CHAPTER 75

Suits Involving Miscellaneous Acts of Wrongful Conduct

**SECTION 15‑75‑10.** Imputation of want of chastity to female.

 If any person shall utter and publish, either by writing or verbally, any words of and concerning any female imputing to her a want of chastity, the person so uttering and publishing such words shall be liable for damages in a civil action brought by the female of whom the words may be uttered and published, without proving any special damage, subject, nevertheless, to the rules of evidence.

HISTORY: 1962 Code Section 10‑2591; 1952 Code Section 10‑2591; 1942 Code Section 8659; 1932 Code Section 8659; Civ. C. ‘22 Section 5595; Civ. C. ‘12 Section 3941; Civ. C. ‘02 Section 2838; G. S. 2179; R. S. 2308; 1824 (6) 236; 1995 Act No. 104, Section 2.

LIBRARY REFERENCES

Westlaw Key Number Search: 237k7(16).

Libel and Slander 7(16).

C.J.S. Libel and Slander.

C.J.S. Injurious Falsehood Section 26.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 4, General and Special Damages.

S.C. Jur. Damages Section 30, Marital or Relational Torts.

S.C. Jur. Libel and Slander Section 31, Sexual Immorality.

United States Supreme Court Annotations

Constitutional aspects of libel and slander. 28 L Ed 2d 885.

NOTES OF DECISIONS

In general 1

1. In general

**SECTION 15‑75‑10 is not unconstitutional.** Wardlaw v. Peck (S.C.App. 1984) 282 S.C. 199, 318 S.E.2d 270.

**SECTION 15‑75‑20.** Loss of companionship of spouse.

 Any person may maintain an action for damages arising from an intentional or tortious violation of the right to the companionship, aid, society and services of his or her spouse. Provided, that such action shall not include any damages recovered prior thereto by the injured spouse.

 This section shall not be retroactive but shall be effective only on cause of action arising after June 25, 1969.

HISTORY: 1962 Code Section 10‑2593; 1969 (56) 615.

CROSS REFERENCES

Marriage, generally, see Sections 20‑1‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 205k209(3); 205k214.

Husband and Wife 209(3), 214.

RESEARCH REFERENCES

ALR Library

4 ALR 7th 1 , Action by or on Behalf of Minor Child, or Presumed Minor Child, for Loss of Parental Consortium‑General Considerations.

54 ALR 4th 112 , Parent’s Right to Recover for Loss of Consortium in Connection With Injury to Child.

Encyclopedias

S.C. Jur. Appeal and Error Section 82, Post‑Verdict and Post‑Trial Motions.

S.C. Jur. Common Law Section 15, Civil Actions.

S.C. Jur. Damages Section 24, Wrongful Death.

S.C. Jur. Damages Section 26, Injury to Child or Spouse.

Treatises and Practice Aids

24 Causes of Action 2d 427, Cause of Action for Loss of Marital Consortium.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Torts. 38 S.C. L. Rev. 228 (Autumn 1986).

NOTES OF DECISIONS

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1. In general

The obvious purpose of this section [ former 1962 Section 10‑2593] is to extend to the wife the right to recover for loss of companionship, etcetera, of her husband which right existed in favor of the husband only under common law. Green v Southern Ry., 319 F Supp 919 (DSC 1970). Berry v Myrick, 260 SC 68, 194 SE2d 240 (1973).

Under South Carolina law, spousal consortium was unavailable where the underlying injury occurred entirely before marriage and, thus, insured, a Catholic diocese, had no legal obligation to pay those spousal consortium claims made by spouses of alleged victims of clergy sexual abuse which purportedly arose before marriage, and insurer was not obligated to indemnify insured for its settlement of such claims. Bishop of Charleston v. Century Indemnity Company, 2016, 225 F.Supp.3d 554. Insurance 2269

Loss of consortium is an independent action, not derivative. Kizer v. Kinard (S.C.App. 2004) 361 S.C. 68, 602 S.E.2d 783. Marriage And Cohabitation 1076(3)

One spouse’s cause of action for medical expenses and loss of consortium resulting from negligent injuries to the other spouse is a different and distinct cause of action from one maintained by the injured spouse. Kizer v. Kinard (S.C.App. 2004) 361 S.C. 68, 602 S.E.2d 783. Marriage And Cohabitation 1075; Marriage And Cohabitation 1076(3); Marriage And Cohabitation 1077

