

AN ACT

To amend sections 2721.01, 2721.02, 2721.03, 2721.04, 2721.06, 2721.07, 2721.08, 2721.09, 2721.10, 2721.11, 2721.12, 2721.13, 2721.14, 2721.15, 2907.36, and 3709.99, to enact new section 3929.06 and section 2721.16, and to repeal section 3929.06 of the Revised Code to prohibit an award of attorney's fees under the Declaratory Judgments Law unless a statute expressly authorizes the award in connection with a claim for declaratory relief under that Law or unless an award of attorney's fees is authorized by the Frivolous Conduct Law, the Civil Rules, or an award of punitive or exemplary damages, to prohibit injured parties or their legal representatives from commencing a declaratory relief action or another type of civil action based on liability insurance coverage against an insurance company until a judgment for damages has been awarded against an insured tortfeasor, to specify the binding legal effect of a judgment rendered in a declaratory relief action between an insured and an insurance company relative to the coverage of a liability insurance policy upon the insured's assignees and certain judgment creditors, and to permit insurance companies to assert against certain judgment creditors coverage defenses generally available against insureds under liability insurance policies.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2721.01, 2721.02, 2721.03, 2721.04, 2721.06, 2721.07, 2721.08, 2721.09, 2721.10, 2721.11, 2721.12, 2721.13, 2721.14, 2721.15, 2907.36, and 3709.99 be amended and new section 3929.06 and section 2721.16 of the Revised Code be enacted to read as follows:

Sec. 2721.01. As used in ~~sections 2721.01 to 2721.15, inclusive, of the Revised Code~~ this chapter, "person" means any person, partnership, joint-stock company, unincorporated association, society, municipal corporation, or other corporation.

Sec. 2721.02. ~~Courts~~ (A) Subject to division (B) of this section, courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding is open to objection on the ground that a declaratory judgment or decree is prayed for under this chapter. The declaration may be either affirmative or negative in form and effect. Such The declaration has the effect of a final judgment or decree.

(B) A plaintiff who is not an insured under a particular policy of liability insurance may not commence against the insurer that issued the policy an action or proceeding under this chapter that seeks a declaratory judgment or decree as to whether the policy's coverage provisions extend to an injury, death, or loss to person or property that a particular insured under the policy allegedly tortiously caused the plaintiff to sustain or caused another person for whom the plaintiff is a legal representative to sustain, until a court of record enters in a distinct civil action for damages between the plaintiff and that insured as a tortfeasor a final judgment awarding the plaintiff damages for the injury, death, or loss to person or property involved.

(C) In an action or proceeding for declaratory relief that a judgment creditor commences in accordance with divisions (a) and (b) of this section against an insurer that issued a particular policy of liability insurance, the insurer has and may assert as an affirmative defense against the judgment creditor any coverage defenses that the insurer possesses and could assert against the holder of the policy in an action or proceeding under this chapter between the holder and the insurer.

If, prior to the judgment creditor's commencement of the action or proceeding for declaratory relief, the holder of the policy commences a similar action or proceeding against the insurer for a determination as to whether the policy's coverage provisions extend to the injury, death, or loss to person or property underlying the judgment creditor's judgment, and if the court involved in that action or proceeding enters a final judgment with respect to the policy's coverage or noncoverage of that injury, death, or loss,

that final judgment shall be deemed to also have binding legal effect upon the judgment creditor for purposes of the judgment creditor's action or proceeding for declaratory relief against the insurer. this division shall apply notwithstanding any contrary common law principles of res judicata or adjunct principles of collateral estoppel.

Sec. 2721.03. ~~Any~~ Subject to division (B) of section 2721.02 of the Revised Code, any person interested under a deed, will, written contract, or other writing constituting a contract; or any person whose rights, status, or other legal relations are affected by a constitutional provision, statute, rule as defined in section 119.01 of the Revised Code, municipal ordinance, township resolution, contract, or franchise; may have determined any question of construction or validity arising under such the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder under it.

