

SECOND REGULAR SESSION

# SENATE BILL NO. 546

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5022S.011

## 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 in tort claims.

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

Section A. Sections 507.040, 507.050, 508.010, 508.012, and 537.762, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 507.040, 507.050, 508.010, 508.012, and 537.762, to read as follows:

507.040. 1. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. **Notwithstanding any other provision of law to the contrary, for any action in which a plaintiff was injured outside the state of Missouri, claims arising out of separate purchases of the same product or service, or separate incidents involving the same product or services shall not satisfy this section.** A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

2. **In addition to the requirements of subsection 1 of this section, 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. Two or more defendants may be joined in**  
22 **a single action only if:**

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

25 **(2) Each plaintiff can establish proper venue against each**  
26 **defendant, independently of the claims against any other defendant.**

27 **3. All parties for which proper personal jurisdiction and venue**  
28 **cannot be independently established shall be deemed**  
29 **misjoined. Misjoined parties may be joined only where at least one**  
30 **claim is properly pending in the court, and all parties to the action**  
31 **waive objection to the misjoinder. All other misjoined parties shall be**  
32 **subject to the provisions of section 507.050. The requirements under**  
33 **this section are procedural.**

34 **4. Notwithstanding any other provision of law to the contrary,**  
35 **if two or more plaintiffs were first injured outside of the state of**  
36 **Missouri as a result of a single occurrence in which injuries occurred**  
37 **simultaneously, such as with an automobile collision or industrial**  
38 **explosion, the plaintiffs may be joined in one action in Cole County.**

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

**507.050. 1. Misjoinder of parties is not ground for dismissal of an**  
2 **action. Parties may be dropped [or], added, or severed by order of the court on**  
3 **motion of any party or of its own initiative at any stage of the action and on such**  
4 **terms as are just. Any claim against a party may be severed and proceeded with**  
5 **separately. If a plaintiff or defendant is deemed misjoined pursuant to**  
6 **subsection 3 of section 507.040, all claims brought by that plaintiff or**  
7 **against that defendant shall be severed from the action and those**  
8 **claims shall be transferred to a county in which venue exists upon the**  
9 **motion of any party. If there is no county in Missouri in which venue**  
10 **exists, those claims shall be dismissed without prejudice.**

11 **2. A motion to drop or add parties may be made at the same time as other**  
12 **motions provided for in section 509.290, and if so made, the provisions of section**  
13 **509.340 with reference to the consolidation of motions and waiver of objections**

14 shall also apply. If said motion is made at any other time, the hearing and  
15 determination thereof shall not delay the trial. Objections on account of  
16 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 **(1) For an individual person, there shall be a rebuttable**  
7 **presumption that the county of voter registration at the time of injury**  
8 **is the principal place of residence.**

9 **(2) For an individual whose conduct at issue was alleged to be**  
10 **in the course and scope of his or her employment with a corporation,**  
11 **the individual's principal place of residence is the applicable**  
12 **corporation's principal place of residence.**

13 **(3) For a corporation, the county where the corporation has its**  
14 **registered agent is the principal place of residence.**

15 **(4) For a domestic insurance corporation, the county where the**  
16 **corporation has its registered office is the principal place of residence.**

17 **(5) For a foreign insurance corporation, the county where the**  
18 **foreign corporation has its registered office is its principal place of**  
19 **residence; if such a foreign corporation does not have a registered**  
20 **office in any county in Missouri, the principal place of residence shall**  
21 **be Cole County.**

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

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

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

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

32 (4) When all the defendants are nonresidents of the state, suit may be  
33 brought in any county in this state, **provided there is personal jurisdiction**

34 **over each defendant, independent of each other defendant.**

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

37 4. Notwithstanding any other provision of [law] **this section to the**  
38 **contrary**, in all actions in which there is any count alleging a tort **or alleging**  
39 **damages for benefits due under an insurance contract based on any**  
40 **insured's bodily injury, personal injury, wrongful death, or property**  
41 **damage**, and in which the plaintiff **or insured** was first injured **or the**  
42 **property damaged** in the state of Missouri, venue shall be in the county where  
43 the plaintiff **or the plaintiff's decedent** was first injured **or the property**  
44 **damaged** by the [wrongful] acts or [negligent] conduct alleged in the  
45 action. **For purposes of any action alleging a tort arising from an**  
46 **insurance contract, the plaintiff is deemed first injured in the county**  
47 **where he or she resided at the time of the alleged economic damage.**

