

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 546

AN ACT

To repeal sections 507.040, 507.050, 508.010, 508.012, and 537.762, RSMo, and to enact in lieu thereof five new sections relating to civil procedure.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 507.040, 507.050, 508.010, 508.012, and
2 537.762, RSMo, are repealed and five new sections enacted in lieu
3 thereof, to be known as sections 507.040, 507.050, 508.010,
4 508.012, and 537.762, to read as follows:

5 507.040. 1. All persons may join in one action as
6 plaintiffs if they assert any right to relief jointly, severally,
7 or in the alternative in respect of or arising out of the same
8 transaction, occurrence, or series of transactions or occurrences
9 and if any question of law or fact common to all of them will
10 arise in the action. All persons may be joined in one action as
11 defendants if there is asserted against them jointly, severally,
12 or in the alternative, any right to relief in respect of or
13 arising out of the same transaction, occurrence, or series of
14 transactions or occurrences and if any question of law or fact
15 common to all of them will arise in the action. Notwithstanding
16 any other provision of law to the contrary, for any action in
17 which a plaintiff was injured outside the state of Missouri,
18 claims arising out of separate purchases of the same product or

1 service, or separate incidents involving the same product or
2 services shall not be joined with other plaintiffs' claims in a
3 single action. A plaintiff or defendant need not be interested
4 in obtaining or defending against all the relief demanded.

5 Judgment may be given for one or more of the plaintiffs according
6 to their respective rights to relief, and against one or more
7 defendants according to their respective liabilities.

8 2. In addition to the requirements of subsection 1 of this
9 section, in any civil action in which there is a count alleging a
10 tort, two or more plaintiffs may be joined in a single action
11 only if each plaintiff could have separately filed an action in
12 that venue, independently of the claims of any other plaintiff.
13 Two or more defendants may be joined in a single action only if:

14 (1) Personal jurisdiction is proper for each defendant,
15 independently of the claims against any other defendant; and

16 (2) Each plaintiff can establish proper venue against each
17 defendant, independently of the claims against any other
18 defendant.

19 3. All parties for which proper personal jurisdiction or
20 venue cannot be independently established shall be deemed
21 misjoined. Misjoined parties may be joined only where all
22 parties to the action, including parties later added to the
23 action, waive objection to the misjoinder. Proceedings against
24 any misjoined parties shall otherwise be governed by the
25 provisions of section 507.050. The requirements under this
26 section are procedural.

27 4. Notwithstanding any other provision of law to the
28 contrary, if two or more plaintiffs were first injured in a state

1 of the United States, other than the state of Missouri, as a
2 result of a single occurrence in which injuries occurred
3 simultaneously, the plaintiffs may be joined in one action in
4 Cole County, in addition to any other proper venue as established
5 by this section.

6 5. The court may make such orders as will prevent a party
7 from being embarrassed, delayed, or put to expense by the
8 inclusion of a party against whom he asserts no claim and who
9 asserts no claim against him, and may order separate trials or
10 make other orders to prevent delay or prejudice.

11 507.050. 1. Misjoinder of parties is not ground for
12 dismissal of an action. Parties may be dropped [or], added, or
13 severed by order of the court on motion of any party or of its
14 own initiative at any stage of the action and on such terms as
15 are just. Any claim against a party may be severed and proceeded
16 with separately. If a plaintiff or defendant is deemed misjoined
17 pursuant to subsection 3 of section 507.040, all claims brought
18 by that plaintiff or against that defendant shall be severed from
19 the action and those claims shall be transferred to a county in
20 which venue exists upon the motion of any party. For any claim
21 that has already been filed but for which the court has not
22 issued a final judgment as of the effective date of this act, all
23 pretrial rulings made by the transferring court may only be
24 reconsidered for good cause. If there is no county in Missouri
25 in which venue exists, those claims shall be dismissed without
26 prejudice.

27 2. A motion to drop or add parties may be made at the same
28 time as other motions provided for in section 509.290, and if so

1 made, the provisions of section 509.340 with reference to the
2 consolidation of motions and waiver of objections shall also
3 apply. If said motion is made at any other time, the hearing and
4 determination thereof shall not delay the trial. Objections on
5 account of misjoinder or nonjoinder of parties may also be raised
6 by answer or reply.

