
 7           the case is filed, arise out of a commercial  
 8           fishing operation owned or operated by  
 9           such corporation or such partnership; and

10                   “(III) if such corporation issues stock,  
 11                   such stock is not publicly traded;

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

17           (b) WHO MAY BE A DEBTOR.—Section 109(f) of title  
 18 11, United States Code, is amended by inserting “or fam-  
 19 ily fisherman” after “family farmer”.

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

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

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



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

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

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

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

12          **SEC. 9. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

13          This Act and the amendments made by this Act shall  
14          take effect on the date of the enactment of this Act and  
15          shall not apply with respect to cases commenced under  
16          title 11 of the United States Code before such date.

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