Loss of consortium encompasses not only the loss of services, but also the loss of society and companionship. Davis v. Tripp (S.C.App. 1999) 338 S.C. 226, 525 S.E.2d 528. Marriage And Cohabitation 1076(1)

Loss of consortium is independent action, not derivative, under South Carolina law. Preer v. Mims (S.C. 1996) 323 S.C. 516, 476 S.E.2d 472. Marriage And Cohabitation 1076(3)

A summary judgment was properly granted in favor of a nursing home in an action brought against it under Section 15‑75‑20 by a patient’s husband for failing to constantly attend the patient and for permitting the patient’s daughter to remove her from the home, where the husband was aware that the nursing home did not have someone in constant attention with his wife and did not expect it to do so, and where the husband was aware of the daughter’s regular visits and did not ask anyone to keep the daughter from seeing her. Flinn v. Crittenden (S.C.App. 1985) 287 S.C. 427, 339 S.E.2d 138.

2. Accrual of cause of action

South Carolina law would not permit a claim of filial loss of consortium, specifically, a claim by parents of injured child for loss of companionship, society and comfort of child by her parents. Kirkland v. Sam’s East, Inc., 2005, 411 F.Supp.2d 639. Parent And Child 324

Right of action for loss of consortium does not accrue until loss of services, society, and companionship of spouse has actually occurred, which is point when spouse sustained injuries. Remand of wife’s loss of consortium claim, based on claim that physician’s wrongful administration of drugs to husband caused him to become addicted, was required in order for court to address questions of when action accrued, or when it was discovered or may have been discovered by exercise of reasonable diligence since trial court improperly determined that loss of consortium was derivative action and directed verdict against wife on basis of statute of limitations. Preer v. Mims (S.C. 1996) 323 S.C. 516, 476 S.E.2d 472. Appeal And Error 1178(1)

It is apparent that the General Assembly did not intend for a wife to be able to assert a cause of action for loss of consortium which arose prior to June 25, 1969. This section [former Code 1962 Section 10‑2593] only authorizes a cause of action “arising after” June 25, 1969. Berry v. Myrick (S.C. 1973) 260 S.C. 68, 194 S.E.2d 240.

The true meaning of “cause of action arising after June 25, 1969,” is one originating subsequent to June 25, 1969, and excludes any remedy by a wife for the loss of her husband’s consortium arising before or prior to June 25, 1969. Berry v. Myrick (S.C. 1973) 260 S.C. 68, 194 S.E.2d 240.

The word “arising,” while having a progressive and prospective meaning in some circumstances usually signifies the present; generally, it denotes immediate present, and only occasionally implies future events or occurrences. It cannot, with any propriety, relate to time past and embrace former transactions. Berry v. Myrick (S.C. 1973) 260 S.C. 68, 194 S.E.2d 240.

A husband’s right to sue for loss of consortium of his wife accrues when the loss of the service, society and companionship of th wife actually occurs. The rationale of this decision is applicable to a wife’s right to sue also. Berry v. Myrick (S.C. 1973) 260 S.C. 68, 194 S.E.2d 240.

3. Personal injury actions

Claims for personal injuries and for loss of consortium are separate and distinct; thus, a judgment for the defendant in one action does not automatically bar recovery in the other action. Daves v. Cleary (S.C.App. 2003) 355 S.C. 216, 584 S.E.2d 423, rehearing denied, certiorari denied. Judgment 585(3)

4. Wrongful death actions

Under South Carolina law, decedent’s spouse could maintain both an action for loss of consortium and an action for wrongful death; claims for loss of consortium and wrongful death were separate and distinct in that potential beneficiaries of the causes of action and the purposes of those causes of action were different. White v. U.S., 2012, 907 F.Supp.2d 703. Action 38(4); Action 38(6); Death 81; Death 88

Recovery under the Wrongful Death Act is an exclusive remedy. Green v. Southern Ry. Co. (D.C.S.C. 1970) 319 F.Supp. 919.

There is no indication in this section [former Code 1962 Section 10‑2593] of an intent to allow each spouse a right to recover the wrongful death of the other spouse under this section as well as under the Wrongful Death Act. Green v. Southern Ry. Co. (D.C.S.C. 1970) 319 F.Supp. 919.

Widow, individually, cannot recover the loss of services due to the death of her husband in an action under this section [former Code 1962 Section 10‑2593]. Green v. Southern Ry. Co. (D.C.S.C. 1970) 319 F.Supp. 919.

