This is an unofficial transcription of the Referees' Salary Act of 1946, prepared by Robert J. Pfister for ease of reading and copying/pasting. The authoritative text is the United States Statutes at Large.

Seventy-Ninth Congress, Session II
Chapter 512 — 60 Stat. 323 — Public Law 464 (H.R. 4160)
June 28, 1946

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 (a) section 1 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 by inserting after paragraph (5) the following new paragraph:

"(5a) 'Circuit' shall mean 'judicial circuit' and shall include the District of Columbia, and 'senior circuit judge' shall include the Chief Justice of the United States Court of Appeals for the District of Columbia;".

(b) Such section 1 is further amended by inserting after paragraph (7) the following new paragraph:

"(7a) 'Conference' shall mean the conference of senior circuit judges provided for by section 2 of the Act of September 14, 1922 (42 Stat. 838);".

(c) Such section 1 is further amended by inserting after paragraph (8) the following new paragraph:

"(8a) 'Council' shall mean the judicial council of the circuit provided for by section 306 of the United States Judicial Code;".

(d) Such section 1 is further amended by inserting after paragraph (14) the following new paragraph:

"(14a) 'Director' shall mean the Director of the Administrative Office of the United States Courts appointed pursuant to chapter XV of the United States Judicial Code;".

SEC. 2. Section 34 of such Act, as amended, is amended to read as follows:

"SEC. 34. APPOINTMENT, REAPPOINTMENT, AND REMOVAL OF REFEREES.—

"a. APPOINTMENT.—The judges of the several courts of bankruptcy shall appoint referees. Where there is more than one judge of a court of bankruptcy, or where the territory to be served by a referee includes territory in more than one judicial district, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such court or of the courts of bankruptcy of such judicial districts, and where there is no such concurrence, then by the senior judge. Except as otherwise provided in section 37 of this Act, each appointment and reappointment shall be for a term of six years.

"b. REMOVAL.—Removal of a referee during the term for which he is appointed shall be only for incompetency, misconduct, or neglect of duty: *Provided, however,* That, in the case of a part-time referee, an additional cause for removal shall be that his services are not needed. Any cause for removal in respect of any referee coming to the knowledge of the Director shall be reported by him to the judge or judges of the judicial district or districts in which such referee serves, and a copy of such report shall at the same time be transmitted to the council and to the referee. Such judge or judges may, upon receipt of such report, or upon their own motion, remove the referee for any one or more of the above mentioned causes; where there is more than one judge, such removal shall be by a concurrence of a majority of the judges, and where there is no such concurrence, then by the council. Before any order of removal shall be entered, except in the case of a part-time referee where the cause for removal is that his services are not needed, a full specification of the charges shall be furnished

to the referee, and he shall be accorded by the removing judge or judges an opportunity to be heard on the charges.

SEC. 3. Section 35 of such Act, as amended, is amended to read as follows:

"SEC. 35. QUALIFICATIONS OF REFEREES.—Individuals shall not be eligible to appointment as referees unless they are (1) competent to perform the duties of a referee in bankruptcy; (2) not holding any office of profit or emolument under the laws of the United States or of any State or subdivision thereof other than conciliation commissioner or special master under this Act: *Provided, however,* That part-time referees may be commissioners of deeds, United States commissioners, justices of the peace, masters in chancery, notaries public, or either conciliation commissioners or supervising conciliation commissioners but not both; (3) at the time when originally appointed not relatives of any of the judges of the courts of bankruptcy or of the justices or judges of the appellate courts of the districts wherein they may be appointed; (4) resident and have their offices within the judicial district of the court or one of the courts of bankruptcy under which they are to hold appointment: *Provided, however,* That where a referee shall be temporarily transferred or permanently appointed to another judicial district, residence or office in such other district shall not be requisite for eligibility; and (5) members in good standing at the bar of the district court of the United States in which they are first appointed or, if appointed to serve in territory within more than one judicial district, at the bar of one of such district courts: *Provided, however,* That the requirement of membership at such bar shall not apply to referees holding office on the date when this amendatory Act takes effect."

SEC. 4. Section 37 of such Act, as amended, is amended to read as follows:

"SEC. 37. NUMBER AND TERRITORIES OF REFEREES.—a. The Director shall recommend to the district judges, the councils and the conference the number of referees to hold appointment and the territory which each shall serve, after he has made a careful study of conditions throughout the country as a whole, and of local conditions, including the estimated amount of funds available for salaries, the areas and the populations to be served, the transportation and communication facilities, the previous types and amount of business under this Act in such areas and where such business is centered, the existing personnel, and any other material factors. The territory of a referee may, if it is deemed advisable, lie within more than one judicial district, but shall be within one circuit: *Provided, however,* That the jurisdiction of a referee in any matter referred to him shall not be restricted to the territory to be served by him but shall, unless otherwise provided in this Act, be coextensive with the territorial jurisdiction of the court or courts of bankruptcy whose judges participated in appointing him.