7 508.010. 1. There shall be only one principal place of
8 residence for each party to an action. As used in this section,
9 "principal place of residence" shall [mean the county which is
10 the main place where an individual resides in the state of
11 Missouri. There shall be a rebuttable presumption that the
12 county of voter registration at the time of injury is the
13 principal place of residence. There shall be only one principal
14 place of residence.] be determined as follows:

15 (1) For an individual person, there shall be a rebuttable
16 presumption that the county of voter registration at the time of
17 injury is the principal place of residence;

18 (2) Notwithstanding subdivision (1) of this subsection, for
19 an individual whose conduct at issue was alleged in at least one
20 count to be in the course and scope of his or her employment with
21 a corporation, the individual's principal place of residence for
22 venue purposes shall be deemed to be the applicable corporation's
23 principal place of residence;

24 (3) For a corporation, the county where the corporation has
25 its registered agent is the principal place of residence;

26 (4) For a domestic insurance corporation, the county where
27 the corporation has its registered office is the principal place
28 of residence;

1 (5) For a foreign insurance corporation, the county where
2 the foreign corporation has its registered office is its
3 principal place of residence; if such a foreign corporation does
4 not have a registered office in any county in Missouri, the
5 principal place of residence shall be Cole County.

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

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

12 (2) When there are several defendants, and they reside in
13 different counties, the suit may be brought in any such county;

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

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

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

21 4. Notwithstanding any other provision of [law] this
22 section to the contrary, in all actions in which there is any
23 count alleging a tort or a claim for uninsured or underinsured
24 motorist benefits, and in which the plaintiff was first injured
25 in the state of Missouri, venue shall be in the county where the
26 plaintiff was first injured by the [wrongful] acts or [negligent]
27 conduct alleged in the action. In all actions in which there is
28 any count against an insurer, whether in tort or contract,

1 regarding the rights, benefits, or duties under an insurance
2 contract or any action arising from an insurance contract, other
3 than claims for uninsured or underinsured motorist coverage,
4 venue shall be determined as described in subsection 6 of this
5 section.

6 5. Notwithstanding any other provision of law, in all
7 actions in which there is any count alleging a tort or a claim
8 for uninsured or underinsured motorist benefits and in which the
9 plaintiff was first injured outside the state of Missouri, venue
10 as to that individual plaintiff shall be determined as follows:

11 (1) If the defendant is a corporation, then venue shall be
12 in [any] the county where [a] the defendant [corporation's
13 registered agent is located] has its principal place of residence
14 or, if the plaintiff's principal place of residence was in the
15 state of Missouri on the date the plaintiff was first injured,
16 then venue may be in the county of the plaintiff's principal
17 place of residence on the date the plaintiff was first injured;

18 (2) If the defendant is an individual, then venue shall be
19 in [any] the county [of] where the [individual defendant's]
20 defendant has his or her principal place of residence in the
21 state of Missouri, which for venue purposes shall be deemed to be
22 that of his or her employer corporation if any count alleges
23 conduct in the course and scope of his or her employment with
24 that corporation, or, if the plaintiff's principal place of
25 residence was in the state of Missouri on the date the plaintiff
26 was first injured, then venue as to that individual plaintiff may
27 be in the county containing the plaintiff's principal place of
28 residence on the date the plaintiff was first injured;

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

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

7 (b) Wholly owned subsidiary of a corporation that, either
8 directly or through its subsidiaries, wholly owns or operates the
9 foreign railroad;

10
11 then venue shall exclusively be in the county where any such
12 defendant corporation's registered agent is located, regardless
13 of venue as to any other defendant or, if the plaintiff's
14 principal place of residence was in the state of Missouri on the
15 date the plaintiff was first injured, then venue may be in the
16 county of the plaintiff's principal place of residence on the
17 date the plaintiff was first injured.

18 6. Notwithstanding any other provision of this section to
19 the contrary, in all actions in which there is any count against
20 an insurer, whether in tort or contract, regarding the rights,
21 benefits, or duties under an insurance contract or any action
22 arising from an insurance contract, including but not limited to
23 claims of bad faith, refusal to settle, claims under section
24 375.296, or claims under section 375.420, venue shall be in the
25 county either of the insurer's principal place of residence or if
26 the insured was a resident of Missouri at the time the insurance
27 contract was issued, the insured's principal place of residence
28 at the time the insurance contract was issued. Venue shall be

1 determined by this subsection even if the insured's rights or
2 claims under the policy have been assigned or otherwise
3 transferred to another party. However, intervention by an
4 insurer in an action pursuant to section 537.065 shall not affect
5 the venue of the action. The provisions of this subsection shall
6 not apply to any action against an insurer relating to uninsured
7 motorist coverage or underinsured motorist coverage, including
8 any action to enforce such coverage.