5. Alienation of affection

The Supreme Court’s judicial abolition of actions for alienation of affection, or “heart balm” cases, in no way limited a spouse’s cause of action for loss of consortium arising out of personal injuries sustained by the other spouse. Russo v. Sutton (S.C. 1992) 310 S.C. 200, 422 S.E.2d 750. Marriage And Cohabitation 1076(1)

6. Medical malpractice claims

Jury’s verdict awarding patient damages for malpractice of doctor but finding doctor not liable for patient’s wife’s loss of consortium was not irreconcilably inconsistent, and thus doctor was not entitled to a new trial; jury’s verdict for patient implied that there was abundant evidence to support finding that doctor was liable to patient, but jury did not believe wife’s testimony. Daves v. Cleary (S.C.App. 2003) 355 S.C. 216, 584 S.E.2d 423, rehearing denied, certiorari denied. Health 835

7. Filial consortium

South Carolina law does not permit filial consortium claims. Bishop of Charleston v. Century Indemnity Company, 2016, 225 F.Supp.3d 554. Parent and Child 324

Filial consortium was not recognized by South Carolina law and, thus, insured, a Catholic diocese, had no legal obligation to pay claims for loss of filial consortium made by parents of alleged victims of clergy sexual abuse, and insurer was not obligated to indemnify insured for its settlement of such claims. Bishop of Charleston v. Century Indemnity Company, 2016, 225 F.Supp.3d 554. Insurance 2269

South Carolina law does not provide a cause of action for filial consortium. Doe v. Greenville County School Dist. (S.C. 2007) 375 S.C. 63, 651 S.E.2d 305, rehearing denied. Parent And Child 324

**SECTION 15‑75‑40.** Definitions.

 (A) As used in this section:

 (1) “Shoplifting” means an act punishable under Section 16‑13‑110 and also includes the theft of cash or merchandise by employees of a mercantile establishment;

 (2) “Store or other retail mercantile establishment” means an establishment as defined in Section 16‑13‑105(5);

 (3) “Emancipated minor” means a person over the age of sixteen at the time of the alleged shoplifting and who was no longer a dependent of or in the custody of a parent or legal guardian.

 (B) In a proceeding brought under this section the burden of proof is by a preponderance of the evidence.

 (C) An adult or emancipated minor who commits shoplifting against the property of a store or other retail mercantile establishment is civilly liable to the operator of the establishment in an amount consisting of:

 (1) the retail price of the merchandise if not recovered in merchantable condition up to an amount not to exceed fifteen hundred dollars; plus

 (2) a penalty not to exceed the greater of three times the retail price of the merchandise or one hundred fifty dollars. In no event may the penalty exceed five hundred dollars.

 (D) Custodial parents or legal guardians of an unemancipated minor who knew or should have known of the minor’s propensity to steal are civilly liable for the minor who commits shoplifting against the property of a store or other retail mercantile establishment to the operator of the establishment in an amount consisting of:

 (1) the retail price of the merchandise if not recovered in merchantable condition up to an amount not to exceed fifteen hundred dollars; plus

 (2) a penalty not to exceed the greater of three times the retail price of the merchandise or one hundred fifty dollars. In no event may the penalty exceed five hundred dollars.

 (E) A conviction or a plea of guilty for committing shoplifting is not a prerequisite to the bringing of a civil suit, obtaining a judgment, or collecting that judgment under this section.

 (F) The fact that an operator of a store or other retail mercantile establishment may bring an action against an individual as provided in this section does not limit the right of the merchant to demand, orally or in writing, that a person who is liable for damages and penalties under this section remit the damages and penalties before the commencement of a legal action.

 (G)(1) A written notice sent by the operator of a store or other mercantile establishment to an individual as provided in subsection (F) must be sent by certified mail and must state substantially as follows:

|  |
| --- |
|  |
|  |
| “(Date of Mailing), 19  |
| (Name) |
| (Address) |
| (City) |
| This letter is written notice of demand for payment of damages in the amount of (amount of damages) arising out of your shoplifting of the following personal property owned by (the undersigned or other owner): |
|  |
| (list of property) |
|  |
| Pursuant to Section 15‑75‑40, Code of Laws of South Carolina, 1976, this letter is further notice that if the amount stated above is not paid, or a written agreement as to its payment is not reached within thirty days of the date of mailing this letter, (I) (we) (other owner) intend to bring a legal action against you for the amount, plus attorney’s fees, court costs, and other relief provided by law. |
|  |
|  |
| (Name) |
| (Address of |
| business) |
| (City) |
| (person sending notice)” |

 (2) The date of mailing of the notice provided by this subsection is the later of the date of mailing stated in the notice or the date on the certified mail receipt when the notice was delivered to the United States mail.

