

FIRST REGULAR SESSION

# SENATE BILL NO. 281

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

1223S.01H

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal sections 517.051, 517.061, 517.071, and 517.091, 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:*

Section A. Sections 517.051, 517.061, 517.071, and  
2 517.091, RSMo, are repealed and five new sections enacted in  
3 lieu thereof, to be known as sections 517.051, 517.061, 517.071,  
4 517.091, and 517.133, to read as follows:

517.051. Every case shall be tried [upon the return  
2 date of the summons, when the summons has been duly and  
3 timely served, or on a date to which the case has been  
4 continued] **on a date set by the court after the defendant  
5 has been duly served and has appeared. All parties shall  
6 receive notice of the setting from the court either through  
7 the court's electronic filing process or notice mailed to a  
8 pro se party.**

517.061. Change of venue and change of judge shall be  
2 for the same reasons and in the same manner as provided in  
3 the rules of civil procedure except that the application  
4 shall be filed not later than [five days before the return  
5 date of the summons. If the cause is not tried on the  
6 return date but continued and if all parties are given  
7 fifteen days' advance notice of] **fifteen days prior to a  
8 trial setting before the particular judge. If the trial  
9 judge changes after the initial trial setting,** then any

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

10 application for change of judge or change of venue shall be  
11 made not later than [five] **fifteen** days before the  
12 **subsequent** date set for trial.

517.071. 1. A case shall be continued to a day  
2 certain upon the request of any party made on or before the  
3 return date of the summons.

4 2. A case may be continued to a day certain, not  
5 exceeding thirty days, upon:

6 (1) The motion of the judge without consent of any  
7 party; or

8 (2) The agreement of all parties; or

9 (3) The application of any party and for good cause  
10 shown.

11 3. A case may be continued [generally] **for a period**  
12 **exceeding thirty days** as follows:

13 (1) By written agreement of all parties **and approved**  
14 **by the judge**; or

15 (2) When all defendants have not been timely served  
16 with process; or

17 (3) If it appears to the judge that there is discovery  
18 or other trial preparation to be done that would reasonably  
19 require more than thirty days.

20 4. [When a case has been continued generally, it may  
21 be rescheduled for trial or other proceeding before the  
22 court on fifteen days' written notice to all parties]  
23 **Regardless of the reason for a continuance, any matter that**  
24 **is continued shall be continued to a date certain.**

517.091. 1. In any case triable before a jury, a  
2 trial by jury shall be deemed waived unless written demand  
3 be filed not later than [five] **fifteen** days before the  
4 return date of summons or the date set for trial, whichever

5 is later. For good cause shown, the judge may grant any  
6 party's request for jury trial.

7 2. A jury shall be composed of twelve qualified  
8 jurors, unless all parties agree on a lesser number, but not  
9 less than six, in which case the number of veniremen shall  
10 be reduced accordingly. Three-fourths or more of any jury  
11 concurring may return a verdict.

12 **517.133. 1. A record of an act, event, condition,**  
13 **opinion, or diagnosis is not excluded by the rule against**  
14 **hearsay in cases in which this chapter is applicable,**  
15 **regardless of whether the declarant is available as a**  
16 **witness, if:**

17 (1) The record was made at or near the time by, or  
18 from information transmitted by, a person with knowledge;

19 (2) The record was kept in the course of a regularly  
20 conducted activity of a business, organization, occupation,  
21 or calling, regardless of whether such business,  
22 organization, occupation, or calling is for profit;

23 (3) Making the record was a regular practice of that  
24 activity;

25 (4) The provisions of subdivisions (1) to (3) of this  
subsection are shown by the testimony of the custodian or  
another qualified witness or by a certification that  
complies with section 490.692 or with another provision of  
law permitting certification; and

(5) The opponent does not show that the source of  
information or the method or circumstances of preparation  
indicate a lack of trustworthiness.

2. Records of regularly conducted activity shall be  
admissible in cases under this chapter, subject to other  
substantive or procedural objections, upon affidavit of the  
custodian or another qualified person that complies with a

26 law of this state or a rule prescribed by the Missouri  
 27 supreme court. Seven days before the trial or hearing, the  
 28 proponent shall send an adverse party the affidavit of a  
 29 custodian who is not expected to appear at the trial, with  
 30 the records attached thereto, so that the party has a fair  
 31 opportunity to challenge such affidavit.

32 3. The affidavit permitted by subsection 2 of this  
 33 section may be in form and content substantially as follows:

34 THE STATE OF .....

35 COUNTY OF .....

36 AFFIDAVIT

37 Before me, the undersigned authority,  
 38 personally appeared ....., who, being by me  
 39 duly sworn, deposed as follows:

40 My name is ..... I am of sound mind,  
 41 capable of making this affidavit, and personally  
 42 acquainted with the facts herein stated:

43 I am the custodian of the records of  
 44 ..... Attached hereto are ..... pages of  
 45 records from ..... These ..... pages of  
 46 records are kept in the regular course of  
 47 business, and it was the regular course of  
 48 business of ..... for an employee or  
 49 representative with knowledge of the act, event,  
 50 condition, opinion, or diagnosis recorded to make  
 51 the record or to transmit information thereof to  
 52 be included in such record, and the record was  
 53 made at or near the time or reasonably soon  
 thereafter.

54 The records attached hereto are the original  
 55 or exact duplicates of the original.

56 .....

57 Affiant

58                    In witness whereof I have hereunto subscribed  
59                    my name and affixed my official seal this .....  
60                    day of ....., 20....

61                    .....

62                    Notary Public

63                    My Commission Expires

64                    .....

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