

MINNESOTA STATUTES 1947 ANNOTATIONS

JUDICIAL REMEDIES

DECLARATORY, CORRECTIVE, AND ADMINISTRATIVE REMEDIES

CHAPTER 555

UNIFORM DECLARATORY JUDGMENTS ACT

NOTE: The uniform declaratory judgments act was adopted and promulgated by the National Conference on Uniform State Laws, in 1922. It became a part of the statutes of Minnesota with the enactment of L. 1923, c. 286. The act has been adopted in the following states: Alabama, Arizona, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The federal declaratory judgments act and the procedure thereunder may be found in 28 USCA, section 400.

The nature, function, and history of declaratory judgments is treated in Part I of Borchard on Declaratory Judgments. The subject of justiciability is treated on Page 33, discretion on Page 61, and history beginning on Page 87. Further historical enlightenment may be found in Anderson on declaratory judgments, *Brindley v Meara*, 193 NE 301, 209 Ind. 144, 141 ALR 682; *Board of Education v Borgen*, 192 M 512, 257 NW 92; *State Farm Mutual v Skluzacek*, 208 M 443, 294 NW 413. Decisions relating to the principles of and practice under the act may be found listed and digested in Uniform Laws Annotated, Vol. 9, beginning on Page 217.

A declaratory judgment is neither an action at law nor a proceeding in equity but a proceeding *sui generis*. The proceeding was not known at common law. It was adapted from the civil law. Its history runs back more than 400 years in Scotland, and ever since 1852 in England. Laws similar in purpose have been enacted in some of the states prior to the adoption of the present uniform act.

The act is enacted to relieve litigants of the rule that no rights may be judicially adjudged until a right has been violated; it is enacted to provide a method whereby parties to a justiciable controversy may have such controversy determined by a court in advance of any invasion of rights. Declaratory judgments are intended to supplement, rather than supersede, ordinary causes of action and to relieve litigants of the common law rule that no rights may be judicially adjudged until a right has been violated. The act is fundamentally remedial and auxiliary, and its object is to supplant and enlarge procedural relief in a field not wholly or adequately occupied by subsisting remedies of law and equity. It is to supplement and not to supersede effective ordinary actions at law or suits in equity. It is an effort to provide a tribunal in which controversies may be determined which could not otherwise be presented for determination to a court having jurisdiction. It has been held in many jurisdictions that a proceeding for a declaratory judgment will not be entertained where another equally serviceable remedy has been provided for the character of the case in hand.

The American decisions have established that the proceedings must be advisory, all interested parties must be cited, the issue must be clear, the question practical and not academic, and the decision must finally settle and determine the controversy. It enables disputes arising out of written instruments or otherwise to be adjudicated without requiring a destruction of the status quo and of the social and economic fabric. It is clearly shown that a dispute can be adjudicated as effectively and more usefully before the status quo has been destroyed. Borchard, on Declaratory Judgments, Appendix 634.

MINNESOTA STATUTES 1947 ANNOTATIONS

1341

UNIFORM DECLARATORY JUDGMENTS ACT 555.01

In some states the act has been broadened either by modification of the statute or decision law until the act has become in fact an alternate remedy opening the door to adjudication of innumerable complaints and controversies not theretofore capable of judicial relief, or not theretofore prosecuted except for coercive relief. While in many states a declaratory judgment is denied where a specific statutory remedy for a special type of case has been provided, other states following the English practice have held that the declaratory judgments act is not an extraordinary remedy. The British courts finding that injunction, damages, or specific performance or other coercive relief requested cannot be given, often sua sponte grants instead of a declaration of rights, thus enabling the substantive issues to be decided and the case terminated. There is a growing flexibility of procedure in the American courts widening the scope of the declaratory judgments act.

In *State Farm Mutual v Skluzacek*, 208 M 443, 294 NW 413, the court held that under the uniform declaratory judgments act courts of record are given power within their respective jurisdictions "to declare rights, status and other legal relations whether or not further relief is or could be claimed." The court's jurisdiction may be invoked "by any person interested" under a written contract to "have determined any question of construction or validity arising under the instrument," and it may be so construed either before or after a breach thereof.

There is a wide distinction between the declaratory judgments procedure and the obtaining of an advisory opinion. The Declaratory Judgments Act must be distinguished from a declaratory statute. The constitutional right of trial by jury is not disturbed.

555.01 COURTS TO CONSTRUE RIGHTS.

The declaratory judgments act is not an extraordinary, but an alternative remedy where there is a justiciable controversy; and is available to a plaintiff seeking to determine whether L. 1945, c. 351, violates the provisions of Minnesota Constitution, art. 4, sections 33, 34, and 36. *Leighton v City of Minneapolis*, 222 M 516, 524, 25 NW(2d) 263.

He who invokes the power of the court to declare a statute unconstitutional by declaratory judgment must be able to show not only that the statute is invalid, but that he has sustained or is in danger of sustaining some direct injury as the result of its enforcement. In the absence of a justiciable controversy, the court has no jurisdiction to render a declaratory judgment. *State v Haveland*, 223 M 89, 25 NW(2d) 475.

Declaratory judgment. 5 MLR 32, 172.

Equity, declaratory judgments. 5 MLR 556.

Constitutionality of statute authorizing declaratory judgments. 6 MLR 327.

Constitutionality of declaratory judgment statutes. 16 MLR 559.

Current legislation. 18 MLR 62.

The uniform declaratory judgments act. 18 MLR 239.