"b. (1) The Director shall, within one year immediately following the date of the enactment of this amendatory Act, make the initial surveys required by subdivision a of this section, and required for subdivisions a and c of section 40, paragraph (2) of section 633, and paragraph (3) of section 659 of this Act. Thereafter, the Director shall, from time to time, make such surveys, general or local, as the conference shall deem expedient. In the course of such surveys, the Director shall give consideration to suggestions from any interested parties, including district judges, referees, bar associations, trade associations, and the like. The surveys shall be made with a view toward creating and maintaining a system of full-time referees. However, should the Director find, as a result of any such surveys, any area in which the employment of a full-time referee would not be feasible because of the small amount of business under this Act and the extent of the territory to be served, he shall also report separately thereon, with a statement of all the pertinent facts and data and his recommendations

and the reasons therefor. Upon the completion of the initial surveys, the Director shall report to the district judges, the councils and the conference concerning the number of referees, their respective territories, the amounts of their respective salaries, and the schedules of additional fees to be charged in asset, arrangement and wage-earner cases. The district judges shall advise their respective councils, and the councils shall advise the conference, in respect thereto, stating their recommendations and their reasons therefor. The conference shall determine, in the light of the recommendations of the Director and of the councils, the number of referees, full-time and part-time, to be appointed, the respective territories which they shall serve, including the regular place of office and the places at which courts shall be held, their respective salaries, and schedules of graduated additional fees to be charged in asset, arrangement and wage-earner cases, and such determinations shall become effective sixty days after they are promulgated by the conference.

"(2) The Director shall upon such promulgation divide by lot the total number of referees first to be appointed as equally as possible into three classes. The initial terms of the referees in the first class shall expire at the end of the second year, in the second class at the end of the fourth year, and in the third class at the end of the sixth year.

"(3) Thereupon the Director shall report in writing to the judge or judges of the several courts of bankruptcy the number of referees to be appointed by them in each of the three classes above specified, the respective territories which such referees shall serve, and the respective salaries to be paid to them. The judge or judges shall thereupon appoint, pursuant to subdivision a of section 34 of this Act such referees in each of the specified classes for terms commencing sixty days after such promulgation of the determinations of the conference, and shall select them as far as practicable from the referees then in office within their respective judicial districts.

"c. Except as otherwise provided in this Act, the conference may, from time to time, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, change the number of referees and the extent of the respective territories to be served by them, as the expeditious transaction of the business of the several courts of bankruptcy may require."

SEC. 5. Subdivision b of section 39 of such Act, as amended, is amended to read as follows:

"b. Referees shall not (1) act in cases in which they are directly or indirectly interested; or (2) purchase, directly or indirectly, any property of an estate in any proceeding under this Act. Active full-time referees shall not exercise the profession or employment of counsel or attorney, or be engaged in the practice of law. Active part-time referees, and referees receiving benefits under paragraph (1) of subdivision d of section 40 of this Act, shall not practice as counsel or attorney in any proceeding under this Act."

SEC. 6. Section 40 of such Act, as amended, is amended to read as follows:

"SEC. 40. COMPENSATION OF REFEREES; REFEREES' SALARY AND EXPENSE FUNDS; RETIREMENT OF REFEREES. a. Referees shall receive as full compensation for their services salaries to be fixed by the conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, at rates not more than $10,000 per annum for full-time referees, and not more than $5,000 per annum for part-time referees. In fixing the amount of salary to be paid to a referee, consideration shall be given to the average number and the types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the referee is to serve, during the last preceding period

of ten years, and to such other factors as may be material. Disbursement of such salaries shall be made monthly by or pursuant to the order of the Director.

"b. The conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, may increase or decrease any salary, within the limits prescribed in subdivision a of this section, if there has been a material increase or decrease in the volume of business or other change in the factors which may be considered material in fixing salaries: *Provided, however,* That during the tenure of any full-time referee his salary shall not be reduced below that at which he was originally appointed under this amendatory Act, and during any term of any such referee his salary shall not be reduced below the salary fixed for him at the beginning of that term: *And provided further,* That no salary fixed under the provisions of this section for a full-time referee shall be changed more often than once in any two years or in an amount of less than $250.