The testator of a will may have the validity of the will determined at any time during ~~his~~ the testator's lifetime pursuant to sections 2107.081 to 2107.085 of the Revised Code.

Sec. 2721.04. ~~A~~ Subject to division (B) of section 2721.02 of the Revised Code, a contract may be construed by a declaratory judgment or decree either before or after there has been a breach thereof of the contract.

Sec. 2721.06. Sections 2721.03 to 2721.05, ~~inclusive,~~ of the Revised Code do not limit or restrict the exercise of the general powers conferred ~~in~~ by division (A) of section 2721.02 of the Revised Code in any action or proceeding where in which declaratory relief is sought; under this chapter and in which a judgment or decree will terminate the controversy or remove an uncertainty.

Sec. 2721.07. Courts of record may refuse to render or enter a declaratory judgment or decree ~~when such~~ under this chapter if the judgment or decree would not terminate the uncertainty or controversy giving rise to the action or proceeding in which the declaratory relief is sought.

Sec. 2721.08. All ~~orders, judgments; and decrees under sections 2721.01 to 2721.15, inclusive, of the Revised Code,~~ this chapter may be reviewed on appeal as are other orders, judgments; and decrees are reviewed of the court of record involved.

Sec. 2721.09. ~~Whenever~~ Subject to section 2721.16 of the Revised Code, whenever necessary or proper, a court of record may grant further relief based on a declaratory judgment or decree previously granted may be given under this chapter. The application therefor for the further relief shall be by petition to a complaint filed in a court having of record with

jurisdiction to grant the further relief. If the application is sufficient, the court ~~shall~~, on reasonable notice, shall require any adverse party, whose rights have been adjudicated by the declaratory judgment or decree, to show cause why the further relief should not be granted forthwith.

Sec. 2721.10. ~~When a~~ an action or proceeding in which declaratory relief is sought under ~~sections 2721.01 to 2721.15, inclusive, of the Revised Code, this chapter~~ involves the determination of an issue of fact, ~~such that~~ such that issue may 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 action or proceeding is pending.

Sec. 2721.11. In any action or proceeding in which declaratory relief is sought under ~~sections 2721.01 to 2721.15, inclusive, of the Revised Code~~ this chapter, the court may make ~~such~~ an award of court costs as is equitable and just.

Sec. 2721.12. ~~When~~ (A) Subject to division (B) of this section, when declaratory relief is sought under this chapter in an action or proceeding, all persons ~~shall be made parties~~ who have or claim any interest ~~which that~~ shall be made parties to the action or proceeding ~~No~~ Except as provided in division (B) of this section, a declaration shall not prejudice the rights of persons who are not made parties to the action or proceeding. In any action or proceeding which that involves the validity of a municipal ordinance or franchise, the municipal corporation shall be made a party and shall be heard, and, if any statute or the ordinance or franchise is alleged to be unconstitutional, the attorney general also shall ~~also~~ be served with a copy of the complaint in the action or proceeding and shall be heard. In any action or proceeding which that involves the validity of a township resolution, the township shall be made a party and shall be heard.

(B) A declaratory judgment or decree that a court of record enters in an action or proceeding under this chapter between an insurer and a holder of a policy of liability insurance issued by the insurer and that resolves an issue as to whether the policy's coverage provisions extend to an injury, death, or loss to person or property that an insured under the policy allegedly tortiously caused shall be deemed to have the binding legal effect described in division (C)(2) of section 3929.06 of the Revised Code and to also have binding legal effect upon any person who seeks coverage as an assignee of the insured's rights under the policy in relation to the injury, death, or loss involved. This division applies whether or not an assignee is made a party to the action or proceeding for declaratory relief and notwithstanding any contrary common law principles of res judicata or adjunct principles of

collateral estoppel.

Sec. 2721.13. ~~Sections 2721.01 to 2721.15, inclusive, of the Revised Code the provisions of this chapter~~ are remedial; and shall be liberally construed and administered.

