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82D CONGRESS
1st Session

SENATE

REPORT
No. 282

AMENDING SUBDIVISION A OF SECTION 34 OF THE BANKRUPTCY ACT, AS AMENDED

APRIL 23 (legislative day, APRIL 17), 1951.—Ordered to be printed

Mr. MCCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3291]

The Committee on the Judiciary, to which was referred the bill (H. R. 3291) to amend subdivision a of section 34 of the Bankruptcy Act, as amended, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to provide by statute that upon the expiration of the term of office of a referee in bankruptcy such referee shall continue to serve until a successor is appointed and qualifies.

STATEMENT

Under existing law, referees are appointed (except in a few unusual circumstances) for a term of 6 years. The statute does not contain a saving clause for their continuance in office. In the instances in which the judges empowered to make the appointment of such referees fail to make such appointment promptly, a lapse occurs in the office. There are probably few instances in which this law will be applicable, because in the great majority of cases the appointments will be made promptly. However, the committee is of the opinion that the provision proposed by this bill should be added to the law to prevent any lapse in referee service.

This matter was considered by the Judicial Conference of the United States at its September 1950 meeting, and the following is an excerpt

from the report of such Conference, wherein the Conference approves the matter herein proposed:

Referees—Tenure of service.—There should be a provision under the statute to the effect that a referee upon the expiration of his term of office shall continue to serve until a successor is appointed and qualifies. The purpose of this proposal is to prevent a lapse in referee service caused by a delay in the appointment of a referee upon expiration of his regular term of office. In order to so provide, the committee recommended that section 34a (11 U. S. C. 62a) be amended by adding the following sentence at the end of the paragraph:

"Upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies."

The Conference approved of the committee's recommendation, and approved of the proposed amendment to section 34a (11 U. S. C. 62a).

Also attached hereto and made a part of this report is a letter of March 7, 1951, from the Administrative Office of the United States Courts to the Vice President of the United States.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS,
March 7, 1951.

Hon. ALBEN W. BARKLEY,
Vice President of the United States,
Washington, D. C.

DEAR MR. VICE PRESIDENT: I have the honor to transmit for the consideration of the Senate of the United States, a bill to amend subdivision a of section 34 of the Bankruptcy Act as amended, by adding at the end thereof a new sentence providing that upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies provided the filling of the vacancy has been authorized by the Judicial Conference of the United States as provided in subdivision b of section 43 of the Bankruptcy Act.

Section 34a of the Bankruptcy Act as amended, now provides that the judges of the several courts of bankruptcy shall appoint referees. Under section 37b (2) of the Bankruptcy Act the total number of referees to be appointed was divided by lot into three classes, with terms to expire June 30, 1949, 1951, and 1953, respectively. When the terms of the referees of the first class expired on June 30, 1949, the sole district judge for the District of Utah, and the sole district judge for the Southern District of Iowa, had previously retired. Each had been assigned to serve in his former district, pending the appointment of a successor, but under the provisions of title 28, United States Code, section 296, a retired judge is prohibited from making appointments to statutory positions. The office of referee in bankruptcy at Salt Lake City remained vacant until November 28, 1949, and the office of the referee at Des Moines, until January 3, 1951.

It seems advisable that provision should be made similar to that contained in title 28, United States Code, section 504 relating to the tenure of office of the United States attorneys, to the effect that upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies provided the filling of the vacancy has been authorized by the Judicial Conference of the United States as provided in subdivision b of section 43 of the Bankruptcy Act.

This measure was approved by the Judicial Conference of the United States at its regular session held in Washington in September 1950 (p. 11 of the report of the regular annual meeting of the Judicial Conference of the United States, September 1950).

This bill has been approved also by the National Bankruptcy Conference, a voluntary organization composed of representatives of the American Bar Association, the American Bankers Association, the National Association of Referees in Bankruptcy, the Commercial Law League of America, the American Institute of Accountants, law teachers, and writers in the field of bankruptcy, representatives of the National Wholesale and Retail Credit Organizations and others interested in bankruptcy matters.

The purpose of this proposal is to prevent a lapse in referee service caused by the delay in the appointment of a referee upon the expiration of his regular term of office.

With great respect, I am,
Sincerely yours,

ELMORE WHITEHURST,
Assistant Director.

A BILL To amend subdivision a of section 34 of the Bankruptcy Act, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subdivision a of section 34 of the Bankruptcy Act, as amended, is hereby amended by adding at the end thereof the following additional sentence:

"Upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies provided the filling of the vacancy has been authorized by the Conference as provided in subdivision b of section 43 of this Act."

CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SEC. 62. APPOINTMENT, REAPPOINTMENT, AND REMOVAL OF REFEREES—

APPOINTMENT

(a) 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 65 of this title each appointment and reappointment shall be for a term of six years. *Upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies provided the filling of the vacancy has been authorized by the conference as provided in subdivision b of section 43 of this Act.*

REMOVAL

(b) 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. As amended June 28, 1946, c. 512, Sec. 2, 60 Stat. 324.

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