

FIRST REGULAR SESSION

# SENATE BILL NO. 258

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Read 1st time January 9, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1162S.011

## AN ACT

To repeal sections 507.040, 507.050, 508.010, and 537.762, RSMo, and to enact in lieu thereof four new sections relating to venue requirements in civil actions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 507.040, 507.050, 508.010, and 537.762, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be known as sections  
3 507.040, 507.050, 508.010, and 537.762, to read as follows:

507.040. 1. All persons may join in one action as plaintiffs if they assert  
2 any right to relief jointly, severally, or in the alternative in respect of or arising  
3 out of the same transaction, occurrence, or series of transactions or occurrences  
4 and if any question of law or fact common to all of them will arise in the action.  
5 All persons may be joined in one action as defendants if there is asserted against  
6 them jointly, severally, or in the alternative, any right to relief in respect of or  
7 arising out of the same transaction, occurrence, or series of transactions or  
8 occurrences and if any question of law or fact common to all of them will arise in  
9 the action. A plaintiff or defendant need not be interested in obtaining or  
10 defending against all the relief demanded. Judgment may be given for one or  
11 more of the plaintiffs according to their respective rights to relief, and against one  
12 or more defendants according to their respective liabilities.

13 2. The court may make such orders as will prevent a party from being  
14 embarrassed, delayed, or put to expense by the inclusion of a party against whom  
15 he asserts no claim and who asserts no claim against him, and may order  
16 separate trials or make other orders to prevent delay or prejudice.

17 **3. In addition to the requirements of subsection 1 of this section,**  
18 **in any civil action in which there is a count alleging a tort, two or more**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 **plaintiffs may be joined in a single action only if each plaintiff could**  
20 **have separately filed an action in that venue, independently of the**  
21 **claims of any other plaintiff. Any plaintiff that cannot establish that**  
22 **venue would be proper independent of the claims of any other plaintiff**  
23 **shall be deemed misjoined. Two or more defendants may be joined in**  
24 **a single action, where the plaintiff was first injured outside of the state**  
25 **of Missouri, only if the plaintiff can establish proper venue against**  
26 **each defendant individually. If proper venue cannot be established**  
27 **against a defendant individually, that defendant shall be deemed**  
28 **misjoined.**

507.050. 1. Misjoinder of parties is not ground for dismissal of an  
2 action. Parties may be dropped or added by order of the court on motion of any  
3 party or of its own initiative at any stage of the action and on such terms as are  
4 just. Any claim against a party may be severed and proceeded with separately.  
5 **If a plaintiff or defendant is deemed misjoined pursuant to subsection**  
6 **3 of section 507.040 that plaintiff or defendant shall be severed from the**  
7 **action and the claims shall be transferred to a county in which venue**  
8 **exists. If there is no county in Missouri in which venue exists, the**  
9 **claims shall be dismissed.**

10 2. A motion to drop or add parties may be made at the same time as other  
11 motions provided for in section 509.290, and if so made, the provisions of section  
12 509.340 with reference to the consolidation of motions and waiver of objections  
13 shall also apply. If said motion is made at any other time, the hearing and  
14 determination thereof shall not delay the trial. Objections on account of  
15 misjoinder or nonjoinder of parties may also be raised by answer or reply.

508.010. 1. As used in this section, "principal place of residence" shall  
2 mean the county which is the main place where an individual resides in the state  
3 of Missouri. There shall be a rebuttable presumption that the county of voter  
4 registration at the time of injury is the principal place of residence. There shall  
5 be only one principal place of residence.

6 2. In all actions in which there is no count alleging a tort, venue shall be  
7 determined as follows:

8 (1) When the defendant is a resident of the state, either in the county  
9 within which the defendant resides, or in the county within which the plaintiff  
10 resides, and the defendant may be found;

11 (2) When there are several defendants, and they reside in different

12 counties, the suit may be brought in any such county;

13 (3) When there are several defendants, some residents and others  
14 nonresidents of the state, suit may be brought in any county in this state in  
15 which any defendant resides;

16 (4) When all the defendants are nonresidents of the state, suit may be  
17 brought in any county in this state.

18 3. The term "tort" shall include claims based upon improper health care,  
19 under the provisions of chapter 538.

20 4. Notwithstanding any other provision of law, in all actions in which  
21 there is any count alleging a tort and in which the plaintiff was first injured in  
22 the state of Missouri, venue shall be in the county where the plaintiff was first  
23 injured by the wrongful acts or negligent conduct alleged in the action.

24 5. Notwithstanding any other provision of law, in all actions in which  
25 there is any count alleging a tort and in which the plaintiff was first injured  
26 outside the state of Missouri, venue shall be determined, **as to each defendant**  
27 **individually**, as follows:

28 (1) If the defendant is a corporation, then venue shall be in any county  
29 where a defendant corporation's registered agent is located or, if the plaintiff's  
30 principal place of residence was in the state of Missouri on the date the plaintiff  
31 was first injured, then venue may be in the county of the plaintiff's principal  
32 place of residence on the date the plaintiff was first injured;

33 (2) If the defendant is an individual, then venue shall be in any county  
34 of the individual defendant's principal place of residence in the state of Missouri  
35 or, if the plaintiff's principal place of residence was in the state of Missouri on the  
36 date the plaintiff was first injured, then venue may be in the county containing  
37 the plaintiff's principal place of residence on the date the plaintiff was first  
38 injured;

39 (3) Notwithstanding subdivisions (1) and (2) of this subsection, if the  
40 plaintiff was first injured in a foreign country in connection with any railroad  
41 operations therein and any defendant is a:

42 (a) Corporation that, either directly or through its subsidiaries, wholly  
43 owns or operates the foreign railroad; or

44 (b) Wholly owned subsidiary of a corporation that, either directly or  
45 through its subsidiaries, wholly owns or operates the foreign railroad;  
46 then venue shall exclusively be in the county where any such defendant  
47 corporation's registered agent is located, regardless of venue as to any other

48 defendant or, if the plaintiff's principal place of residence was in the state of  
49 Missouri on the date the plaintiff was first injured, then venue may be in the  
50 county of the plaintiff's principal place of residence on the date the plaintiff was  
51 first injured.

