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## **An Agricultural Law Research Note**

### **Chapter 12 Bankruptcy: On Again, Off Again**

by

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### Chapter 12 Bankruptcy: On Again, Off Again

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Chapter 12 again expired on January 1, 2004. Its most recent six-month extension provided temporary authorization through December 31, 2003 only. Public Law 108-73, 117 Stat. 891 (2003). Although its reauthorization is not itself controversial, Chapter 12 continues to be used as a pawn in the debate over bankruptcy reform.

Chapter 12 has always been a temporary chapter of the Bankruptcy Code. This temporary status, combined with the short-term extensions and frequent lapses in authorization, have made bankruptcy planning difficult for farmers and their attorneys. This article summarizes the history of Chapter 12 and its various extensions.

Chapter 12, *Adjustment of Debts of a Family Farmer with Regular Annual Income*, was first enacted in October, 1986, with a sunset provision for repeal on October 1, 1993. *Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986*, Pub. L. No. 99-554, tit. II, § 255, 100 Stat. 3088, 3105-3113 (1986) (codified at 11 U.S.C. §§ 1201 - 1231). Shortly before it sunset, Chapter 12 was extended for another five years, to October 1, 1998. *Farm Bankruptcies, Extension*, Pub. L. No. 103-65, 107 Stat. 311 (1993).

During this extension, Congress began its debate on overall bankruptcy reform. The National Bankruptcy Review Commission was formed to study bankruptcy law and to suggest necessary reforms. *Bankruptcy Reform Act of 1994*, Pub. L. No. 103-394, 108 Stat. 4106 (1994). The Commission's final report was issued in 1997 and included the recommendation that Chapter 12 be made permanent. National Bankruptcy Review Commission Final Report, <http://govinfo.library.unt.edu/nbrc/default.html>. Although other aspects of bankruptcy reform generated controversy, the Chapter 12 recommendation did not. The National Bankruptcy Review Commission Report was not adopted by Congress, and Chapter 12 officially sunset at the end of its extension, on October 1, 1998.

Chapter 12 was resurrected with a six-month retroactive extension as part of an omnibus appropriations bill passed later in October, 1998. *Omnibus Consolidated and Emergency Supplemental Appropriations Act*, Pub. L. 105-277, div. C, tit. 1, § 149, 112 Stat. 2681, 2681-610-11 (1999). On March 30, 1999, one day before sunset, another short-term extension was enacted. *Bankruptcy: Extension of Reenactment of Chapter 12, Family Farmers Indebtedness*, Pub. L. No. 106-5, 113 Stat. 9 (1999). This extension provided a six-month extension to October 1, 1999. Meanwhile, comprehensive bankruptcy reform legislation containing Chapter 12 permanency provisions continued to be debated.

Chapter 12 sunset on October 1, 1999, but was resurrected shortly thereafter for another nine months. *Bankruptcy - Extension of Family Farmer Debt Adjustment*, Pub.L. 106-70, S 1, 113 Stat. 1031 (1999). However, Congress did not take action to stop the July 1, 2000 sunset. Chapter 12 was repealed as of that date and was not resurrected for almost a year.

On May 11, 2001, Congress revived Chapter 12 with an eleven-month extension. *Bankruptcy, Chapter 12- Reenactment*, Pub.L. 107-8, S 1, 115 Stat. 10 (2001). However, because the effective date

applied retroactively back to the previous sunset, the bill only extended Chapter 12 from May 11 to June 1, 2001.

Chapter 12 again sunset on June 1, 2001. On June 26, 2001, it was reenacted for six months, until October 1, 2001. *Bankruptcy, Chapter 12- Reenactment*, Pub.L. 107-17, 115 Stat. 151 (2001). It again sunset in October, 2001, and was not reenacted until May, 2002. *Bankruptcy, Chapter 12- Reenactment*, Pub.L. 107-170, S. 1, 116 Stat. 133 (2002). Again, because of a retroactive provision, the reenactment only provided authorization for a few days, until June 1, 2002. The 2002 Farm Bill, enacted May 13, 2002, provided additional authority, extending Chapter 12 until January 1, 2003. Pub. L. No. 107-171, tit. X, § 10814(a), 116 Stat. 532 (2002).