Declaration of marriage status. 18 MLR 883.

Declaratory judgments. 19 MLR 716.

Scope of declaratory judgment procedure in federal courts. 21 MLR 424.

Declaratory judgments, declaration that an act is not a crime under a valid statute. 22 MLR 279.

Discretion to refuse jurisdiction of actions for declaratory judgments. 26 MLR 677.

Disability benefits; specific performance; declaratory judgment. 26 MLR 754.

Creditors' remedies relating to choses in action and corporate stock. 30 MLR 616.

MINNESOTA STATUTES 1947 ANNOTATIONS

555.02 UNIFORM DECLARATORY JUDGMENTS ACT

1342

Federal declaratory judgment act; and the construction of limitations upon the jurisdiction of the federal courts in state tax controversies under the 1937 amendment to the Johnson act. 25 MLR 643.

Atrocities of declaratory judgments law:

- I. Failure to appreciate the declaratory judgment as an alternative remedy.
- II. Failure to appreciate the declaratory judgment as a remedy based upon a justiciable controversy.
- III. Failure to recognize the declaratory judgment as a remedy sui generis.
- IV. Failure of users of the procedure to understand the basic and simple fundamentals of the law of this remedy. 31 MLR 575.

555.02 MAY HAVE INSTRUMENTS CONSTRUED.

In a suit under the declaratory judgment act to determine the proper interpretation of an indemnity policy issued to a gas company, the court reads the contract not as covering liability for, or defense of, suits brought to recover damages for deaths or injuries caused by asphyxiation or carbon monoxide poisoning due to fault in installations made by the gas company where the deaths and injuries occurred after the completion of the installation by the gas company. *Hutchinson Gas Co. v Phoenix Co.* 206 M 257, 288 NW 847.

A proceeding for a declaratory judgment must be based on a justiciable controversy for lack of which the appellate court will reverse for want of jurisdiction of the subject matter, although the point has nowhere been raised; and the fact that the attorney general has intervened does not make a justiciable controversy out of what was obviously not one as between the parties. *Seiz v Citizens Ice Co.* 207 M 277, 290 NW 802.

In the instant case the court had power under the act to entertain and determine the issues involved in the interpretation of a policy covering automobile liability insurance. *State Farm Mutual v Skluzacek*, 208 M 443, 294 NW 413.

This action under the declaratory judgment act presents a justiciable controversy touching the application of a rule of the civil service board to employees of the state highway department in respect to vacation with pay prior to promulgation of the rule. *Nollet v Hoffman*, 210 M 88, 297 NW 164.

555.04 WHO MAY ASK FOR CONSTRUCTION.

Discretion to refuse jurisdiction of actions for declaratory judgments. 26 MLR 677.

555.06 DISCRETIONARY.

Federal courts, discretion. 26 MLR 677.

555.07 REVIEW.

In this action under the declaratory judgments act to have a written agreement for furnishing electricity to plaintiff's dwelling in the city of Glencoe at prices not exceeding a specified maximum rate, during the life of defendant's franchise, adjudged void for want of consideration, the judgment of dismissal cannot be reversed where the proof fails to show want of consideration. *Macdanz v Northern States Power Co.* 206 M 510, 289 NW 58.

A proceeding for a declaratory judgment must be based on a justiciable controversy for lack of which the appellate court will reverse for want of jurisdiction of the subject matter, although the point has nowhere been raised. *Seiz v Citizens Ice Co.* 207 M 277, 290 NW 802.

Within its granted powers of licensing practitioners the board exercises quasi judicial functions. And since the act makes provision for notice and opportunity

MINNESOTA STATUTES 1947 ANNOTATIONS

1343

UNIFORM DECLARATORY JUDGMENTS ACT 555.13

to be heard, with right of review by appeal to the district court on questions of both law and fact so that any error may be corrected, injunctive relief will not be granted at the suit of one who has as his basis for relief merely the fear that proceedings to discipline him may be brought. *Fisch v Sivertsen*, 208 M 102, 292 NW 758.

555.09 ISSUES OF FACT MAY BE TRIED.

In the instant case the issue is limited to the validity of tax assessments to be made for the year 1939 and thereafter, a compromise having been accomplished of the 1937, 1938 taxes. L. 1925, c. 304, is a valid statute and does not violate the provisions of Minnesota Constitution, Article 9, Section 1, nor does it violate the fourteenth amendment of the federal constitution. The limitation of power to tax shares in national banks does not deprive the state of its power to tax corporations created by its own laws. *Cherokee State Bank v Wallace*, 202 M 582, 279 NW 410.

Under section 555.09 the right of jury trial in its appropriate sphere remains inviolate. *State Farm Mutual v Skluzacek*, 208 M 443, 294 NW 413.

In a proceeding under the declaratory judgments act being an action to apportion an award in gross made in a highway condemnation proceeding for the taking of a strip of land subject to a lease, the evidence justified a finding of a waiver of a provision in the lease for payment of taxes by the lessees. *Hockman v Lindgren*, 212 M 321, 3 NW(2d) 492.

Constitutionality of declaratory judgment statutes. 16 MLR 559.

Review of L. 1943, c. 25. 31 MLR 44.

555.11 PARTIES.

Necessary parties. 18 MLR 263.

555.12 REMEDIAL.

Discretion, when favorably exercised. 18 MLR 239, 262.

555.13 PERSON.

Jurisdiction and procedure. 18 MLR 248.