

**As Reported by the Senate Judiciary--Civil Justice Committee**

**124th General Assembly**

**Regular Session**

**2001-2002**

**H. B. No. 233**

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

**SENATORS Austria, Blessing**

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**A B I L L**

To amend section 2721.16 of the Revised Code to 1  
exclude from the prohibition against awarding 2  
attorney's fees in declaratory relief claims the 3  
award of attorney's fees to a fiduciary, 4  
beneficiary, or other interested party to be paid 5  
out of trust or estate property in accordance with 6  
equitable principles. 7

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

**Section 1.** That section 2721.16 of the Revised Code be 8  
amended to read as follows: 9

**Sec. 2721.16.** (A)(1) A court of record shall not award 10  
attorney's fees to any party on a claim or proceeding for 11  
declaratory relief under this chapter unless a any of the 12  
following applies: 13

(a) A section of the Revised Code explicitly authorizes a 14  
court of record to award attorney's fees on a claim for 15  
declaratory relief under this chapter or unless an. 16

(b) An award of attorney's fees is authorized by section 17  
2323.51 of the Revised Code, by the Civil Rules, or by an award of 18

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punitive or exemplary damages against the party ordered to pay 19  
attorney's fees. References 20

(c) Regardless of whether a claim for declaratory relief is 21  
granted under this chapter, a court of record awards attorney's 22  
fees to a fiduciary, beneficiary, or other interested party, the 23  
attorney's fees are to be paid out of trust property, estate 24  
property, or other property that is the subject of a fiduciary 25  
relationship and that is involved in that claim or proceeding for 26  
declaratory relief, and the attorney's fees are awarded in 27  
accordance with equitable principles that permit recovery of 28  
attorney's fees incurred for services that are beneficial to the 29  
trust or estate. 30

(2) References in another section of the Revised Code to an 31  
award of costs or expenses incurred in connection with an action 32  
or proceeding does not authorize an award of attorney's fees for 33  
purposes of ~~this~~ division (A)(1) of this section. 34

(B) Consistent with section 2721.13 of the Revised Code, the 35  
provisions of this section are remedial in nature. Notwithstanding 36  
any provision of the Revised Code in existence on the day 37  
immediately prior to ~~the effective date of this section~~ September 38  
24, 1999, notwithstanding any judicial construction prior to ~~the 39  
effective date of this section~~ September 24, 1999, of a statutory 40  
provision of that nature, notwithstanding the holding in any 41  
decision of a court of this state, other than a decision based on 42  
equitable principles described in division (A)(1)(c) of this 43  
section, that authorized an award of attorney's fees to a party to 44  
a civil action or proceeding based on common law grounds rather 45  
than a statutory authorization of the general assembly, regardless 46  
of the date upon which a cause of action accrued that pertains to 47  
an action or proceeding in which declaratory relief is sought 48  
under this chapter, and regardless of who is the plaintiff or the 49  
defendant in an action or proceeding in which declaratory relief 50

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is sought under this chapter, division (A) of this section shall 51  
apply in connection with both of the following: 52

(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