

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE NO. 2 FOR

SENATE BILL NO. 7

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Offered February 26, 2019.

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ADRIANE D. CROUSE, Secretary.

0212S.13P

AN ACT

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

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Section A. Sections 507.040, 507.050, 508.010, 508.012, and 537.762, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 375.1800, 375.1803, 375.1806, 507.040, 507.050, 508.010, 508.012, 537.762, 1, and 2, to read as follows:

375.1800. 1. A domestic insurance company shall be deemed for all purposes, including venue, to reside in, and be a resident of, the county where its registered office is maintained.

2. A foreign insurance company shall be deemed for all purposes, including venue, to reside in, and be a resident of, the county where its registered office is maintained. A foreign insurance company that does not maintain a registered office in any county in Missouri shall be deemed to reside in, and be a resident of, Cole County.

375.1803. 1. Notwithstanding any provision of law to the contrary, in all actions in which there is any count against an insurer, whether in tort or contract, regarding the rights, benefits, or duties under an insurance contract or any action arising from an insurance contract, including but not limited to claims of breach of contract, bad

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

6 faith, or breach of fiduciary duty, venue shall be in the county where
7 the insurer resides, or if the insured was a resident of Missouri at the
8 time the insurance contract was issued, the county of the insured's
9 principal place of residence, as defined in section 508.010, at the time
10 the insurance contract was issued. Venue shall be determined by this
11 section even if the insured's rights or claims under the policy have
12 been assigned or otherwise transferred to another party. However,
13 intervention by an insurer in an action pursuant to section 537.065
14 shall not affect the venue of the action.

15 2. (1) The provisions of this section shall not apply to any action
16 against an insurer relating to uninsured motorist coverage or
17 underinsured motorist coverage, including any action to enforce such
18 coverage.

19 (2) Venue for a vexatious refusal to pay claim under section
20 375.296 or section 375.420 to collect an amount due under uninsured
21 motorist or underinsured motorist coverage shall not be determined in
22 accordance with the provisions of this section, but shall be determined
23 by the provisions of section 375.1806. However, venue for any other
24 vexatious refusal to pay claim to collect an amount due under any other
25 type of policy or coverage shall be determined in accordance with the
26 provisions of this section.

 375.1806. Notwithstanding any provision of law to the contrary,
2 in all actions against an insurer relating to uninsured motorist
3 coverage or underinsured motorist coverage, including any action to
4 enforce such coverage, venue as to that individual plaintiff shall be
5 determined as follows:

6 (1) If the accident involving the uninsured or underinsured
7 motor vehicle occurred in Missouri, then venue shall be in the county
8 where the accident occurred;

9 (2) If the accident involving the uninsured or underinsured
10 motor vehicle occurred outside the state of Missouri, then venue shall
11 either be in:

12 (a) The county where the insurer resides; or

13 (b) If the insured's principal place of residence was in the state
14 of Missouri on the date the insured was first injured by the accident
15 involving an uninsured or underinsured motor vehicle, the county of
16 the insured's principal place of residence on the date the insured was

17 **first injured by such accident.**

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. **Notwithstanding any other provision of law to the contrary,**
10 **claims arising out of separate purchases of the same product or service,**
11 **or separate incidents involving the same product or services shall not**
12 **satisfy this section.** A plaintiff or defendant need not be interested in
13 obtaining or defending against all the relief demanded. Judgment may be given
14 for one or more of the plaintiffs according to their respective rights to relief, and
15 against one or more defendants according to their respective liabilities.

16 2. **The general assembly hereby expressly adopts the holding of**
17 ***State ex rel. Johnson & Johnson v. Burlison*, No. SC96704, as issued on**
18 **February 13, 2019, as it relates to joinder and venue.**

19 3. The court may make such orders as will prevent a party from being
20 embarrassed, delayed, or put to expense by the inclusion of a party against whom
21 he asserts no claim and who asserts no claim against him, and may order
22 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.

