(124th General Assembly)
(House Bill Number 233)

AN ACT

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~~

(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:

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

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

SECTION 2. That existing section 2721.16 of the Revised Code is hereby repealed.

_____

Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

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 _____