48 5. Notwithstanding any other provision of law, in all actions in which  
49 there is any count alleging a tort and in which the plaintiff was first injured  
50 outside the state of Missouri, venue **as to that individual plaintiff** shall be  
51 determined as follows:

52 (1) If the defendant is a corporation, then venue shall be in [any] **the**  
53 county where a defendant [corporation's registered agent is located] **has its**  
54 **principal place of residence** or, if the plaintiff's principal place of residence  
55 was in the state of Missouri on the date the plaintiff was first injured, then venue  
56 may be in the county of the plaintiff's principal place of residence on the date the  
57 plaintiff was first injured;

58 (2) If the defendant is an individual, then venue shall be in [any] **the**  
59 county [of] **where** the [individual defendant's] **defendant has its** principal  
60 place of residence in the state of Missouri or, if the plaintiff's principal place of  
61 residence was in the state of Missouri on the date the plaintiff was first injured,  
62 then venue **as to that individual plaintiff** may be in the county containing the  
63 plaintiff's principal place of residence on the date the plaintiff was first injured;

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

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

69 (b) Wholly owned subsidiary of a corporation that, either directly or

70 through its subsidiaries, wholly owns or operates the foreign railroad;  
71 then venue shall exclusively be in the county where any such defendant  
72 corporation's registered agent is located, regardless of venue as to any other  
73 defendant or, if the plaintiff's principal place of residence was in the state of  
74 Missouri on the date the plaintiff was first injured, then venue may be in the  
75 county of the plaintiff's principal place of residence on the date the plaintiff was  
76 first injured.

77         6. Any action, in which any county shall be a plaintiff, may be commenced  
78 and prosecuted to final judgment in the county in which the defendant or  
79 defendants reside, or in the county suing and where the defendants, or one of  
80 them, may be found.

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

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

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

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

91         11. In a wrongful death action, the plaintiff shall be considered first  
92 injured where the decedent was first injured by the wrongful acts or negligent  
93 conduct alleged in the action. In any spouse's claim for loss of consortium, the  
94 plaintiff claiming consortium shall be considered first injured where the other  
95 spouse was first injured by the wrongful acts or negligent conduct alleged in the  
96 action.

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

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

105         14. A plaintiff is considered first injured where the trauma or exposure

106 occurred rather than where symptoms are first manifested.

107           **15. Notwithstanding any other provision of law to the contrary,**  
108 **in any civil action in which there is any count alleging a tort, each**  
109 **plaintiff shall establish that the court where the action is filed is a**  
110 **proper venue against each defendant, independent of the claims**  
111 **brought by any other plaintiff or against any other defendant. Venue**  
112 **for each plaintiff and each defendant cannot be established by joinder**  
113 **or intervention.**

114           **16. If the county where the plaintiff's claim is filed is not a**  
115 **proper venue, that plaintiff shall be transferred to a county where**  
116 **proper venue can be established. If no such county exists in the state**  
117 **of Missouri, the claim shall be dismissed without prejudice.**

118           **17. Denial of a motion to transfer venue pursuant to sections**  
119 **507.040, 507.050, or 508.010, if denied in error, requires reversal, and no**  
120 **finding of prejudice under Missouri supreme court rule 84.13(b) is**  
121 **required for reversal.**

122           **18. For the purposes of this section, the principal place of**  
123 **residence of a domestic insurance company shall be the county where**  
124 **its registered office is maintained. The principal place of residence of**  
125 **a foreign insurance company shall be in the county where its registered**  
126 **office is maintained, unless it does not maintain such an office within**  
127 **the state. If a foreign insurance company does not maintain a**  
128 **registered office in any county in Missouri, the principal place of**  
129 **residence of the foreign insurance company shall be in Cole County.**

          508.012. At any time prior to the commencement of a trial, if a plaintiff  
2 or defendant, including a third-party plaintiff or defendant, is either added [or]  
3 **to, removed, or severed** from a petition filed in any court in the state of  
4 Missouri which would have, if originally added [or] **to, removed [to], or severed**  
5 **from** the initial petition, altered the determination of venue under section  
6 508.010, then the judge shall upon application of any party transfer the case to  
7 a proper forum [under section 476.410].

          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.

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