"c. (1) Except as otherwise provided in this Act, there shall be deposited with the clerk, at the time the petition is filed in each case, and at the time an ancillary proceeding is instituted, (a) $17 for each estate for the referees' salary fund, and (b) $15 for each estate for the referees' expense fund, as hereinbelow established: *Provided, however,* That in cases of voluntary bankruptcy such fees, as well as the filing fees of the clerk and trustee, may be paid in installments, if so authorized by General Order of the Supreme Court of the United States.

"(2) Additional fees for the referees' salary fund and for the referees' expense fund shall be charged, in accordance with the schedules fixed by the conference (a) against each estate wholly or partially liquidated in a bankruptcy proceeding, and be computed upon the net proceeds realized; (b) against each case in an arrangement confirmed under chapter XI of this Act, and be computed upon the amount to be paid to the unsecured creditors upon confirmation of the arrangement and thereafter,

pursuant to the terms of the arrangement, and, where under the arrangement any part of the consideration to be distributed is other than money, upon the amount of the fair value of such consideration; and (c) against each case in a wage-earner plan confirmed under chapter XIII of this Act, and be computed upon the payments actually made by or for a debtor under the plan. Such schedules of fees may be revised by the Director, with the approval of the conference, not more than once during each calendar year, so that the total amount of fees, allowances and charges collected and to be collected from all sources for the referees' salary fund and for the referees' expense fund will, as near as may be, equal for each fund, respectively, the total amount of salaries paid and to be paid to referees in active service, and the total amount of their expenses: *Provided, however,* That such schedules of fees shall not be so revised for any year that the total collections estimated by the Director for such year shall exceed by more than 10 per centum the total collections in the preceding year. The Director, with the approval of the conference, may make, and from time to time amend, rules and regulations prescribing methods for determining net proceeds realized in asset cases, fair values of considerations, other than money, distributable in arrangement cases, and payments actually made by or for a debtor under the plan in wage-earner cases; prescribing the procedure for collection by the clerk of fees and allowances for the referees' salary fund and the referees' expense fund; and providing for the effective administration of the provisions of this paragraph (2).

"(3) Charges for the expense of special services relating to or in connection with proceedings before referees shall be made and collected by the referees in accordance with regulations to be prescribed by the Director, with the approval of the conference, and the proceeds shall be paid by the referees to the clerk for transmission to the Treasury of the United States for deposit in the referees' expense fund.

"(4) A referee's salary fund and a referee's expense fund shall be established in the Treasury of the United States, and the amounts of the various fees and allowances collected by the clerks for the services of referees, and for their expenses, including the fees, allowances and charges for their services and expenses as conciliation commissioners and as special masters under this Act, shall be covered into the Treasury of the United States for the account of such salary fund and expense fund. The salaries of the referees in active service shall be paid out of annual appropriations from such salary fund, and the expenses of the referees, including the salaries of their clerical assistants, shall be paid out of annual appropriations from such expense fund, by the United States. Any deficiencies of such salary fund or expense fund shall be paid out of any funds in the Treasury of the United States not otherwise appropriated, and appropriations to pay such deficiencies are hereby authorized: *Provided, however,* That there shall be covered into miscellaneous receipts of the Treasury of the United States in any subsequent year so much of the surplus, if any, arising in the salary fund or expense fund respectively as may be necessary to reimburse the Treasury of the United States for payments made on account of such respective funds in any prior year.

"(5) As of the day preceding the date when the referees, as provided by paragraph (2) of subdivision b of section 37 of this Act, are to take office, an allocation shall be made by the judge or judges of the several courts of bankruptcy of all filing and other fees, commissions, and allowances, and of all expense funds, due the then existing referees for services rendered and expenses incurred in the cases pending before them, whether as referee, conciliation commissioner, or special master under this Act. The balances of such filing and other fees, commissions, and allowances and the expense surpluses shall be covered into the Treasury of the United States by the referees and the clerks, to be deposited to the credit of the respective salary and expense funds. All cases pending before outgoing referees shall be rereferred, and no

additional filing fees shall be required, but additional salary and expense charges may be assessed in such cases in such amounts as the judge or judges of the several courts of bankruptcy may deem equitable, taking into consideration the schedules of additional fees fixed by the Director and the payments previously made therein.

"d. (1) All referees in bankruptcy and employees in the offices of such referees shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of section 3 of the Civil Service Retirement Act of May 29, 1930, as amended.

"(2) Any referee who has retired or been retired under the provisions of paragraph (1) of this subdivision d may, if called upon by a judge of a court of bankruptcy, perform, without compensation, such duties of a referee, conciliation commissioner or special master under this Act, within the jurisdiction of such court, as such referee may be able and willing to undertake: *Provided, however,* That when so acting, compensation for his services shall be allowed and paid or deposited and his expenses shall be allowed and paid, as in the case of an active referee."