6 2. A motion to drop or add parties may be made at the same time as other
7 motions provided for in section 509.290, and if so made, the provisions of section
8 509.340 with reference to the consolidation of motions and waiver of objections
9 shall also apply. If said motion is made at any other time, the hearing and
10 determination thereof shall not delay the trial. Objections on account of
11 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) Notwithstanding subdivision (1) of this subsection, for an**
10 **individual whose conduct at issue was alleged in at least one count to**
11 **be in the course and scope of his or her employment with a**
12 **corporation, the individual's principal place of residence for venue**
13 **purposes shall be deemed to be the applicable corporation's principal**
14 **place of residence.**

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

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

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

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

25 (4) When all the defendants are nonresidents of the state, suit may be
26 brought in any county in this state, **provided there is personal jurisdiction**
27 **over each defendant, independent of each other defendant.**

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

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

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

38 (1) If the defendant is a corporation, then venue shall be in any county

39 where a defendant corporation's registered agent is located or, if the plaintiff's
40 principal place of residence was in the state of Missouri on the date the plaintiff
41 was first injured, then venue may be in the county of the plaintiff's principal
42 place of residence on the date the plaintiff was first injured;

43 (2) If the defendant is an individual, then venue shall be in [any] **the**
44 county [of] **where** the [individual defendant's] **defendant has his or her**
45 principal place of residence in the state of Missouri, **which for venue purposes**
46 **shall be deemed to be that of his or her employer corporation if any**
47 **count alleges conduct in the course and scope of his or her employment**
48 **with that corporation**, or, if the plaintiff's principal place of residence was in
49 the state of Missouri on the date the plaintiff was first injured, then venue **as to**
50 **that individual plaintiff** may be in the county containing the plaintiff's
51 principal place of residence on the date the plaintiff was first injured;

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

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

57 (b) Wholly owned subsidiary of a corporation that, either directly or
58 through its subsidiaries, wholly owns or operates the foreign railroad;
59 then venue shall exclusively be in the county where any such defendant
60 corporation's registered agent is located, regardless of venue as to any other
61 defendant or, if the plaintiff's principal place of residence was in the state of
62 Missouri on the date the plaintiff was first injured, then venue may be in the
63 county of the plaintiff's principal place of residence on the date the plaintiff was
64 first injured.

65 6. Any action, in which any county shall be a plaintiff, may be commenced
66 and prosecuted to final judgment in the county in which the defendant or
67 defendants reside, or in the county suing and where the defendants, or one of
68 them, may be found.

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

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

74 9. In all actions, venue shall be determined as of the date the plaintiff was

75 first injured.

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

79 11. In a wrongful death action, the plaintiff shall be considered first
80 injured where the decedent was first injured by the wrongful acts or negligent
81 conduct alleged in the action. In any spouse's claim for loss of consortium, the
82 plaintiff claiming consortium shall be considered first injured where the other
83 spouse was first injured by the wrongful acts or negligent conduct alleged in the
84 action.

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

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

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

95 **15. If the county where the plaintiff's claim is filed is not a**
96 **proper venue, that plaintiff shall be transferred to a county where**
97 **proper venue can be established. If no such county exists in the state**
98 **of Missouri, the claim shall be dismissed without prejudice.**

99 **16. Denial of a motion to transfer venue pursuant to sections**
100 **507.040, 507.050, or 508.010, if denied in error, requires reversal, and no**
101 **finding of prejudice under Missouri supreme court rule 84.13(b) is**
102 **required for reversal.**

103 **17. For the purposes of this section, a domestic insurance**
104 **company shall be deemed to reside in, and be a resident of, the county**
105 **where its registered office is maintained. A foreign insurance company**
106 **shall be deemed to reside in, and be a resident of, the county where its**
107 **registered office is maintained. If a foreign insurance company does**
108 **not maintain a registered office in any county in Missouri, the foreign**
109 **insurance company shall be deemed to reside in, and be a resident of,**
110 **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.

Section 1. The provisions of sections 507.040, 507.050, 508.010,
2 508.012, and 537.762 shall apply to any action filed after February 13,
3 2019. A plaintiff who is a resident of Missouri and who has a case that:
4 (1) Is pending in a court in this state as of February 13, 2019;
5 (2) Has proper jurisdiction in this state; and
6 (3) Has or had been set at any time prior to February 13, 2019, for
7 a trial date beginning on or before August 28, 2019,
8 may continue to trial in the venue as filed.

Section 2. For actions pending as of February 13, 2019, a plaintiff
2 whose claim has been found to have no county in Missouri in which
3 venue exists may proceed in such venue in Missouri where such claim
4 was dismissed without prejudice only when the court finds that the
5 claim:
6 (1) Was filed in the Missouri court within the statute of
7 limitations applicable to the claim;
8 (2) Has no proper venue in the state of Missouri; and
9 (3) Cannot be maintained, as of August 28, 2019, in any state
10 where the claim may be brought because of applicable statutes of
11 limitations and lack of a savings statute or similar law.

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