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CHAPTER 77

Suits Involving State, State Agencies and Officials and United States

ARTICLE 1

General Provisions

**SECTION 15‑77‑10.** Persons appointed by United States may prosecute in its behalf.

Every person authorized and appointed by the United States for the purpose, in its name and in its behalf, may commence and prosecute to final decree, judgment and execution any action for the recovery from individuals of debts due and effects belonging to the United States. Every such action shall be conducted in the same manner and subject to the same rules and regulations as when commenced by one citizen of this State against another citizen thereof, and the defendant shall be allowed the same privileges and advantages as he would be entitled to if sued by a citizen of this State.

HISTORY: 1962 Code Section 10‑2601; 1952 Code Section 10‑2601; 1942 Code Section 336; 1932 Code Section 336; Civ. P. ‘22 Section 292; Civ. C. ‘12 Section 3925; Civ. C. ‘02 Section 2822; G. S. 2169; R. S. 2298; 1785 (4) 667.

**SECTION 15‑77‑20.** Suits affecting obligations of the State.

No suit shall be filed nor shall any pending suit be prosecuted in any court of this State affecting the issuance or sale of any state security, certificate of indebtedness or bond the intent or effect of which is to prevent, delay or affect the sale or other disposition thereof or which would have this effect unless and until the plaintiff in such action shall make application to the circuit judge presiding in the circuit in which the action is brought or, if there be no judge presiding, then to the resident judge of such circuit or to the Chief Justice of the Supreme Court, if the action be brought in the original jurisdiction thereof, or if he be disabled or disqualified to an associate justice, for leave to bring or prosecute such action and shall convince such judge or justice of the merit in such action or proceeding. Such suit shall not then be filed or prosecuted unless and until the plaintiff shall file in such court a bond in such amount as will adequately protect the State against loss, damage, injury and costs in an amount of not less than twenty‑five thousand dollars, subscribed by a duly licensed surety company or secured by the deposit of a like amount in cash, conditioned to pay all loss, damage, injury and costs, including attorney’s fees, which the State may sustain in any such action. And before any such action shall be commenced at least ten days’ notice thereof, together with a copy of the proposed complaint, shall be given to the Governor and the State Treasurer, so as to afford them an opportunity to appear before the judge or justice in opposition to the filing of the suit and to be heard upon the amount of the bond to be required.

HISTORY: 1962 Code Section 10‑2602; 1952 Code Section 10‑2602; 1942 Code Section 442; 1932 Code Section 442; 1930 (36) 1221.

**SECTION 15‑77‑30.** State as defendant in action affecting title to real estate.

In any action or suit at law affecting the title to real estate when it appears that the State has or claims a judgment lien upon such real estate the State may be made a party defendant in such action or suit at law, provided no money demand is made in such suit or action at law against the State.

HISTORY: 1962 Code Section 10‑2603; 1952 Code Section 10‑2603; 1942 Code Section 405; 1932 Code Section 405; 1926 (34) 963.

**SECTION 15‑77‑40.** Action for forfeiture of property to State.

Whenever by the provisions of law any property, real or personal, shall be forfeited to the State or to any officer for its use an action for the recovery of such property, alleging the ground of the forfeiture, may be brought by the proper officer in the circuit court.

HISTORY: 1962 Code Section 10‑2604; 1952 Code Section 10‑2604; 1942 Code Section 846; 1932 Code Section 846; Civ. P. ‘22 Section 794; Civ. P. ‘12 Section 481; Civ. P. ‘02 Section 443; 1870 (14) 526 Section 462.

**SECTION 15‑77‑50.** Jurisdiction and venue of actions affecting State agencies and officials.

The circuit courts of this State are hereby vested with jurisdiction to hear and determine all questions, actions and controversies, other than those involving rates of public service companies for which specific procedures for review are provided in Title 58, affecting boards, commissions and agencies of this State, and officials of the State in their official capacities in the circuit where such question, action or controversy shall arise.

HISTORY: 1962 Code Section 10‑2605; 1954 (48) 1541.

ARTICLE 5

Attorney’s Fees in State Initiated Actions

**SECTION 15‑77‑300.** . Allowance of fees.

(A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney’s fees to be taxed as court costs against the appropriate agency if:

(1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) the court finds that there are no special circumstances that would make the award of attorney’s fees unjust.

The agency is presumed to be substantially justified in pressing its claim against the party if the agency follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction.

(B) Attorney’s fees allowed pursuant to subsection (A) must be limited to a reasonable time expended at a reasonable rate. Factors to be applied in determining a reasonable rate include:

(1) the nature, extent, and difficulty of the case;

(2) the time devoted;

(3) the professional standing of counsel;

(4) the beneficial results obtained; and

(5) the customary legal fees for similar services.

The judge must make specific written findings regarding each factor listed above in making the award of attorney’s fees. However, in no event shall a prevailing party be allowed to shift attorney’s fees pursuant to this section that exceed the fees the party has contracted to pay counsel personally for work on the litigation.

(C) The provisions of this section do not apply to civil actions relating to the establishment of public utility rates, disciplinary actions by state licensing boards, habeas corpus or post conviction relief actions, child support actions, except as otherwise provided for herein, and child abuse and neglect actions.

HISTORY: 1985 Act No. 44, Section 1; 2010 Act No. 125, Section 1, eff February 24, 2010.

**SECTION 15‑77‑310.** Petition.

The party shall petition for the attorney’s fees within thirty days following final disposition of the case. The petition must be supported by an affidavit setting forth the basis for the request.

HISTORY: 1985 Act No. 44, Section 1.

**SECTION 15‑77‑320.** No right of action created.

Nothing in this article grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.

HISTORY: 1985 Act No. 44, Section 1.

**SECTION 15‑77‑330.** Payment of fees.

Any attorney’s fees assessed against an agency under this article shall be paid from the agency’s funds to the extent the funds are available and from the state’s or political subdivision’s general fund if the agency has no available funds; provided, that such money shall only be paid upon presentation of an itemized accounting of the attorney’s fees. The State Budget and Control Board shall determine whether or not the agency has available funds for this purpose.

HISTORY: 1985 Act No. 44, Section 1.

**SECTION 15‑77‑340.** Costs of blood tests.

In any civil action in which the paternal or maternal relationship of one person to another is sought to be proved by use of blood tests, the costs of such tests shall be paid by that party upon whom the blood test is to be performed, except that the plaintiff shall pay the cost of any test administered to a child if a minor. Upon entry of judgment, the court shall award to the prevailing party any cost incurred by him or it under this section for the administration of such blood tests.

HISTORY: 1985 Act No. 44, Section 1.