

**As Reported by the House Civil and Commercial Law Committee**

**124th General Assembly**

**Regular Session**

**2001-2002**

**H. B. No. 233**

**REPRESENTATIVES Womer Benjamin, Willamowski, Latta, Seitz, Manning**

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**A B I L L**

To amend section 2721.16 of the Revised Code to  
exclude from the prohibition against awarding  
attorney's fees in declaratory relief claims the  
award of attorney's fees to a fiduciary,  
beneficiary, or other interested party to be paid  
out of trust or estate property in accordance with  
equitable principles.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2721.16 of the Revised Code be  
amended to read as follows:

**Sec. 2721.16.** (A)(1) A court of record shall not award  
attorney's fees to any party on a claim or proceeding for  
declaratory relief under this chapter unless a any of the  
following applies:

(a) 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.~~

(b) 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~~

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(c) Regardless of whether a claim for declaratory relief is granted under this chapter, a court of record awards attorney's fees to a fiduciary, beneficiary, or other interested party, the attorney's fees are to be paid out of trust property, estate property, or other property that is the subject of a fiduciary relationship and that is involved in that claim or proceeding for declaratory relief, and the attorney's fees are awarded in accordance with equitable principles that permit recovery of attorney's fees incurred for services that are beneficial to the trust or estate.

(2) 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 (A)(1) of this section.

(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~~ September 24, 1999, notwithstanding any judicial construction prior to ~~the effective date of this section~~ September 24, 1999, of a statutory provision of that nature, notwithstanding the holding in any decision of a court of this state, other than a decision based on equitable principles described in division (A)(1)(c) of this section, 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:

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(1) An action or proceeding that is commenced on or after ~~the~~ 53  
~~effective date of this section~~ September 24, 1999, and that seeks 54  
declaratory relief under this chapter; 55

(2) An action or proceeding that was commenced prior to ~~the~~ 56  
~~effective date of this section~~ September 24, 1999, that is pending 57  
in a court of record on that date, and that seeks declaratory 58  
relief under this chapter. 59

**Section 2.** That existing section 2721.16 of the Revised Code 60  
is hereby repealed. 61