TITLE 3

REMEDIES AND SPECIAL ACTIONS AND PROCEEDINGS

Chapter 28. Declaratory Judgments; Certification of Questions of Law
29. Provisional Process; Attachment and Garnishment
30. Actions and Suits in Particular Cases
33. Special Proceedings
34. Writs
35. Eminent Domain Procedure
36. Mediation and Arbitration

Chapter 28

1989 EDITION

Declaratory Judgments; Certification of Questions of Law

DECLARATORY JUDGMENTS

28.010 Power of courts; form of declaration
28.020 Declarations as to writings and laws
28.030 Construction of contract before or after breach
28.040 Declaratory judgments on trusts or estates
28.050 Enumeration not exclusive
28.060 Discretion of court to refuse judgment or decree
28.070 Appeal or review
28.080 Supplemental relief
28.090 Trial of issues of fact
28.100 Costs
28.110 Parties; service on Attorney General when constitutional question involved
28.120 Construction and administration
28.130 "Person" defined
28.140 Provisions severable
28.150 Uniformity of interpretation
28.160 Short title

CERTIFICATION OF QUESTIONS OF LAW

28.200 Supreme Court authorized to answer questions of law certified by federal courts
28.205 Procedure to invoke ORS 28.200 to 28.255
28.210 Certification order
28.215 Form of certification order; submission of record
28.220 Fees; apportionment between parties
28.225 Procedure in certification matters
28.230 Opinion on certified question
28.235 Certification to another state
28.240 Procedure for certification to another state
28.245 Severability
28.250 Construction
28.255 Short title

CROSS REFERENCES

Declaratory judgment on right to review public records, 192.450 to 192.490

Declaratory judgment on validity of state agency rule, 183.400

DECLARATORY JUDGMENTS

28.010 Power of courts; form of declaration. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

28.020 Declarations as to writings and laws. Any person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a constitution, statute, municipal charter, ordinance, contract or franchise may have determined any question of construction or validity arising under any such instrument, constitution, statute, municipal charter, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

28.030 Construction of contract before or after breach. A contract may be construed either before or after there has been a breach thereof.

28.040 Declaratory judgments on trusts or estates. Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, ward or insolvent, may have a declaration of rights or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, egatees, heirs, next of kin or other; or

(2) To direct the executors, administrators, trustees, guardians or conservators to do or abstain from doing any particular act in their fiduciary capacity; or

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings. [Amended by 1961 c 344 §101]

28.050 Enumeration not exclusive. The enumeration in ORS 28.010 to 28.040 does not limit or restrict the exercise of the general powers conferred in ORS 28.010, in any proceedings where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

28.060 Discretion of court to refuse judgment or decree. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

28.070 Appeal or review. All orders, judgments and decrees under this chapter may be appealed from or reviewed as other orders, judgments and decrees.

28.080 Supplemental relief. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application thereof shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

28.090 Trial of issues of fact. When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other actions at law or suits in equity in the court in which the proceeding is pending.

28.100 Costs. In any proceeding under this chapter the court may make such award of costs as may seem equitable and just.

28.110 Parties; service on Attorney General when constitutional question involved. When 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. In any proceeding which involves the validity of a municipal charter, ordinance or franchise, the municipality affected shall be made a party, and shall be entitled to be heard, and if the constitution, statute, charter, ordinance or franchise 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.

28.120 Construction and administration. This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered.

28.130 "Person" defined. The word "person," wherever used in this chapter, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

28.140 Provisions severable. The several sections and provisions of this chapter,

except ORS 28.010 and 28.020, are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the chapter invalid or inoperative.

28.150 Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

28.160 Short title. This chapter may be cited as the "Uniform Declaratory Judgments Act."

CERTIFICATION OF QUESTIONS OF LAW

28.200 Supreme Court authorized to answer questions of law certified by federal courts. The Supreme Court may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, a United States District Court or the highest appellate court or the intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceedings before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court and the intermediate appellate courts of this state. [1983 c.103 §1]

Note: 28.200 to 28.255 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 28 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

28.205 Procedure to invoke ORS 28.200 to 28.255. ORS 28.200 to 28.255 may be invoked by an order of any of the courts referred to in ORS 28.200 upon the court's own motion or upon the motion of any party to the cause. [1983 c.103 §2]

Note: See note under 28.200

28.210 Certification order. A certification order shall set forth:

(1) The questions of law to be answered; and

(2) A statement of all facts relevant to the questions certified and showing fully the nature of the controversy in which the questions arose. [1983 c.103 §3]

Note: See note under 28.200.

28.215 Form of certification order; submission of record. The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the Supreme Court by the clerk of the certifying court under its official seal. The Supreme Court may require the original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of the Supreme Court, the record or portion thereof may be necessary in answering the questions. [1983 c.103 §4]

Note: See note under 28.200.

28.220 Fees; apportionment between parties. Fees and costs shall be the same as in civil appeals docketed before the Supreme Court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification. [1983 c.103 §5]

Note: See note under 28.200.

28.225 Procedure in certification matters. Proceedings in the Supreme Court shall be those provided in rules of appellate procedure and statutes governing briefs and arguments. [1983 c.103 §6]

Note: See note under 28.200.

28.230 Opinion on certified question. The written opinion of the Supreme Court stating the law governing the questions certified shall be sent by the clerk under the seal of the Supreme Court to the certifying court and to the parties. [1983 c.103 §7]

Note: See note under 28.200.

28.235 Certification to another state. The Supreme Court or the Court of Appeals of this state, on their own motion or the motion of any party, may order certification of questions of law to the highest court of any state when it appears to the certifying court that there are involved in any proceeding before the court questions of law of the receiving state which may be determinative of the cause then pending in the certifying court and it appears to the certifying court that there are no controlling precedents in the decisions of the highest court or intermediate appellate courts of the receiving state. [1983 c.103 §8]

Note: See note under 28.200.

28.240 Procedure for certification to another state. The procedures for certification from this state to the receiving state shall be those provided in the laws of the receiving state. [1983 c.103 §9]

Note: See note under 28.200.

28.245 Severability. If any provision of ORS 28.200 to 28.255 or the application thereof to any person, court, or circumstance is held invalid the invalidity does not affect other provisions or applications of ORS 28.200 to 28.255 which can be given effect

without the invalid provision or application, and to this end the provisions of ORS 28.200 to 28.255 are severable. [1983 c.103 §10]

Note: See note under 28.200.

28.250 Construction. ORS 28.200 to 28.255 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1983 c.103 §11]

Note: See note under 28.200.

28.255 Short title. ORS 28.200 to 28.255 may be cited as the Uniform Certification of Questions of Law Act. [1983 c.103 §12]

Note: See note under 28.200.