Sec. 2721.14. ~~Sections 2721.01 to 2721.15, inclusive, of the Revised Code the provisions of this chapter~~ shall be so interpreted and construed as to effectuate their general purpose to make the law of this state uniform with the law of those states ~~which that~~ enact similar ~~sections, provisions~~ and to harmonize, ~~as far insofar~~ as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

Sec. 2721.15. With the exception of sections 2721.02 and 2721.03 of the Revised Code, ~~sections 2721.01 to 2721.15, inclusive, of the Revised Code the provisions of this chapter~~ are independent and severable, and the invalidity of any part of ~~sections 2721.01 and 2721.04 to 2721.15, inclusive, of the Revised Code those provisions~~ does not affect or render the remainder of ~~such sections those provisions~~ invalid or inoperative.

Sec. 2721.16. (A) A court of record shall not award attorney's fees to any party on a claim for declaratory relief under this chapter unless a section of the Revised Code explicitly authorizes a court of record to award attorney's fees on a claim for declaratory relief under this chapter or unless an award of attorney's fees is authorized by section 2323.51 of the Revised Code, by the Civil Rules, or by an award of punitive or exemplary damages against the party ordered to pay attorney's fees. References in another section of the Revised Code to an award of costs or expenses incurred in connection with an action or proceeding does not authorize an award of attorney's fees for purposes of this division.

(B) Consistent with section 2721.13 of the Revised Code, the provisions of this section are remedial in nature. Notwithstanding any provision of the Revised Code in existence on the day immediately prior to the effective date of this section, notwithstanding any judicial construction prior to the effective date of this section of a statutory provision of that nature, notwithstanding the holding in any decision of a court of this state that authorized an award of attorney's fees to a party to a civil action or proceeding based on common law grounds rather than a statutory authorization of the general assembly, regardless of the date upon which a cause of action accrued that pertains to an action or proceeding in which declaratory relief is sought under this chapter, and regardless of who is the plaintiff or the defendant in an action or proceeding in which declaratory relief is sought under this chapter, division (A) of this section shall apply in connection with both of the following:

(1) An action or proceeding that is commenced on or after the effective date of this section and that seeks declaratory relief under this chapter;

(2) An action or proceeding that was commenced prior to the effective date of this section, that is pending in a court of record on that date, and that seeks declaratory relief under this chapter.

Sec. 2907.36. (A) Without limitation on the persons otherwise entitled to bring an action for a declaratory judgment pursuant to ~~sections 2721.01 to 2721.15~~ Chapter 2721. of the Revised Code, involving the same issue, the following persons have standing to bring ~~such an a declaratory judgment~~ action to determine whether particular materials or performances are obscene or harmful to juveniles:

(1) The chief legal officer of the jurisdiction in which there is reasonable cause to believe that section 2907.31 or 2907.32 of the Revised Code is being or is about to be violated;

(2) Any person who, pursuant to division (B) of section 2907.35 of the Revised Code, has received notice in writing from a chief legal officer stating that particular materials or performances are obscene or harmful to juveniles.

(B) Any party to an action for a declaratory judgment pursuant to division (A) of this section is entitled, upon ~~his~~ the party's request, to trial on the merits within five days after joinder of the issues, and the court shall render judgment within five days after trial is concluded.

(C) An action for a declaratory judgment pursuant to division (A) of this section shall not be brought during the pendency of any civil action or criminal prosecution, when the character of the particular materials or performances involved is at issue in the pending case, and either of the following ~~apply~~ applies:

(1) Either of the parties to the action for a declaratory judgment is a party to the pending case;

(2) A judgment in the pending case will necessarily constitute res judicata as to the character of the materials or performances involved.

(D) A civil action or criminal prosecution in which the character of particular materials or performances is at issue, brought during the pendency of an action for a declaratory judgment involving the same issue, shall be stayed during the pendency of the action for a declaratory judgment.

(E) The fact that a violation of section 2907.31 or 2907.32 of the Revised Code occurs prior to a judicial determination of the character of the material or performance involved in the violation; does not relieve the offender of criminal liability for the violation, even though prosecution may be stayed pending the judicial determination.