SEC. 7. Section 43 of such Act, as amended, is amended to read as follows:

"SEC. 43. a. VACANCIES; REFEREE'S ABSENCE OR DISABILITY.—Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the clerk of the district court in which the territory or any part of the territory served by such referee is located shall immediately notify the Director of such fact.

"b. Whenever the office of a referee is vacant, the Director shall recommend to the district judges, the councils and the conference whether a new appointment should be made, and no such appointment shall be made until authorized by the conference.

"c. Whenever the office of a referee is vacant or its occupant is temporarily absent or disqualified to act, or whenever the expeditious transaction of the business of the court or courts of bankruptcy may require, the judge, or any one of the judges, may act, or another referee holding appointment under such court or courts of bankruptcy may be designated by the judge, or by a concurrence of a majority of the judges where there is more than one judge, and where there is no such concurrence, then by the council, to act; or the council may designate another referee from within the same circuit to act, or the council may order that pending cases be rereferred and future cases referred to one or more referees within the same circuit; or the conference may temporarily assign a referee from another circuit to act."

SEC. 8. (a) Clause (2) of section 51 of such Act, as amended, is amended to read as follows:

"(2) collect the fees of the clerk and trustee and the fees for the referees' salary fund and referees' expense fund provided in paragraph (1) of subdivision c of section 40 of this Act in each case instituted before filing the petition, except where installment payments may be authorized pursuant to section 40 of this Act, and collect the various other fees, allowances and charges for the services of referees and for their expenses, including their services and expenses as conciliation commissioners and as special masters under this Act;".

(b) Clause (5) of such section is amended to read as follows:

"(5) transmit to the Treasury of the United States all fees, allowances and charges collected for the referees' salary fund and the referees' expense fund, and transmit to the trustee, within ten days after a case has been closed, the fee collected for him at the time of the filing of the petition."

SEC. 8A. Subdivision a of section 52 of such Act, as amended, is amended to read as follows:

"SEC. 52A. Clerks shall charge and collect for their services to each estate, whether in a court of primary or ancillary jurisdiction, a filing fee of $8. The clerk may collect this amount in installments when such installment payments have been authorized by General Order of the Supreme Court of the United States."

SEC. 9. Section 53 of such Act, as amended, is amended to read as follows:

"SEC. 53. STATISTICS.—The Director annually shall lay before Congress statistical tables which will accurately reflect the business transacted by the several bankruptcy courts, a statement of the amounts received and disbursed for the referees' salary fund and referees' expense fund, and all other pertinent data."

SEC. 10. Section 54 of such Act, as amended, is hereby repealed.

SEC. 11. (a) Subdivision a of section 62 of such Act, as amended, is amended to read as follows:

"SEC. 62. EXPENSES OF ADMINISTERING ESTATES; UNAUTHORIZED SHARING OF FEES; WITHHOLDING ALLOWANCES.—a. (1) The actual and necessary costs and expenses incurred by officers, other than referees, in the administration of estates shall, except where other provisions are made for their payment, be reported in detail under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

"(2) The actual and necessary office and other expenses of referees shall be allowed when authorized and approved by the Director, including compensation of clerical, stenographic and other assistants of referees at rates to be fixed by the Director, taking into consideration the rates for comparable services prevailing in the respective

offices of the clerks of the several district courts, and the costs of establishing and maintaining their offices with equipment and supplies adequate for their efficient and economical operation, including mechanical equipment and devices and law libraries. Such expenses may be allowed when authorized by a judge of the judicial district or districts in which a referee serves in cases of emergency where it is not feasible to secure prior authorization of the Director. The Director, with the approval of the conference, may prescribe such rules and regulations as may be necessary for the purpose of carrying out the provisions of this paragraph (2).

"(3) When, in the opinion of the Director, the public interest requires it, he may, on the recommendation of a referee, which recommendation shall state facts showing the necessity for the same, allow the referee to employ necessary clerical, stenographic, and other assistants. The referee may at his pleasure remove any assistant in his employ. If the office of a referee shall become vacant, the employment of his assistants shall not thereupon be terminated: *Provided, however,* That during such vacancy the Director may terminate the employment of any assistant, if, in his opinion, the services of such assistant are no longer needed.

"(4) Referees and special masters under this Act shall be entitled to transmit in the mails, free of postage, under cover of a penalty envelope, all matters which relate exclusively to the business of the courts, including notices in proceedings under this Act."

