

JAN 23 2020

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# A BILL FOR AN ACT

RELATING TO DECLARATORY JUDGMENTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that since the enactment  
2 of the judicial remedy of declaratory judgments in state law,  
3 the role of declaratory judgments within the State's  
4 jurisprudence has changed. Declaratory judgments, which were  
5 introduced in the State by Act 162, Session Laws of Hawaii 1921,  
6 were viewed by various contemporaneous legal scholars as a broad  
7 remedy capable of:

8           (1) Resolving actual controversies when no other cause of  
9           action was available because, although foreseeable, no  
10           injury has yet occurred nor has any penalty accrued;  
11           and

12           (2) Resolving actual controversies where injury has  
13           occurred or penalties have accrued, but the parties  
14           sought only a statement of rights.

15           Declaratory judgments merely declare the existing rights,  
16 relations, statuses, privileges, and obligations of the parties  
17 to a controversy without imposing coercive relief, such as an



1 injunction or the payment of damages. See Edson R. Sunderland,  
2 *A Modern Evolution in Remedial Rights - The Declaratory*  
3 *Judgment*, 16 Mich. L. Rev. 69, 75-77 (1917). An oft-cited  
4 example of the utility of declaratory judgments is to clarify  
5 the rights and obligations of parties under a contract without  
6 requiring one party to breach the contract or sue for  
7 nonperformance.

8       However, subsequent to the introduction of declaratory  
9 judgments to the State's jurisprudence, this originally broad  
10 remedy was restricted to instances in which another cause of  
11 action was not available, for example, prior to the occurrence  
12 of a legally cognizable injury. See *Kaleikau v. Hall*, 27 Haw.  
13 420 (1923); *Kaaa v. Waiakea Mill Co.*, 29 Haw. 122 (1926).  
14 Believing that it was not the intent of the "legislature to  
15 provide a new remedy or method of procedure for cases for which  
16 an adequate remedy and method of procedure had already been  
17 provided," *Kaleikau* at 428, the State's courts restricted the  
18 reach of the declaratory judgment remedy even though the  
19 authorizing statute explicitly stated that courts shall have  
20 such power to issue the remedy "whether or not consequential



1 relief is, or at the time could be, claimed." Act 162, Session  
2 Laws of Hawaii 1921.

3 To overturn this restriction, the legislature passed Act  
4 74, Session Laws of Hawaii 1945, which, among other things,  
5 reiterated that "the mere fact that an actual or threatened  
6 controversy is susceptible of relief through a general common  
7 law remedy, or an equitable remedy, or an extraordinary legal  
8 remedy, whether such remedy is recognized or regulated by  
9 statute or not, shall not debar a party from the privilege of  
10 obtaining a declaratory judgment or decree in any case where the  
11 other essentials to such relief are present." In justifying the  
12 necessity of Act 74, the House Judiciary Committee stated that  
13 "[t]he benefits sought to be had under our present law have been  
14 negated by two decisions of our Supreme Court. The State of  
15 Pennsylvania[,] which has a similar law like that of our present  
16 law[,] has enacted this bill into its law." H. Stand. Com. Rep.  
17 No. 76, in 1945 House Journal, at 566. Pennsylvania, too, "had  
18 professed to discover, in the face of clear wording of the  
19 [Pennsylvania statute] to the contrary, that the [statute] could  
20 not be used where another remedy was available." Edwin



1 Borchard, *Pennsylvania's Clarifying Amendment for Declaratory*  
2 *Judgments*, 93 U. Pa. L. Rev. 50, 50-51 (1944).

3       However, the legislature finds that the remedy of  
4 declaratory judgments has now become too broad, where the remedy  
5 has been authorized in instances of a general disagreement of a  
6 government action without a showing of an actual controversy.  
7 The remedy of a declaratory judgment has always been intended to  
8 be limited to an actual controversy as "[n]obody thought of  
9 conferring upon the courts power to decide imaginary, academic  
10 or moot cases." Edwin Borchard, *Progress of the Declaratory*  
11 *Judgment*, 35 Yale L. J. 473, 475 (1926). While the contours of  
12 an actual controversy are hard to define, when determining  
13 whether an actual controversy exists, "the question is whether  
14 the facts alleged, under all the circumstances, show that there  
15 is a substantial controversy, between parties having adverse  
16 legal interests, of sufficient immediacy and reality to warrant  
17 a declaratory judgment.'" *Asato v. Procurement Policy Bd.*, 132  
18 Haw. 333, 355 (2014) (quoting *Kaho'ohanohano v. State*, 114 Haw.  
19 302, 332 (2007)); see *Medimmune, Inc. v. Genentech, Inc.*, 549  
20 U.S. 118, 127 (2007) (stating the same standard for determining  
21 when a controversy qualifies as a justiciable controversy in



1 which declaratory relief may be granted under the Federal  
2 Declaratory Judgment Act).

3       The legislature understands that part of the inquiry of  
4 determining whether parties have adverse legal interests is  
5 determining whether a plaintiff has sufficient standing to bring  
6 the suit. For the purposes of determining whether parties have  
7 adverse legal interests, the legislature believes that  
8 declaratory judgments should be reserved for instances where a  
9 plaintiff alleges more than a disagreement. In *Tax Foundation*  
10 *of Hawaii v. State*, the plaintiff, as a taxpayer, was found to  
11 have a concrete interest in a right to have moneys transferred  
12 from one governmental agency to another. 144 Haw. 175, 202-03  
13 (2019). While the legislature believes that the expenditures of  
14 public moneys and the proper management of such expenditures are  
15 of public importance, the legislature does not believe that  
16 general disagreement challenges to government actions are the  
17 proper use of declaratory judgments. A plaintiff should show a  
18 personal stake in the proceedings beyond a mere disagreement  
19 with the government action and shall implicate an actual or  
20 threatened injury or penalty.



