



Legislation Text

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AN ACT ESTABLISHING AUTHORITY AND JURISDICTION FOR CHEROKEE NATION DISTRICT COURTS AND THE CHEROKEE NATION SUPREME COURT TO EXERCISE AND DETERMINE DECLARATORY JUDGMENTS

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the "Cherokee Nation Declaratory Judgment Act of 2009" and codified under Title 12 Chapter 7 of the Cherokee Nation Code Annotated (CNCA).

Section 2. Purpose

The purpose of this Act is to establish authority for the Judicial Branch to exercise declaratory judgments.

Section 3. Legislative History

Article VI Section 7 of the Cherokee Code Constitution.

Section 4. Definitions

Section 5. Substantive Provisions

A. Determination of rights, status or other legal relations - Exceptions:

District courts may, in cases of actual controversy, determine rights, status, or other legal relations, including but not limited to a determination of the construction or validity of any foreign judgment or decree, deed, contract, trust, or other instrument or agreement or of any statute, municipal ordinance, or other governmental regulation, whether or not other relief is or could be claimed, except that no declaration shall be made concerning liability or nonliability for damages on account of alleged tortious injuries to persons or to property either before or after judgment or for compensation alleged to be due under workers' compensation laws for injuries to persons. The determination may be made either before or after there has been a breach of any legal duty or obligation, and it may be either affirmative or negative in form and effect; provided however, that a court may refuse to make a determination where the judgment, if rendered, would not terminate the controversy, or some part thereof, giving rise to the proceeding.

B. Pleading:

A determination of rights, status, or other legal relations may be obtained by means of a

pleading seeking that relief alone or as incident to or part of a petition, counterclaim, or other pleading seeking other relief, and when a party seeks other relief, a court may grant declaratory relief where appropriate.

C. Parties - Venue

A. When a declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

B. The venue of the action shall be established by existing statutes; provided, however, where the action involves an individual defendant, the venue shall be in the county of the defendant's residence or where the defendant may be served with summons. If the action involves two or more defendants who reside in different counties, the venue shall be in any county where any defendant resides or may be served with summons. Where the action has a defendant the Department of Corrections, the Board of Corrections or any of the agents, officers or employees of the Department or Board, the venue shall be in the county of the official residence of the Department or Board.

C. In any proceeding which involves the validity of a municipal ordinance or regulation, the municipality shall be made a party, and shall be entitled to be heard, and if a statute or regulation is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.

D. Effect of determination - Review

Any determination of rights, status, or other legal relations shall have the force and effect of a final judgment, and it shall be reviewable in the same manner as other judgments.

E. Further relief

Further relief based upon determination of rights, status, or other legal relations may be granted whenever such relief becomes necessary and proper after the determination has been made. Application may be made by petition to any court having jurisdiction for an order directed to any party or parties whose rights have been determined to show cause why the further relief should not be granted forthwith, upon reasonable notice prescribed by the court in its order.

F. Issues of fact

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