

PROVIDING FOR CONSIDERATION OF S. 1920, TO EXTEND FOR 6 MONTHS
THE PERIOD FOR WHICH CHAPTER 12 OF TITLE 11 OF THE UNITED
STATES CODE IS REENACTED

JANUARY 27, 2004.—Referred to the House Calendar and ordered to be printed

Mr. SESSIONS, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 503]

The Committee on Rules, having had under consideration House Resolution 503, by a nonrecord vote, reports the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of S. 1920, To extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted, under a modified closed rule. The rule provides one hour of general debate on the bill and on amendments made in order, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The rule provides that it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of the substitute consisting of H.R. 975 as passed by the House, and that it shall be considered as read. The rule waives all points of order against that amendment in the nature of a substitute. The rule makes in order only those amendments to that amendment in the nature of a substitute which are printed in this report, and provides that those amendments may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in this report. The rule also provides one motion to recommit with or without instructions.

Finally, Section 2 of the rule provides that if the Senate bill, as amended, is passed, then it shall be in order to move that the House insist on its amendment to S. 1920 and request a conference thereon.

SUMMARY OF AMENDMENTS MADE IN ORDER

1. Sensenbrenner No. 2: Manager’s Amendment. Makes technical changes to the text of H.R. 975 as passed by the House, which consist of the following: (1) revising the year of the short title (and subsequent references thereto) from 2003 to 2004 and a Code of Federal Regulations reference from 2002 to 2003; (2) amending section 1001 to make the reenactment of Chapter 12 retroactive to the date on which Chapter 12 was last in effect; (3) renumbering titles XIV and XV as titles XV and XIV, respectively, to clarify the measure’s overall effective date; (4) correcting an erroneous drafting instruction in section 1201; and (5) adding a new provision (section 1502) that corrects statutory cross-references in the Bankruptcy Code and the Securities Investment Protection Act with respect to a provision of the Bankruptcy Code amended by H.R. 975. (10 minutes)

2. Baldwin No. 1: Amendment in the Nature of a Substitute. Makes chapter 12 of title 11 of the U.S. Bankruptcy Code, dealing with “family farmer” reorganization, permanent and expands eligibility requirements. (60 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SENSENBRENNER OF WISCONSIN, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike “Bankruptcy Abuse Prevention and Consumer Protection Act of 2003” each place it appears and insert “Bankruptcy Abuse Prevention and Consumer Protection Act of 2004”.

In section 204 strike “2002” and insert “2003”.

Strike section 1001 and insert the following:

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), and as in effect on December 31, 2003, is hereby reenacted.

(2) EFFECTIVE DATE OF REENACTMENT.—Paragraph (1) shall take effect on January 1, 2004.

(b) AMENDMENTS—Chapter 12 of title 11, United States Code, as reenacted by subsection (a), is amended by this Act.

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

In section 1201—

(1) strike paragraph (2) and insert the following:

(2) in each paragraph (other than paragraph (54A)), by inserting “The term” after the paragraph designation;

and

(2) strike paragraph (7) and insert the following:

(7) in paragraph (54A)—

(A) by striking “the term” and inserting “The term”; and

(B) by indenting the left margin of paragraph (54A) 2 ems to the right; and

Strike titles XIV and XV, and insert the following:

TITLE XIV—PREVENTING CORPORATE BANKRUPTCY ABUSE

SEC. 1401. EMPLOYEE WAGE AND BENEFIT PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 212, is amended—

(1) in paragraph (4) by striking “90” and inserting “180”, and

(2) in paragraphs (4) and (5) by striking “\$4,000” and inserting “\$10,000”.

SEC. 1402. FRAUDULENT TRANSFERS AND OBLIGATIONS.

Section 548 of title 11, United States Code, is amended—

(1) in subsections (a) and (b) by striking “one year” and inserting “2 years”,

(2) in subsection (a)—

(A) by inserting “(including any transfer to or for the benefit of an insider under an employment contract)” after “transfer” the 1st place it appears, and

(B) by inserting “(including any obligation to or for the benefit of an insider under an employment contract)” after “obligation” the 1st place it appears, and

(3) in subsection (a)(1)(B)(ii)—

(A) in subclause (II) by striking “or” at the end,

(B) in subclause (III) by striking the period at the end and inserting “; or”, and

(C) by adding at the end the following:

“(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.”.

SEC. 1403. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114 of title 11, United States Code, is amended—

(1) by redesignating subsection (l) as subsection (m), and

(2) by inserting after subsection (k) the following:

“(l) If the debtor, during the 180-day period ending on the date of the filing of the petition—

“(1) modified retiree benefits; and

“(2) was insolvent on the date such benefits were modified; the court, on motion of a party in interest, and after notice and a hearing, shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.”.

SEC. 1404. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) **EFFECTIVE DATE.**—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) **APPLICATION OF AMENDMENTS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this title shall apply only with respect to cases commenced under title 11 of the United States Code on or after the date of the enactment of this Act.

