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HOUSE BILL 348

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CONSUMER PROTECTIONS; CLARIFYING THAT A CONSUMER
MAY SEEK A DECLARATORY JUDGMENT OF AN ALLEGED DEBT; CLARIFYING
AWARD OF ATTORNEY FEES; PROVIDING FOR SUFFICIENCY OF SERVICE OF
PROCESS FOR CERTAIN PARTIES; PROVIDING FOR A CIVIL PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 44-6-2 NMSA 1978 (being Laws 1975,
Chapter 340, Section 2) is amended to read:

"44-6-2. SCOPE.--

A. In cases of actual controversy, district courts
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

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1 either affirmative or negative in form and effect and shall
2 have the force and effect of a final judgment or decree.

3 B. In cases of alleged debts, district, magistrate
4 and metropolitan courts shall have the power to hear and issue
5 a declaratory judgment to determine status of alleged debts or
6 ownership of tangible property valued within their respective
7 jurisdictions."

8 SECTION 2. Section 44-6-9 NMSA 1978 (being Laws 1975,
9 Chapter 340, Section 9) is amended to read:

10 "44-6-9. SUPPLEMENTAL RELIEF.--

11 A. Further relief based on a declaratory judgment
12 or decree may be granted whenever necessary or proper. The
13 application [~~therefor~~] for further relief shall be by petition
14 to a court having jurisdiction to grant the relief. If the
15 application [~~be~~] is deemed sufficient, the court shall, on
16 reasonable notice, require any adverse party whose rights have
17 been adjudicated by the declaratory judgment or decree to show
18 cause why further relief should not be granted forthwith.

19 B. In cases of alleged debts, a party may seek the
20 collection debts determined to be valid or the removal from a
21 publication, credit report or other public file of alleged
22 debts determined not to be valid. A court may impose a civil
23 penalty of up to five hundred dollars (\$500) on a party who
24 fails to remove within a reasonable time period the entry of an
25 alleged debt determined not to be valid from a publication,

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1 credit report or other public file."

2 SECTION 3. Section 44-6-11 NMSA 1978 (being Laws 1975,
3 Chapter 340, Section 11) is amended to read:

4 "44-6-11. ATTORNEY FEES--COSTS.--

5 A. In any proceeding under the Declaratory Judgment
6 Act, the court may make an award of costs as may seem equitable
7 and just.

8 B. Contractual rights to attorney fees may only be
9 granted if pled in the petition or first responsive pleading.
10 If contractual rights to attorney fees are sought by a party,
11 and the court determines a right to those fees exists, a
12 reciprocal right shall be granted to all other parties to the
13 action."

14 SECTION 4. Section 44-6-12 NMSA 1978 (being Laws 1975,
15 Chapter 340, Section 12) is amended to read:

16 "44-6-12. PARTIES.--

17 A. When declaratory relief is sought, all persons
18 shall be made parties who have or claim any interest [~~which~~]
19 that would be affected by the declaration, and no declaration
20 shall prejudice the rights of persons not parties to the
21 proceeding.

22 B. In any proceeding [~~which~~] that involves the
23 validity of a municipal ordinance or franchise, the
24 municipality shall be made a party and shall be entitled to be
25 heard, and if the statute, ordinance or franchise is alleged to

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underscoring material = new
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1 be unconstitutional, the attorney general shall also be served
2 with a copy of the proceeding and be entitled to be heard.

3 C. In cases of alleged debts, a party who makes a
4 demand for payment of an alleged debt by mail, telephone or in
5 person within the state and provides an address where payment
6 for the satisfaction of that debt can be made may be served at
7 that address with service of process. In a proceeding for
8 declaratory judgment of alleged debts, a court may exercise
9 personal jurisdiction over a nonresident person who mails or
10 telephones into the state a demand for payment of an alleged
11 debt."