Sec. 3709.99. (A) Whoever violates section 3709.20, 3709.21, or 3709.22 of the Revised Code or any order or regulation of the board of health of a city or general health district adopted in pursuance of ~~such~~ those sections, or ~~whoever~~ interferes with the execution of ~~such~~ an order or regulation of that nature by a member of the board or person authorized by the board, shall be fined not more than one hundred dollars or imprisoned not more than ninety days, or both. No person shall be imprisoned for the first offense, and the prosecution shall always be for a first offense unless the affidavit upon which the prosecution is instituted contains the allegation that the offense is a subsequent offense.

(B) Except in case of an emergency endangering the public health caused by an epidemic, an infectious or a communicable disease, or a disaster emergency condition or event, no prosecution for a violation of any regulation or order adopted pursuant to section 3709.20, 3709.21, or 3709.22 of the Revised Code shall take place until twenty days after ~~such~~ the board of health of a city or general health district has notified the person subject to ~~such~~ the regulation or order of the specific violation alleged. Any person notified by the board of a violation of any ~~such~~ regulation or order of that nature may file an action for declaratory judgment pursuant to ~~sections 2721.01 to 2721.15, inclusive, Chapter 2721.~~ sections 2721.01 to 2721.15, inclusive, Chapter 2721. of the Revised Code; to have determined whether ~~such~~ the regulation or order is unreasonable or unlawful. No ~~such~~ prosecution of that nature shall be commenced when, within ~~such~~ the twenty-day period described in this division, the violation has been corrected. No ~~such~~ prosecution of that nature shall be commenced until ~~such~~ a declaratory judgment of that nature has been given.

Sec. 3929.06. (A)(1) If a court in a civil action enters a final judgment that awards damages to a plaintiff for injury, death, or loss to the person or property of the plaintiff or another person for whom the plaintiff is a legal representative and if, at the time that the cause of action accrued against the judgment debtor, the judgment debtor was insured against liability for that injury, death, or loss, the plaintiff or the plaintiff's successor in interest is entitled as judgment creditor to have an amount up to the remaining limit of liability coverage provided in the judgment debtor's policy of liability insurance applied to the satisfaction of the final judgment.

(2) If, within thirty days after the entry of the final judgment referred to in division (A)(1) of this section, the insurer that issued the policy of liability insurance has not paid the judgment creditor an amount equal to the remaining limit of liability coverage provided in that policy, the judgment creditor may file in the court that entered the final judgment a supplemental complaint against the insurer seeking the entry of a judgment ordering the

insurer to pay the judgment creditor the requisite amount. subject to division (C) of this section, the civil action based on the supplemental complaint shall proceed against the insurer in the same manner as the original civil action against the judgment debtor.

(B) Division (A)(2) of this section does not authorize the commencement of a civil action against an insurer until a court enters the final judgment described in division (A)(1) of this section in the distinct civil action for damages between the plaintiff and an insured tortfeasor and until the expiration of the thirty-day period referred to in division (A)(2) of this section.

(C)(1) In a civil action that a judgment creditor commences in accordance with divisions (A)(2) and (B) of this section against an insurer that issued a particular policy of liability insurance, the insurer has and may assert as an affirmative defense against the judgment creditor any coverage defenses that the insurer possesses and could assert against the holder of the policy in a declaratory judgment action or proceeding under Chapter 2721. of the Revised Code between the holder and the insurer.

(2) If, prior to the judgment creditor's commencement of the civil action against the insurer in accordance with divisions (A)(2) and (B) of this section, the holder of the policy commences a declaratory judgment action or proceeding under Chapter 2721. of the Revised Code against the insurer for a determination as to whether the policy's coverage provisions extend to the injury, death, or loss to person or property underlying the judgment creditor's judgment, and if the court involved in that action or proceeding enters a final judgment with respect to the policy's coverage or noncoverage of that injury, death, or loss, that final judgment shall be deemed to have binding legal effect upon the judgment creditor for purposes of the judgment creditor's civil action against the insurer under divisions (A)(2) and (B) of this section. this division shall apply notwithstanding any contrary common law principles of res judicata or adjunct principles of collateral estoppel.