(b) Subdivision b of such section is amended to read as follows:

"b. (1) When authorized and approved by the Director, the actual expenses of travel, and the actual expenses for lodging and subsistence not to exceed $7 per day, shall be allowed a referee while absent from his regular place of office on official business.

"(2) When authorized and approved by the Director, the assistants of referees shall be entitled to the same travel allowances as are provided for employees of the executive branch of the United States Government under the standardized Government travel regulations issued by the President, while absent from their regular place of employment on official business.

"(3) Payment of the expenses allowed or per diem granted under subdivision b and paragraph (2) of subdivision a of this section 62 shall be by or pursuant to the order of the Director."

SEC. 12. Clause numbered (1) of subdivision a of section 64 of such Act, as amended, is amended to read as follows:

"(1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the fees for the referees' salary fund and for the referees' expense fund; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow;".

SEC. 13. Section 72 of such Act, as amended, is amended to read as follows:

"SEC. 72. LIMITATION OF COMPENSATION OF OFFICERS OF COURT.—No receiver, marshal, or trustee shall in any form or guise receive, nor shall the court allow him,

any other or further compensation for his services as required by this Act, than that expressly authorized and prescribed in this Act.

"No referee shall receive any compensation for his services under this Act other than his salary; and allowances made to a referee for compensation or expense while acting as a conciliation commissioner under section 75, or as a referee or special master under any chapter or section of this Act, shall be paid to the clerk, and by him transmitted to the Treasury of the United States for deposit in the referees' salary fund and referees' expense fund, respectively."

SEC. 14. Section 117 of such Act, as amended, is amended to read as follows:

"SEC. 117. The judge may, at any stage of a proceeding under this chapter, refer the proceeding to a referee in bankruptcy to hear and determine any and all matters not reserved to the judge by the provisions of this chapter, or to a referee as special master, to hear and report generally or upon specified matters. Only under special circumstances shall references be made to a special master who is not a referee. The appointment of a receiver in a proceeding under this chapter shall be by the judge."

SEC. 15. Paragraph numbered (3) of section 624 of such Act, as amended, is amended to read as follows:

"(3) where a petition is filed under section 622 of this Act, by payment to the clerk of $15 to be distributed, $10 to the Treasury of the United States for deposit in the referees' salary fund and $5 to the clerk, in lieu of the fees of $17 and $8 as prescribed in sections 40 and 52 of this Act: *Provided, however,* That such fees may be paid in installments, if so authorized by General Order of the Supreme Court of the United States."

SEC. 16. Paragraph numbered (2) of section 633 of such Act, as amended, is amended to read as follows:

"(2) the debtor shall submit his plan, and deposit with the clerk, for payment into the referees' expense fund a fee, not to exceed $15, to be graduated and charged in the manner outlined in paragraph (2) of subdivision c of section 40 of this Act: *Provided, however,* That such fee may be paid in installments, if so authorized by General Order of the Supreme Court of the United States".

SEC. 17. Paragraphs numbered (1) and (3), respectively, of section 659 of such Act, as amended, are amended to read as follows:

"(1) the costs of the referee as specified in paragraph (2) of section 633;".

"(3) an additional fee for the referees' salary fund, to be graduated and charged in the manner outlined in paragraph (2) of subdivision c of section 40 of this Act, and to be computed upon the amount of the payments actually made by or for a debtor under the plan; and commissions to the trustee of 5 per centum to be computed upon and payable out of the payments actually made by or for a debtor under the plan;".

SEC. 18. Sections 1 and 10 of this amendatory Act and so much of section 4 of this amendatory Act as amends subdivision b of section 37 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended, shall be effective upon approval of this amendatory Act. All other provisions of this amendatory Act shall become effective sixty days after promulgation of the determinations of the conference, as provided in the said subdivision b of section 37, as amended by this amendatory Act: *Provided, however,* That the references contained in paragraph (1) of subdivision b of section 37 as amended by this amendatory Act to "subdivision a of this section, and required for subdivisions a and c of section 40, paragraph (2) of section 633, and paragraph (3) of section 659

of this Act" are intended to refer to those subdivisions and paragraphs as they will be amended when sections 6, 16, and 17 of this amendatory Act become effective, and section 4 of this amendatory Act becomes fully effective.

SEC. 19. a. All Acts or parts of Acts inconsistent with any provisions of this amendatoryAct are hereby repealed.

b. Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act is amendatory.

c. If any provision of this amendatory Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act are declared to be severable.

d. Section and subdivision headings shall not be taken to govern or limit the scope of the sections or subdivisions to which they relate.

APPROVED June 28, 1946.