Congress continued its debate of the overall bankruptcy reform bill, a bill which included provisions to make Chapter 12 a permanent part of the Bankruptcy Code. As reform negotiations stalled, the House passed a bill that authorized another six-month extension of Chapter 12. *Protection of Family Farmers Act of 2002*, H.R. 5472. Representative Tim Holden (D-Pa.) spoke on behalf of the reenactment but expressed the following concerns.

I rise to reluctantly offer my support for H.R. 5472, the Family Farmer Protection Act of 2002. I say "reluctantly" because the legislation before us today is an incomplete solution to a problem that has existed for more than 5 years. . . . The bill we are considering today marks the sixth time we are ignoring the 1997 recommendation and are instead extending chapter 12 on a temporary basis. It does not make sense. Chapter 12 is by no means a controversial issue. . . . For 5 years now, family farmers have been held hostage by the contentious debate surrounding the larger bankruptcy issue. For years they have been made to sit on pins and needles waiting to see if Congress will extend these protections for another few months until we reach the next legislative hurdle on the larger bankruptcy issue.

148 CONG. REC. H6849 (daily ed. Oct. 1, 2002) (statement of Rep. Holden).

The *Protection of Family Farmers Act of 2002* that was passed by the House was not immediately considered by the Senate. In late October, it appeared that overall bankruptcy reform legislation was on the verge of passage. On November 15, 2002, however, the Conference Committee Report on that legislation was defeated in the House. *Bankruptcy Abuse Prevention and Consumer Protection Act of 2001*, H.R. 333, House vote on Nov. 15, 2002. On November 20, 2002, in light of this defeat, the Senate considered the legislation to temporarily extend Chapter 12. Before that vote, Senator Patrick Leahy expressed his frustration with the process by stating, "[u]nfortunately, too many family farmers have been left in legal limbo in bankruptcy courts across the country because Chapter 12 of the Bankruptcy Code is still a temporary measure. . . . Our family farmers do not deserve these lapses in bankruptcy law that could mean the difference between foreclosure and farming." 148 CONG. REC. S11792 (Nov. 20, 2002)(statement of Sen. Leahy).

The Senate passed the temporary reauthorization of Chapter 12 by unanimous consent, and President Bush signed it on December 19, 2002. Pub.L. 107-377, 116 Stat. 3115 (2002). This bill extended Chapter 12 Bankruptcy for six months, from January 1, 2003 to July 1, 2003. Pub. L. 107-377, 116 Stat. 3115 (2002). Without this extension, Chapter 12 would have expired on December 31, 2002.

On June 23, 2003, the House passed a bill extending Chapter 12 Bankruptcy for six months, providing authorization from July 1, 2003 through December 31, 2003. *Family Farmer Relief Act of 2003*, H.R. 2465. The bill passed the House by a vote of 379-3. Nevertheless, the Senate failed to act, and Chapter 12 sunset on July 1, 2003. On July 31, 2003, the Senate passed an extension by unanimous consent, resurrecting Chapter 12. It was signed into law by President Bush on August 15 and became

Public Law 108-73, 117 Stat. 891 (2003). On January 1, 2004, this extension came to an end and Chapter 12 once again expired.

Just prior to the expiration, both Houses of Congress considered Chapter 12 extensions. Although two different bills were proposed in the House, neither passed before the end of the session. H.R. 3540, 108<sup>th</sup> Cong. (2003) (providing for a one-year extension); H.R. 3542, 108<sup>th</sup> Cong. (2003) (providing a six month extension). The Senate, however, passed a six-month extension by unanimous consent on November 25, 2003. S. 1920, 108<sup>th</sup> Cong. (2003). On December 8, the Senate bill was referred to the House Committee on the Judiciary and then on to the Subcommittee on Commercial and Administrative Law. See, <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN01920:@@S>.

However, when the House considered S. 1920, House Republicans orchestrated efforts to switch the legislative focus back to overall bankruptcy reform. On January 28, 2004, in an unusual procedural move, House Judiciary Chairman James Sensenbrenner (R-Wis.) substituted the entire text of the omnibus bankruptcy bill, the Bankruptcy Abuse and Consumer Protection Act of 2003 (H.R. 975), in place of the Chapter 12 extension language in S. 1920. This bill, with the substituted language, passed the House 265 - 99. As of this writing, it is not clear whether this procedural tactic will in fact force the Senate into conference on the reform bill. However, Chapter 12 is once again caught up in the debate over reform and remains unavailable to family farmers.

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