SECTION 2. That existing sections 2721.01, 2721.02, 2721.03, 2721.04, 2721.06, 2721.07, 2721.08, 2721.09, 2721.10, 2721.11, 2721.12, 2721.13, 2721.14, 2721.15, 2907.36, and 3709.99 and section 3929.06 of the Revised Code are hereby repealed.

SECTION 3. The General Assembly hereby declares that, in enacting section 2721.16 of the Revised Code in this act and in making conforming amendments to sections 2721.01, 2721.02, 2721.06, 2721.07, 2721.08,

2721.09, 2721.10, 2721.11, 2721.12, 2721.13, 2721.14, 2721.15, 2907.36, and 3709.99 of the Revised Code in this act, it is the intent of the General Assembly to do all of the following:

(A) To supersede the effect of the holding in Motorists Mut. Ins. Co. v. Brandenburg (1995), 72 Ohio St. 3d 157, and in its progeny, including Landis v. Grange Mut. Ins. Co. (1998), 82 Ohio St. 3d 339, 342-343, that the "whenever necessary or proper" and "further relief" language in section 2721.09 of the Revised Code, as it existed prior to the effective date of this act, reflected the General Assembly's conferral of authority upon an Ohio trial court to award "attorney's fees based on a declaratory judgment issued by the court";

(B) To recognize the dissent's accurate construction in Brandenburg of the "whenever necessary or proper" and "further relief" language in section 2721.09 of the Revised Code, as it existed prior to the effective date of this act;

(C) To recognize the holding of the Ohio Supreme Court in Sorin v. Bd. of Edn. (1976), 46 Ohio St. 2d 177, and its progeny that Ohio follows the "American Rule" under which an award of attorney's fees to a prevailing party in a civil action or proceeding generally must be based on an express authorization of the General Assembly;

(D) To recognize, consistent with the "American Rule," that authority to grant an award of attorney's fees in connection with an action or proceeding in which declaratory relief is sought under Chapter 2721. of the Revised Code must be expressly conferred by the General Assembly upon the courts of this state and has not been so conferred prior to the effective date of this act.

SECTION 4. The General Assembly declares that, in enacting divisions (A) and (B) of new section 3929.06 and new division (B) of section 2721.02 of the Revised Code in this act, in outright repealing existing section 3929.06 of the Revised Code in this act, and in making conforming amendments to sections 2721.03 and 2721.04 of the Revised Code in this act, it is the intent of the General Assembly to supersede the effect of the holding of the Ohio Supreme Court in

Krejci v. Prudential Prop. and Cas. Ins. Co.

SECTION (1993), 66 Ohio St. 3d 15,

Broz v. Winland

SECTION (1994), 68 Ohio St. 3d 521, 524-525, and

Mezerkor v. Mezerkor

SECTION (1994), 70 Ohio St. 3d 304, 308, that existing section 3929.06

of the Revised Code does not preclude the commencement of a civil action under that section or a declaratory judgment action or proceeding under Chapter 2721. of the Revised Code against an insurer that issued a policy of liability insurance until a court of record enters in a distinct civil action for damages between the plaintiff and an insured tortfeasor a final judgment awarding the plaintiff damages for the injury, death, or loss to person or property involved.

SECTION 5. The General Assembly declares that, in enacting new division (C) of section 2721.02, new division (B) of section 2721.12, and division (C) of new section 3929.06 of the Revised Code in this act and in making conforming amendments to division (A) of section 2721.12 of the Revised Code in this act, it is the intent of the General Assembly to supersede the effect of the holding of the Ohio Supreme Court in

Broz v. Winland

SECTION (1994), 68 Ohio St. 3d 521, and its progeny relative to the lack of binding legal effect of a judgment or decree upon certain persons who were not parties to a declaratory judgment action or proceeding between the holder of a policy of liability insurance and the insurer that issued the policy.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 58

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____