52           6. Any action, in which any county shall be a plaintiff, may be commenced  
53 and prosecuted to final judgment in the county in which the defendant or  
54 defendants reside, or in the county suing and where the defendants, or one of  
55 them, may be found.

56           7. In all actions, process shall be issued by the court in which the action  
57 is filed and process may be served in any county within the state.

58           8. In any action for defamation or for invasion of privacy, the plaintiff  
59 shall be considered first injured in the county in which the defamation or  
60 invasion was first published.

61           9. In all actions, venue shall be determined as of the date the plaintiff was  
62 first injured.

63           10. All motions to dismiss or to transfer based upon a claim of improper  
64 venue shall be deemed granted if not denied within ninety days of filing of the  
65 motion unless such time period is waived in writing by all parties.

66           11. In a wrongful death action, the plaintiff shall be considered first  
67 injured where the decedent was first injured by the wrongful acts or negligent  
68 conduct alleged in the action. In any spouse's claim for loss of consortium, the  
69 plaintiff claiming consortium shall be considered first injured where the other  
70 spouse was first injured by the wrongful acts or negligent conduct alleged in the  
71 action.

72           12. The provisions of this section shall apply irrespective of whether the  
73 defendant is a for-profit or a not-for-profit entity.

74           13. In any civil action, if all parties agree in writing to a change of venue,  
75 the court shall transfer venue to the county within the state unanimously chosen  
76 by the parties. If any parties are added to the cause of action after the date of  
77 said transfer who do not consent to said transfer then the cause of action shall  
78 be transferred to such county in which venue is appropriate under this section,  
79 based upon the amended pleadings.

80           14. A plaintiff is considered first injured where the trauma or exposure  
81 occurred rather than where symptoms are first manifested.

82           **15. Notwithstanding any other provision of law, in any civil**  
83 **action in which there is a count alleging a tort, each plaintiff shall**

84 **independently establish proper venue; it is not sufficient that venue is**  
85 **proper for any other plaintiff joined in the civil action. Venue cannot**  
86 **be established by joinder or intervention. The claims of any plaintiff**  
87 **who cannot independently establish venue shall be deemed misjoined**  
88 **and the claims of any such plaintiff shall be severed and transferred to**  
89 **a county in which venue exists or if there is no county in Missouri in**  
90 **which venue exists, such claims shall be dismissed. If a trial has**  
91 **occurred over objection to venue improperly established by joinder or**  
92 **intervention, and the matter is still subject to review either because no**  
93 **final judgment has been entered or because the matter remains pending**  
94 **on appeal, any judgment entered shall be vacated and the claim shall**  
95 **be remanded to the trial court for the sole purpose of transferring any**  
96 **claim for which venue does not exist to a county in which venue exists**  
97 **or if there is no county in Missouri in which jurisdiction and venue**  
98 **exist, such claims shall be dismissed.**

99 **16. For the purposes of this section, the residence of a domestic**  
100 **insurance company shall be the county where its registered office is**  
101 **maintained. The residence of a foreign insurance company shall be in**  
102 **the county where its registered office is maintained, unless it does not**  
103 **maintain such an office within the state. If a foreign insurance**  
104 **company does not maintain a registered office in any county in**  
105 **Missouri, the residence of the foreign insurance company shall be in**  
106 **Cole County.**

537.762. 1. A defendant whose liability is based solely on his status as  
2 a seller in the stream of commerce may be dismissed from a products liability  
3 claim as provided in this section.

4 2. This section shall apply to any products liability claim in which another  
5 defendant, including the manufacturer, is properly before the court and from  
6 whom total recovery may be had for plaintiff's claim.

7 3. A defendant may move for dismissal under this section within the time  
8 for filing an answer or other responsive pleading unless permitted by the court  
9 at a later time for good cause shown. The motion shall be accompanied by an  
10 affidavit which shall be made under oath and shall state that the defendant is  
11 aware of no facts or circumstances upon which a verdict might be reached against  
12 him, other than his status as a seller in the stream of commerce.

13 4. The parties shall have sixty days in which to conduct discovery on the

14 issues raised in the motion and affidavit. The court for good cause shown, may  
15 extend the time for discovery, and may enter a protective order pursuant to the  
16 rules of civil procedure regarding the scope of discovery on other issues.

17         5. Any party may move for a hearing on a motion to dismiss under this  
18 section. If the requirements of subsections 2 and 3 of this section are met, and  
19 no party comes forward at such a hearing with evidence of facts which would  
20 render the defendant seeking dismissal under this section liable on some basis  
21 other than his status as a seller in the stream of commerce, the court shall  
22 dismiss without prejudice the claim as to that defendant.

23         6. [No order of dismissal under this section shall operate to divest a court  
24 of venue or jurisdiction otherwise proper at the time the action was commenced.  
25 A defendant dismissed pursuant to this section shall be considered to remain a  
26 party to such action only for such purposes.

27         7.] An order of dismissal under this section shall be interlocutory until  
28 final disposition of plaintiff's claim by settlement or judgment and may be set  
29 aside for good cause shown at anytime prior to such disposition.

✓  
Bill

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