This is an unofficial transcription of a 1940 amendment of the 1898 Act, prepared by Robert J. Pfister for ease of reading and copying/pasting. The authoritative text is the United States Statutes at Large.

Seventy-Sixth Congress, Session III
Chapter 438 — 54 Stat. 667 — Public, No. 669 (H.R. 9139)
June 28, 1940

AN ACT *To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 81 of chapter IX of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended, is amended to read as follows:

"SEC. 81. This Act and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the taxing agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levied against and constituting liens upon property in any of said taxing agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such taxing agencies or instrumentalities from the sale of water or power or both, or (d) from any combination thereof: (1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts, such as sewer, paving,

sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts, such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public-school facilities; or (5) local improvement districts, such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any county or parish or any city, town, village, borough, township, or other municipality: *Provided, however,* That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding."

SEC. 2. Section 83(b) of chapter IX of such Act, as amended, is amended to read as follows:

"(b) Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond

dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or, if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed at least sixty days before the date fixed for the hearing.

"At any time not less than ten days prior to the time fixed for the hearing, any creditor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the percentage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge shall decide the issues presented and unless the material allegations of the petition are sustained shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and interests: *Provided, however,* That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

"At the hearing, or a continuance thereof, the judge may refer any matters to a special master for consideration, the taking of testimony, and a report upon special issues, and may allow reasonable compensation for the services performed by such special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing: *Provided, however,* That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any order making such determination or award to the United States circuit court of appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily.

"On thirty days' notice by any creditor to petitioner, the judge, if he finds that the proceeding has not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the proceeding."

SEC. 3. Section 83(e) of chapter IX of such Act as amended, is amended to read as follows:

"(e) Before concluding the hearing, the judge shall carefully examine all of the contracts, proposals, acceptances, deposit agreements, and all other papers relating to the plan, specifically for the purpose of ascertaining if the fiscal agent, attorney, or

other person, firm, or corporation promoting the composition, or doing anything of such a nature, has been or is to be compensated, directly or indirectly, by both the petitioner and the creditors thereof, or any of such creditors—either by fee, commission, or other similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue—and shall take evidence under oath to make certain whether or not any such practice obtains or might obtain.

"After such examination the judge shall make an adjudication of this issue, as a separate part of his interlocutory decree, and if it be found that any such practice be possible, he shall forthwith dismiss the proceeding and tax all of the costs against such fiscal agent, attorney, or other person, firm, or corporation promoting the composition, or doing anything of such a nature, or against the petitioner, unless such plan be modified within the time to be allowed by the judge so as to eliminate the possibility of any such practice, in which event the judge may proceed to further consideration of the confirmation of the plan. If it be found that no such practice is possible, then the judge may proceed to further consideration of the confirmation of the plan.

"At the conclusion of the hearing, the judge shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if satisfied that (1) it is fair, equitable, and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (2) complies with the provisions of this chapter; (3) has been accepted and approved as required by the provisions of subdivision (d) of this section; (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and (6) the petitioner is authorized by law to take all action necessary to be

taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding.

"Before a plan is confirmed, changes and modifications may be made therein, with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified: *Provided, however,* That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken, the running of such time shall be suspended in case of an appeal until final determination thereof. In case said decree is affirmed, the judge may grant such time as he may deem proper for the taking of such action."

SEC. 4. Section 84 of chapter IX of such Act, as amended, is amended to read as follows:

"SEC. 84. Jurisdiction conferred on any court by section 81 shall not be exercised by such court after June 30, 1942, except in respect of any proceeding initiated by filing a petition under section 83(a) on or prior to June 30, 1942."

APPROVED, June 28, 1940.