



Ohio Revised Code

Section 2923.34 Civil proceeding seeking relief from any person whose conduct constitutes corrupt activity.

Effective: July 1, 2007

Legislation: House Bill 241 - 126th General Assembly

(A) Any person who is injured or threatened with injury by a violation of section 2923.32 of the Revised Code may institute a civil proceeding in an appropriate court seeking relief from any person whose conduct violated or allegedly violated section 2923.32 of the Revised Code or who conspired or allegedly conspired to violate that section, except that the pattern of corrupt activity alleged by an injured person or person threatened with injury shall include at least one incident other than a violation of division (A)(1) or (2) of section 1707.042 or division (B), (C)(4), (D), (E), or (F) of section 1707.44 of the Revised Code, of 18 U.S.C. 1341, 18 U.S.C. 1343, 18 U.S.C. 2314, or any other offense involving fraud in the sale of securities.

(B) If the plaintiff in a civil action instituted pursuant to this section proves the violation by a preponderance of the evidence, the court, after making due provision for the rights of innocent persons, may grant relief by entering any appropriate orders to ensure that the violation will not continue or be repeated. The orders may include, but are not limited to, orders that:

- (1) Require the divestiture of the defendant's interest in any enterprise or in any real property;
- (2) Impose reasonable restrictions upon the future activities or investments of any defendant in the action, including, but not limited to, restrictions that prohibit the defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of section 2923.32 of the Revised Code;
- (3) Order the dissolution or reorganization of any enterprise;
- (4) Order the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any department or agency of the state;
- (5) Order the dissolution of a corporation organized under the laws of this state, or the revocation of



the authorization of a foreign corporation to conduct business within this state, upon a finding that the board of directors or an agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of section 2923.32 of the Revised Code, and that, for the prevention of future criminal conduct, the public interest requires the corporation to be dissolved or its license revoked.

(C) Relief pursuant to division (B)(3), (4), or (5) of this section shall not be granted in any civil proceeding instituted by an injured person unless the attorney general intervenes in the civil action pursuant to this division.

Upon the filing of a civil proceeding for relief under division (B)(3), (4), or (5) of this section by an allegedly injured person other than a prosecuting attorney, the allegedly injured person immediately shall notify the attorney general of the filing. The attorney general, upon timely application, may intervene in any civil proceeding for relief under division (B)(3), (4), or (5) if the attorney general certifies that, in the attorney general's opinion, the proceeding is of general public interest. In any proceeding brought by an injured person under division (B)(3), (4), or (5) of this section, the attorney general is entitled to the same relief as if the attorney general instituted the proceeding.

(D) In a civil proceeding under division (B) of this section, the court may grant injunctive relief without a showing of special or irreparable injury.

Pending final determination of a civil proceeding initiated under this section, the court may issue a temporary restraining order or a preliminary injunction upon a showing of immediate danger or significant injury to the plaintiff, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an improvidently granted injunction.

(E) In a civil proceeding under division (A) of this section, any person directly or indirectly injured by conduct in violation of section 2923.32 of the Revised Code or a conspiracy to violate that section, other than a violator of that section or a conspirator to violate that section, in addition to relief under division (B) of this section, shall have a cause of action for triple the actual damages the person sustained. To recover triple damages, the plaintiff shall prove the violation or conspiracy to violate that section and actual damages by clear and convincing evidence. Damages under this



division may include, but are not limited to, competitive injury and injury distinct from the injury inflicted by corrupt activity.

(F) In a civil action in which the plaintiff prevails under division (B) or (E) of this section, the plaintiff shall recover reasonable attorney fees in the trial and appellate courts, and the court shall order the defendant to pay to the state, municipal, or county law enforcement agencies that handled the investigation and litigation the costs of investigation and litigation that reasonably are incurred and that are not ordered to be paid pursuant to division (B)(2) of section 2923.32 of the Revised Code or division (H) of this section.

(G) Upon application, based on the evidence presented in the case by the plaintiff, as the interests of justice may require, the trial court may grant a defendant who prevails in a civil action brought pursuant to this section all or part of the defendant's costs, including the costs of investigation and litigation reasonably incurred, and all or part of the defendant's reasonable attorney fees, unless the court finds that special circumstances, including the relative economic position of the parties, make an award unjust.