1           In light of this broadening use of declaratory judgments,  
2 the legislature finds it necessary to:

3           (1) Codify the standard for determining whether standing  
4 exists; and

5           (2) Reinstate the restriction of the *Kaleikau* Court,  
6 limiting the use of declaratory judgments to those  
7 instances where an actual controversy has not yet  
8 resulted in injury or penalty.

9           The purpose of this Act is to clarify and redefine the  
10 scope of declaratory judgments in the State by:

11           (1) Restricting declaratory judgments to instances where a  
12 legally cognizable injury has not yet occurred and  
13 consequential relief could not presently be claimed;

14           (2) Further amending the instances in which declaratory  
15 judgments would not be available; and

16           (3) Requiring that a plaintiff show a personal stake in  
17 the actual controversy beyond a generally available  
18 grievance by establishing injury-in-fact standing.

19           SECTION 2. Section 632-1, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§632-1 Jurisdiction; controversies subject to. [†] (a) [†]  
2 In cases of actual controversy, courts of record, within the  
3 scope of their respective jurisdictions, shall have power to  
4 make binding adjudications of legal relations, status, right[~~†~~  
5 ~~whether or not~~], and privilege only if consequential relief [~~is~~  
6 ~~or at the time could be, claimed,~~] could not be claimed and no  
7 action or proceeding shall be open to objection on the ground  
8 that a judgment or order merely declaratory of right is prayed  
9 for; provided that declaratory relief may not be obtained in  
10 [any] :  
11           (1) Any district court[~~, or in any~~] ;  
12           (2) Any controversy with respect to taxes[~~, or in any~~] ;  
13           (3) Any controversy with respect to the determination of a  
14           future effect of a constitutional provision;  
15           (4) Any case where a divorce or annulment of marriage is  
16           sought [~~†~~] ;  
17           (5) Any case where a statute provides a special form of  
18           remedy for a specific type of case; and  
19           (6) Any case where another cause of action exists pursuant  
20           to section 632-6.



1 Controversies involving the interpretation of deeds, wills,  
2 other instruments of writing, statutes, municipal ordinances,  
3 and other governmental regulations may be so determined, and  
4 this enumeration does not exclude other instances of actual  
5 antagonistic assertion and denial of right.

6 ~~[(b)] Relief by declaratory judgment may be granted in~~  
7 ~~civil cases where an actual controversy exists between~~  
8 ~~contending parties, or where the court is satisfied that~~  
9 ~~antagonistic claims are present between the parties involved~~  
10 ~~which indicate imminent and inevitable litigation, or where in~~  
11 ~~any such case the court is satisfied that a party asserts a~~  
12 ~~legal relation, status, right, or privilege in which the party~~  
13 ~~has a concrete interest and that there is a challenge or denial~~  
14 ~~of the asserted relation, status, right, or privilege by an~~  
15 ~~adversary party who also has or asserts a concrete interest~~  
16 ~~therein, and the court is satisfied also that a declaratory~~  
17 ~~judgment will serve to terminate the uncertainty or controversy~~  
18 ~~giving rise to the proceeding. Where, however, a statute~~  
19 ~~provides a special form of remedy for a specific type of case,~~  
20 ~~that statutory remedy shall be followed, but the mere fact that~~  
21 ~~an actual or threatened controversy is susceptible of relief~~





1 ~~through a general common law remedy, a remedy equitable in~~  
2 ~~nature, or an extraordinary legal remedy, whether such remedy is~~  
3 ~~recognized or regulated by statute or not, shall not debar a~~  
4 ~~party from the privilege of obtaining a declaratory judgment in~~  
5 ~~any case where the other essentials to such relief are present.]~~

6 (b) Notwithstanding any other law that may be construed to  
7 the contrary, plaintiffs seeking declaratory relief shall have  
8 legal standing only if the plaintiff has alleged a personal  
9 stake in the outcome of the controversy by establishing the  
10 following:

- 11 (1) The plaintiff suffered an actual or threatened injury;  
12 (2) The injury is fairly traceable to the defendant's  
13 actions; and  
14 (3) A favorable decision will likely provide relief for  
15 the plaintiff's injury.

16 The injury in paragraph (1) must be an actual or threatened harm  
17 to a legally protected interest. The plaintiff must show a  
18 distinct and palpable injury to the plaintiff rather than a  
19 generally available grievance that no more directly affects  
20 plaintiff than it does the public at large. The injury must be



1 distinct and palpable, as opposed to abstract, conjectural, or  
2 merely hypothetical."

3 SECTION 3. Section 632-6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§632-6 Provisions, remedial. This chapter is declared to  
6 be remedial. Its purpose is to afford relief from the  
7 uncertainty and insecurity attendant upon controversies over  
8 legal rights [~~, without requiring~~]; provided that once one of the  
9 parties interested [~~so to invade~~] invades the rights asserted by  
10 the other [~~as to entitle the party to~~], the parties shall be  
11 barred from the remedy under this chapter and shall maintain an  
12 ordinary action therefor. [~~It is to be liberally interpreted~~  
13 and administered, with a view to making the courts more  
14 serviceable to the people.] "

15 SECTION 4. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

18

INTRODUCED BY:





# S.B. NO. 2810

**Report Title:**

Declaratory Judgments; Standing; Courts; Personal Stake; Injury-In-Fact

**Description:**

Prohibits declaratory judgments when there is a cause of action and in other certain instances. Requires a plaintiff to show a personal stake in the actual controversy beyond a general disagreement or complaint by requiring a showing of an injury-in-fact.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

