

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1941



ENROLLED

HOUSE BILL No. 310

(By Mr. James R. Ewing)



PASSED March 1, 1941

In Effect from Passage

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(BY MR. JAMES R. EWING)

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AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article designated article thirteen, to confer upon all courts of record jurisdiction to make binding declarations of rights and determine questions of construction; whether any consequential relief is or could be claimed or not, and to prescribe whether, and how, and with what effect proceedings seeking the exercise of such jurisdiction shall be brought and conducted, and how this act, known as the "Uniform Declaratory Judgments Act", shall be construed.

Be it enacted by the Legislature of West Virginia:

Section 1. Courts of record within their respective
2 jurisdictions shall have power to declare rights, status
3 and other legal relations whether or not further relief is

4 or could be claimed. No action or proceeding shall be
5 open to objection on the ground that a declaratory judg-
6 ment or decree is prayed for. The declaration may be
7 either affirmative or negative in form and effect; and
8 such declarations shall have the force and effect of a
9 final judgment or decree.

Sec. 2. Any person interested under a deed, will, writ-
2 ten contract, or other writings constituting a contract, or
3 whose rights, status or other legal relations are affected
4 by a statute, municipal ordinance, contract or franchise,
5 may have determined any question of construction or
6 validity arising under the instrument, statute, ordinance,
7 contract or franchise and obtain a declaration of rights,
8 status or other legal relations thereunder.

Sec. 3. A contract may be construed either before or
2 after there has been a breach thereof.

Sec. 4. Any person interested as or through an executor,
2 administrator, trustee, guardian or other fiduciary,
3 creditor, devisee, legatee, heir, next of kin or cestui que
4 trust, in the administration of a trust, or of the estate of
5 a decedent, an infant, lunatic or insolvent, may have a

6 declaration of rights or legal relations in respect thereto;

7 (a) To ascertain any class of creditors, devisees,
8 legatees, heirs, next of kin or others; or

9 (b) To direct the executors, administrators, or trus-
10 tees to do or abstain from doing any particular act in their
11 fiduciary capacity; or

12 (c) To determine any question arising in the adminis-
13 tration of the estate or trust, including questions of con-
14 struction of wills and other writings.

Sec. 5. The enumeration in sections two, three, and
2 four does not limit or restrict the exercise of the general
3 powers conferred in section one, in any proceeding where
4 declaratory relief is sought, in which a judgment or de-
5 cree will terminate the controversy or remove an un-
6 certainty.

Sec. 6. The court may refuse to render or enter a
2 declaratory judgment or decree where such judgment or
3 decree, if rendered or entered, would not terminate the
4 uncertainty or controversy giving rise to the proceeding.

Sec. 7. All orders, judgments and decrees under this

2 act may be reviewed as other orders, judgments and de-
3 crees.

Sec. 8. Further relief based on a declaratory judgment
2 or decree may be granted whenever necessary or proper.
3 The application therefor shall be by petition to a court
4 having jurisdiction to grant the relief. If the application
5 be deemed sufficient, the court shall on reasonable notice,
6 require any adverse party whose rights have been adjudi-
7 cated by the declaratory judgment or decree, to show
8 cause why further relief should not be granted forth-
9 with.

Sec. 9. When a proceeding under this act involves the
2 determination of an issue of fact, such issue may be tried
3 and determined in the same manner as issues of fact are
4 tried and determined in other civil actions in the court
5 in which the proceeding is pending.

Sec. 10. In any proceeding under this act the court may
2 make such award of costs as may seem equitable and
3 just.

Sec. 11. When declaratory relief is sought, all persons
2 shall be made parties who have or claim any interest

3 which would be affected by the declaration, and no
4 declaration shall prejudice the rights of persons not
5 parties to the proceeding. In any proceeding which in-
6 volves the validity of a municipal ordinance or franchise,
7 such municipality shall be made a party, and shall be
8 entitled to be heard, and if the statute, ordinance or
9 franchise is alleged to be unconstitutional, the attorney
10 general of the state shall also be served with a copy of
11 the proceeding and be entitled to be heard.

Sec. 12. This act is declared to be remedial; its pur-
2 pose is to settle and to afford relief from uncertainty and
3 insecurity with respect to rights, status and other legal
4 relations; and is to be liberally construed and adminis-
5 tered.

Sec. 13. The word "person", wherever used in this
2 act, shall be construed to mean any person, partnership,
3 joint stock company, unincorporated association or so-
4 ciety, or municipal or other corporation of any character
5 whatsoever.

Sec. 14. The several sections and provisions of this act,
2 except sections one and two, are hereby declared inde-

3 pendent and severable, and the invalidity, if any, of any
4 part or feature thereof shall not affect or render the re-
5 mainder of the act invalid or inoperative.

Sec. 15. This act shall be so interpreted and construed
2 as to effectuate its general purpose to make uniform the
3 law of the states which enact it, and to harmonize, as
4 far as possible, with federal laws and regulations on the
5 subject of declaratory judgments and decrees.

Sec. 16. This act may be cited as the "Uniform Declara-
2 tory Judgments Act".

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

C. N. McKown
Chairman Senate Committee

Leon Rice
Chairman House Committee

Originated in the House of Delegates

Takes effect from passage.

A. Hale Watkins
Clerk of the Senate

Griffith
Clerk of the House of Delegates

Byron R. Randolph
President of the Senate

Malcolm R. Arnold
Speaker House of Delegates

The within approved this the 13th
day of March, 1941.

Matthew M. Neely
Governor.



Filed in the office of the Secretary of State
of West Virginia. MAR 13 1941
Wm. S. O'BRIEN,
Secretary of State