9 7. Any action, in which any county shall be a plaintiff,
10 may be commenced and prosecuted to final judgment in the county
11 in which the defendant or defendants reside, or in the county
12 suing and where the defendants, or one of them, may be found.

13 [7.] 8. In all actions, process shall be issued by the
14 court in which the action is filed and process may be served in
15 any county within the state.

16 [8.] 9. In any action for defamation or for invasion of
17 privacy, the plaintiff shall be considered first injured in the
18 county in which the defamation or invasion was first published.

19 [9.] 10. In all actions, venue shall be determined as of
20 the date the plaintiff was first injured.

21 [10.] 11. All motions to dismiss or to transfer based upon
22 a claim of improper venue shall be deemed granted if not denied
23 within ninety days of filing of the motion unless such time
24 period is waived in writing by all parties.

25 [11.] 12. In a wrongful death action, the plaintiff shall
26 be considered first injured where the decedent was first injured
27 by the wrongful acts or negligent conduct alleged in the action.
28 In any spouse's claim for loss of consortium, the plaintiff

1 claiming consortium shall be considered first injured where the
2 other spouse was first injured by the wrongful acts or negligent
3 conduct alleged in the action.

4 [12.] 13. The provisions of this section shall apply
5 irrespective of whether the defendant is a for-profit or a
6 not-for-profit entity.

7 [13.] 14. In any civil action, if all parties agree in
8 writing to a change of venue, the court shall transfer venue to
9 the county within the state unanimously chosen by the parties.
10 If any parties are added to the cause of action after the date of
11 said transfer who do not consent to said transfer then the cause
12 of action shall be transferred to such county in which venue is
13 appropriate under this section, based upon the amended pleadings.

14 [14.] 15. A plaintiff is considered first injured where the
15 trauma or exposure occurred rather than where symptoms are first
16 manifested.

17 16. Notwithstanding any other provision of law to the
18 contrary, in any civil action in which there is any count
19 alleging a tort, each plaintiff shall establish that the court
20 where the action is filed is a proper venue against each
21 defendant, independent of the claims brought by any other
22 plaintiff or against any other defendant. Venue for each
23 plaintiff and each defendant cannot be established by joinder or
24 intervention.

25 17. If the county where the plaintiff's claim is filed is
26 not a proper venue, that plaintiff shall be transferred to a
27 county where proper venue can be established. If no such county
28 exists in the state of Missouri, the claim shall be dismissed

1 without prejudice.

2 18. Denial of a motion to transfer venue pursuant to
3 sections 507.040, 507.050, or this section, if denied in error,
4 requires reversal, and no finding of prejudice under Missouri
5 supreme court rule 84.13(b) is required for reversal.

6 19. For the purposes of this section, a domestic insurance
7 company shall be deemed to reside in, and be a resident of, the
8 county where its registered office is maintained. A foreign
9 insurance company shall be deemed to reside in, and be a resident
10 of, the county where its registered office is maintained. If a
11 foreign insurance company does not maintain a registered office
12 in any county in Missouri, the foreign insurance company shall be
13 deemed to reside in, and be a resident of, Cole County.

14 508.012. At any time prior to the commencement of a trial,
15 if a plaintiff or defendant, including a third-party plaintiff or
16 defendant, is either added [or] to, removed, or severed from a
17 petition filed in any court in the state of Missouri which would
18 have, if originally added [or] to, removed [to], or severed from
19 the initial petition, altered the determination of venue under
20 section 508.010, then the judge shall upon application of any
21 party transfer the case to a proper forum [under section
22 476.410].

23 537.762. 1. A defendant whose liability is based solely on
24 his status as a seller in the stream of commerce may be dismissed
25 from a products liability claim as provided in this section.

26 2. This section shall apply to any products liability claim
27 in which another defendant, including the manufacturer, is
28 properly before the court and from whom total recovery may be had

1 for plaintiff's claim.

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

10 4. The parties shall have sixty days in which to conduct
11 discovery on the issues raised in the motion and affidavit. The
12 court for good cause shown, may extend the time for discovery,
13 and may enter a protective order pursuant to the rules of civil
14 procedure regarding the scope of discovery on other issues.

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

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

27 7.] An order of dismissal under this section shall be
28 interlocutory until final disposition of plaintiff's claim by

1 settlement or judgment and may be set aside for good cause shown
2 at anytime prior to such disposition.