(2) **AVOIDANCE PERIOD.**—The amendment made by section 1402(1) shall apply only with respect to cases commenced under title 11 of the United States Code more than 1 year after the date of the enactment of this Act.

TITLE XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1501. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) **EFFECTIVE DATE.**—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) **APPLICATION OF AMENDMENTS.**—

(1) **IN GENERAL.**—Except as otherwise provided in this Act and paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

(2) **CERTAIN LIMITATIONS APPLICABLE TO DEBTORS.**—The amendments made by sections 308, 322, and 330 shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

SEC. 1502. TECHNICAL CORRECTIONS.

(a) **CONFORMING AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.**—Title 11 of the United States Code, as amended by the preceding provisions of this Act, is amended—

(1) in section 507—

(A) in subsection (a)—

(i) in paragraph (5)(B)(ii) by striking “paragraph (3)” and inserting “paragraph (4)”; and

(ii) in paragraph (8)(D) by striking “paragraph (3)” and inserting “paragraph (4)”;

(B) in subsection (b) by striking “subsection (a)(1)” and inserting “subsection (a)(2)”; and

(C) in subsection (d) by striking “subsection (a)(3)” and inserting “subsection (a)(1)”;

(2) in section 523(a)(1)(A) by striking “507(a)(2)” and inserting “507(a)(3)”;

(3) in section 752(a) by striking “507(a)(1)” and inserting “507(a)(2)”;

(4) in section 766—

(A) in subsection (h) by striking “507(a)(1)” and inserting “507(a)(2)”; and

(B) in subsection (i) by striking “507(a)(1)” each place it appears and inserting “507(a)(2)”; and

(5) in section 901(a) by striking “507(a)(1)” and inserting “507(a)(2)”;

(6) in section 943(b)(5) by striking “507(a)(1)” and inserting “507(a)(2)”;

(7) in section 1123(a)(1) by striking “507(a)(1), 507(a)(2)” and inserting “507(a)(2), 507(a)(3)”;

(8) in section 1129(a)(9)—

(A) in subparagraph (A) by striking “507(a)(1) or 507(a)(2)” and inserting “507(a)(2) or 507(a)(3)”;

(B) in subparagraph (B) by striking “507(a)(3)” and inserting “507(a)(1)”;

(9) in section 1226(b)(1) by striking “507(a)(1)” and inserting “507(a)(2)”;

(10) in section 1326(b)(1) by striking “507(a)(1)” and inserting “507(a)(2)”.

(b) RELATED CONFORMING AMENDMENT.—Section 6(e) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff(e)) is amended by striking “507(a)(1)” and inserting “507(a)(2)”.

In the table of contents strike the items relating to titles XIV and XV, and insert the following items:

TITLE XIV—PREVENTING CORPORATE BANKRUPTCY ABUSE

Sec. 1401. Employee wage and benefit priorities.

Sec. 1402. Fraudulent transfers and obligations.

Sec. 1403. Payment of insurance benefits to retired employees.

Sec. 1404. Effective date; application of amendments.

TITLE XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Sec. 1501. Effective date; application of amendments.

Sec. 1502. Technical corrections.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BALDWIN OF WISCONSIN, OR HER DESIGNEE, DEBATABLE FOR 60 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protection of Family Farmers and Family Fisherman Act of 2004”.

SEC. 2. PERMANENT REENACTMENT OF CHAPTER 12.

(a) PERMANENT REENACTMENT.—

(1) REENACTMENT.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), and as in effect on December 31, 2003, is hereby reenacted.

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

(b) EFFECTIVE DATE OF REENACTMENT.—Subsection (a) shall take effect on January 1, 2004.

SEC. 3. DEBT LIMIT INCREASE.

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

SEC. 4. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

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

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

“(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor’s farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

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

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

(c) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to cases commenced under title 11 of the United States Code before such date.

SEC. 5. DEFINITION OF FAMILY FARMER.

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

(1) in subparagraph (A)—

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

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

(2) in subparagraph (B)(ii)—

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

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

SEC. 6. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

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

“for—

“(i) the taxable year preceding; or

“(ii) each of the 2d and 3d taxable years preceding; the taxable year”.

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

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

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

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

(3) by adding at the end the following:

“(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that

the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.”.

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

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

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

“(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

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

SEC. 8. FAMILY FISHERMEN.

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

(1) by inserting after paragraph (7) the following:

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

“(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

“(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A);

“(7B) ‘commercial fishing vessel’ means a vessel used by a family fisherman to carry out a commercial fishing operation;”;

and

(2) by inserting after paragraph (19) the following:

“(19A) ‘family fisherman’ means—

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

“(i) whose aggregate debts do not exceed \$1,500,000 and not less than 80 percent of whose aggregate non-contingent, liquidated 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

“(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 non-contingent, 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 the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

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

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

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

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

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

(2) in section 1203, by inserting “or commercial fishing operation” after “farm”; and

(3) in section 1206, by striking “if the property is farmland or farm equipment” and inserting “if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel)”.

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

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

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