(H) If a person, other than an individual, is not convicted of a violation of section 2923.32 of the Revised Code, the prosecuting attorney may institute proceedings against the person to recover a civil penalty for conduct that the prosecuting attorney proves by clear and convincing evidence is in violation of section 2923.32 of the Revised Code. The civil penalty shall not exceed one hundred thousand dollars and shall be paid into the state treasury to the credit of the corrupt activity investigation and prosecution fund created in section 2923.32 of the Revised Code. If a civil penalty is ordered pursuant to this division, the court shall order the defendant to pay to the state, municipal, or county law enforcement agencies that handled the investigation and litigation the costs of investigation and litigation that are reasonably incurred and that are not ordered to be paid pursuant to this section.

(I) A final judgment, decree, or delinquency adjudication rendered against the defendant or the adjudicated delinquent child in a civil action under this section or in a criminal or delinquency action or proceeding for a violation of section 2923.32 of the Revised Code shall estop the defendant or the adjudicated delinquent child in any subsequent civil proceeding or action brought by any person as to all matters as to which the judgment, decree, or adjudication would be an estoppel as between the



parties to the civil, criminal, or delinquency proceeding or action.

(J) Notwithstanding any other provision of law providing a shorter period of limitations, a civil proceeding or action under this section may be commenced at any time within five years after the unlawful conduct terminates or the cause of action accrues or within any longer statutory period of limitations that may be applicable. If a criminal proceeding, delinquency proceeding, civil action, or other proceeding is brought or intervened in by the state to punish, prevent, or restrain any activity that is unlawful under section 2923.32 of the Revised Code, the running of the period of limitations prescribed by this division with respect to any civil action brought under this section by a person who is injured by a violation or threatened violation of section 2923.32 of the Revised Code, based in whole or in part upon any matter complained of in the state prosecution, action, or proceeding, shall be suspended during the pendency of the state prosecution, action, or proceeding and for two years following its termination.

(K) Personal service of any process in a proceeding under this section may be made upon any person outside this state if the person was involved in any conduct constituting a violation of section 2923.32 of the Revised Code in this state. The person is deemed by the person's conduct in violation of section 2923.32 of the Revised Code to have submitted to the jurisdiction of the courts of this state for the purposes of this section.

(L) The application of any civil remedy under this section shall not preclude the application of any criminal remedy or criminal forfeiture under section 2923.32 of the Revised Code or any other provision of law, or the application of any delinquency disposition under Chapter 2152. of the Revised Code or any other provision of law.

(M)(1) Any person who prevails in a civil action pursuant to this section has a right to any property, or the proceeds of any property, criminally forfeited to the state pursuant to section 2981.04 of the Revised Code or against which any fine under section 2923.32 of the Revised Code or civil penalty under division (H) of this section may be imposed.

The right of any person who prevails in a civil action pursuant to this section, other than a prosecuting attorney performing official duties under that section, to forfeited property, property against which fines and civil penalties may be imposed, and the proceeds of that property is superior



to any right of the state, a municipal corporation, or a county to the property or the proceeds of the property, if the civil action is brought within one hundred eighty days after the entry of a sentence of forfeiture or a fine pursuant to sections 2923.32 and 2981.04 of the Revised Code or the entry of a civil penalty pursuant to division (H) of this section.

The right is limited to the total value of the treble damages, civil penalties, attorney's fees, and costs awarded to the prevailing party in an action pursuant to this section, less any restitution received by the person.

(2) If the aggregate amount of claims of persons who have prevailed in a civil action pursuant to this section against any one defendant is greater than the total value of the treble fines, civil penalties, and forfeited property paid by the person against whom the actions were brought, all of the persons who brought their actions within one hundred eighty days after the entry of a sentence or disposition of forfeiture or a fine pursuant to section 2923.32 of the Revised Code or the entry of a civil penalty pursuant to division (H) of this section, first shall receive a pro rata share of the total amount of the fines, civil penalties, and forfeited property. After the persons who brought their actions within the specified one-hundred-eighty-day period have satisfied their claims out of the fines, civil penalties, and forfeited property, all other persons who prevailed in civil actions pursuant to this section shall receive a pro rata share of the total amount of the fines, civil penalties, and forfeited property that remains in the custody of the law enforcement agency or in the corrupt activity investigation and prosecution fund.

(N) As used in this section, "law enforcement agency" includes, but is not limited to, the state board of pharmacy.