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~~Amendment in the Nature of a Substitute~~

~~To 1920~~

~~Offered by Hon. Tammy Baldwin~~

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Protection of Family  
3 Farmers and Family Fisherman Act of 2004".

4 SEC. 2. PERMANENT REENACTMENT OF CHAPTER 12.

5 (a) PERMANENT REENACTMENT.—

6 (1) REENACTMENT.—Chapter 12 of title 11,  
7 United States Code, as reenacted by section 149 of  
8 division C of the Omnibus Consolidated and Emer-  
9 gency Supplemental Appropriations Act, 1999 (Pub-  
10 lic Law 105-277), and as in effect on December 31,  
11 2003, is hereby reenacted.

12 (2) CONFORMING AMENDMENT.—Section 302  
13 of the Bankruptcy Judges, United States Trustees,  
14 and Family Farmer Bankruptcy Act of 1986 (28  
15 U.S.C. 581 note) is amended by striking subsection  
16 (f).

17 (b) EFFECTIVE DATE OF REENACTMENT.—Sub-  
18 section (a) shall take effect on January 1, 2004.



1 SEC. 3. DEBT LIMIT INCREASE.

2 Section 104(b) of title 11, United States Code, as  
3 amended by section 226, is amended by inserting  
4 "101(18)," after "101(3)," each place it appears.

5 SEC. 4. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

6 (a) CONTENTS OF PLAN.—Section 1222(a)(2) of title  
7 11, United States Code, is amended to read as follows:

8 "(2) provide for the full payment, in deferred  
9 cash payments, of all claims entitled to priority  
10 under section 507, unless—

11 "(A) the claim is a claim owed to a govern-  
12 mental unit that arises as a result of the sale,  
13 transfer, exchange, or other disposition of any  
14 farm asset used in the debtor's farming oper-  
15 ation, in which case the claim shall be treated  
16 as an unsecured claim that is not entitled to  
17 priority under section 507, but the debt shall be  
18 treated in such manner only if the debtor re-  
19 ceives a discharge; or

20 "(B) the holder of a particular claim  
21 agrees to a different treatment of that claim;".

22 (b) SPECIAL NOTICE PROVISIONS.—Section 1231(b)  
23 of title 11, United States Code, as so designated by section  
24 719, is amended by striking "a State or local govern-  
25 mental unit" and inserting "any governmental unit".



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

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

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

10 (1) in subparagraph (A)—

11 (A) by striking “\$1,500,000” and inserting  
12 “\$3,237,000”; and

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

14 and

15 (2) in subparagraph (B)(ii)—

16 (A) by striking “\$1,500,000” and inserting  
17 “\$3,237,000”; and

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

19 **SEC. 6. ELIMINATION OF REQUIREMENT THAT FAMILY**  
20 **FARMER AND SPOUSE RECEIVE OVER 50 PER-**  
21 **CENT OF INCOME FROM FARMING OPER-**  
22 **ATION IN YEAR PRIOR TO BANKRUPTCY.**

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



1 "for—

2 " (i) the taxable year preceding; or

3 " (ii) each of the 2d and 3d taxable years  
4 preceding;

5 the taxable year”.

6 **SEC. 7. PROHIBITION OF RETROACTIVE ASSESSMENT OF**  
7 **DISPOSABLE INCOME.**

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

10 (1) in subparagraph (A) by striking “or” at the  
11 end;

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

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

15 “(C) the value of the property to be distributed  
16 under the plan in the 3-year period, or such longer  
17 period as the court may approve under section  
18 1222(c), beginning on the date that the first dis-  
19 tribution is due under the plan is not less than the  
20 debtor’s projected disposable income for such pe-  
21 riod.”.

22 (b) MODIFICATION OF PLAN.—Section 1229 of title  
23 11, United States Code, is amended by adding at the end  
24 the following:

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



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

3           “(2) by anyone except the debtor, based on an  
4 increase in the debtor’s disposable income, to in-  
5 crease the amount of payments to unsecured credi-  
6 tors required for a particular month so that the ag-  
7 gregate of such payments exceeds the debtor’s dis-  
8 posable income for such month; or

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

13 **SEC. 8. FAMILY FISHERMEN.**

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

16           (1) by inserting after paragraph (7) the fol-  
17 lowing:

18           “(7A) ‘commercial fishing operation’ means—

19           “(A) the catching or harvesting of fish,  
20 shrimp, lobsters, urchins, seaweed, shellfish, or  
21 other aquatic species or products of such spe-  
22 cies; or

23           “(B) for purposes of section 109 and chap-  
24 ter 12, aquaculture activities consisting of rais-



1           ing for market any species or product described  
2           in subparagraph (A);

3           “(7B) ‘commercial fishing vessel’ means a ves-  
4           sel used by a family fisherman to carry out a com-  
5           mercial fishing operation;”; and

6           (2) by inserting after paragraph (19) the fol-  
7           lowing:

8           “(19A) ‘family fisherman’ means—

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

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

22                 “(ii) who receive from such commer-  
23                 cial fishing operation more than 50 percent  
24                 of such individual’s or such individual’s  
25                 and spouse’s gross income for the taxable



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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

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

“(II) its aggregate debts do not exceed \$1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date



1 the case is filed, arise out of a commercial  
2 fishing operation owned or operated by  
3 such corporation or such partnership; and

4 “(III) if such corporation issues stock,  
5 such stock is not publicly traded;

6 “(19B) ‘family fisherman with regular annual  
7 income’ means a family fisherman whose annual in-  
8 come is sufficiently stable and regular to enable such  
9 family fisherman to make payments under a plan  
10 under chapter 12 of this title;”.

11 (b) WHO MAY BE A DEBTOR.—Section 109(f) of title  
12 11, United States Code, is amended by inserting “or fam-  
13 ily fisherman” after “family farmer”.

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

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

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

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





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

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

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