 (H) In an action brought under subsection (D) of this section, the court shall consider in the interest of justice mitigating circumstances that bear directly upon the actions of the custodial parent or legal guardian in supervising the unemancipated minor who committed the shoplifting. These mitigating circumstances may include, but are not limited to, whether or not the unemancipated minor had demonstrated a propensity to steal or tendencies toward kleptomania and whether or not the custodial parent or legal guardian had notice or knowledge of the unemancipated minor’s propensity to steal or tendencies toward kleptomania.

 (I) An action for recovery of damages and penalties under this section may be brought in any court of competent jurisdiction.

 (J) The provisions of this section may not be construed to prohibit or limit any other cause of action which an operator of a store or other retail mercantile establishment may have against a person who unlawfully takes merchandise from the establishment.

 (K) Testimony or statements of the defendant or unemancipated minor child of the defendant or any evidence derived from an attempt to reach a civil settlement or from a civil proceeding brought under this section is inadmissible in any other court proceeding related to the shoplifting.

 (L) A store which utilizes the provisions of this section is prohibited from subsequently filing criminal charges against the individual pursuant to Section 16‑13‑110.

HISTORY: 1994 Act No. 390, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 234k1.

Larceny 1.

C.J.S. Larceny Section 1(1, 2), 9.

NOTES OF DECISIONS

Emancipated minor 1

1. Emancipated minor

Although minor had moved out of ex‑wife’s home and was residing with her boyfriend and was pregnant with boyfriend’s child, minor was not fully emancipated so as to warrant termination of ex‑husband’s child support obligation before minor had reached age of majority; ex‑wife, who was primary custodial parent, objected to minor’s move and did not agree that minor should be emancipated, ex‑husband testified he gave minor $700 for “down payment” on apartment, minor and her boyfriend were not married and, therefore, boyfriend was not legally obligated to contribute to minor’s support, and there was no evidence that minor could have supported herself in the event her relationship with her boyfriend deteriorated. Purdy v. Purdy (S.C.App. 2003) 353 S.C. 400, 578 S.E.2d 30. Child Support 386

**SECTION 15‑75‑50.** Use of a facsimile machine to transmit unsolicited advertising material prohibited; exceptions; civil actions.

 (A) No person may use a machine that electronically transmits facsimiles through connection with a telephone network to transmit unsolicited advertising material which offers to sell goods or services except as follows:

 (1) where a prior or current business relationship exists between the sender and receiver;

 (2) where the facsimile transmission is sent as a follow‑up or response to a sales call, sales lead, or other business or association‑related contact.

 (B) A person aggrieved by a violation of the provisions of subsection (A) may bring a civil action to enjoin further violations and to recover the actual damages sustained by reason of the violation, together with costs and a reasonable attorney’s fee, or two hundred dollars, whichever is greater.

HISTORY: 1991 Act No. 58, Section 1.

Editor’s Note

Section 3 of 1991 Act No. 58, effective May 27, 1991, provides as follows:

“The provisions of this act do not apply to persons submitting bids for services or materials to be used in connection with nonresidential construction projects.”

LIBRARY REFERENCES

Westlaw Key Number Search: 382k870.

Trade Regulation 870.

**SECTION 15‑75‑51.** Notice not to transmit unsolicited material required prior to imposition of penalty.

 The penalty provided by Section 15‑75‑50, including injunctive relief, may not be imposed unless the person who is alleged to have violated that section does so after being instructed, (1) in writing, (2) by telephone, or (3) by a machine that electronically transmits facsimiles through connection with a telephone network, by the receiver of the unsolicited advertising material not to transmit the material.

HISTORY: 1991 Act No. 58, Section 2.

LIBRARY REFERENCES

Westlaw Key Number Search: 382k870.

Trade Regulation 870.

**SECTION 15‑75‑60.** Sham legal processes involving persons impersonating government officials or employees, or by persons falsely asserting authority of law; remedies.

 A person who is injured by a sham legal process involving a violation of Section 16‑17‑735 has the following civil remedies against the person who committed the violation or who caused the violation to be committed:

 (1) actual damages;

 (2) punitive damages;

 (3) costs; and

 (4) reasonable attorney’s fees. The amount of the recovery for the plaintiff is not determinative of the attorney’s fee.

HISTORY: 1998 Act No. 385, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Search: 379k14.

Torts 14.

C.J.S. Torts Sections 86 to 87.