

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 460

99TH GENERAL ASSEMBLY

1153H.02P

D. ADAM CRUMBLISS, Chief Clerk

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## 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 civil proceedings.

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*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Section A. Sections 507.040, 507.050, 508.010, and 537.762, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 507.040, 507.050, 508.010,  
3 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  
2 relief jointly, severally, or in the alternative in respect of or arising out of the same transaction,  
3 occurrence, or series of transactions or occurrences and if any question of law or fact common  
4 to all of them will arise in the action. All persons may be joined in one action as defendants if  
5 there is asserted against them jointly, severally, or in the alternative, any right to relief in respect  
6 of or arising out of the same transaction, occurrence, or series of transactions or occurrences and  
7 if any question of law or fact common to all of them will arise in the action. A plaintiff or  
8 defendant need not be interested in obtaining or defending against all the relief demanded.  
9 Judgment may be given for one or more of the plaintiffs according to their respective rights to  
10 relief, and against one or more defendants according to their respective liabilities.

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

15 **3. In addition to the requirements of subsection 1 of this section, in any civil action**  
16 **in which there is a count alleging a tort, two or more plaintiffs may be joined in a single**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **action only if each plaintiff could have separately filed an action in that venue, independent**  
18 **of the claims of any other plaintiff. Any plaintiff that cannot establish proper venue**  
19 **independent of the claims of any other plaintiff shall be deemed misjoined. If the plaintiff**  
20 **was first injured outside of the state of Missouri, two or more defendants may be joined**  
21 **in a single action if the plaintiff can establish proper venue against each defendant**  
22 **individually, and if proper venue cannot be established against any such defendant**  
23 **individually, that defendant shall be deemed misjoined.**

507.050. 1. Misjoinder of parties is not ground for dismissal of an action. Parties may  
2 be dropped or added by order of the court on motion of any party or of its own initiative at any  
3 stage of the action and on such terms as are just. Any claim against a party may be severed and  
4 proceeded with separately. **If a plaintiff or defendant is deemed misjoined under Missouri**  
5 **supreme court rule 52.05(c), such plaintiff or defendant shall be severed from the action**  
6 **and the claims shall be transferred to a county in which venue exists. If there is no county**  
7 **in Missouri in which venue exists, the claims shall be dismissed without prejudice.**

8 2. A motion to drop or add parties may be made at the same time as other motions  
9 provided for in section 509.290, and if so made, the provisions of section 509.340 with reference  
10 to the consolidation of motions and waiver of objections shall also apply. If said motion is made  
11 at any other time, the hearing and determination thereof shall not delay the trial. Objections on  
12 account of 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 mean the county  
2 which is the main place where an individual resides in the state of Missouri. There shall be a  
3 rebuttable presumption that the county of voter registration at the time of injury is the principal  
4 place of residence. There shall be only one principal place of residence.

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

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

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

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

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

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

18           4. Notwithstanding any other provision of law, in all actions in which there is any count  
19 alleging a tort **or seeking recovery for bodily injury, personal injury, wrongful death, or**  
20 **property damage under the terms of an insurance contract**, and in which the plaintiff **or**  
21 **plaintiff's decedent** was first injured **or the property damaged** in the state of Missouri, venue  
22 shall be in the county where the plaintiff **or the plaintiff's decedent** was first injured **or the**  
23 **property damaged** by the ~~wrongful~~ acts or ~~negligent~~ conduct alleged in the action.

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

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

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

36           **(3) Notwithstanding any other provision of this subsection, if the defendants**  
37 **include any individual whose conduct at issue in the lawsuit was in the course and scope**  
38 **of his or her employment with a corporation, venue as to such individual shall not be**  
39 **determined under subdivision (2) of this subsection, but instead shall be the same as the**  
40 **venue of the corporation;**

41           ~~[(3)]~~ **(4)** Notwithstanding subdivisions (1) and (2) of this subsection, if the plaintiff was  
42 first injured in a foreign country in connection with any railroad operations therein and any  
43 defendant is a:

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

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

48

49 then venue shall exclusively be in the county where any such defendant corporation's registered  
50 agent is located, regardless of venue as to any other defendant or, if the plaintiff's principal place  
51 of residence was in the state of Missouri on the date the plaintiff was first injured, then venue  
52 may be in the county of the plaintiff's principal place of residence on the date the plaintiff was  
53 first injured.

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

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

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

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

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

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

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

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

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

79           **15. Notwithstanding any other provision of law, in any civil action in which there**  
80 **is a count alleging a tort, each plaintiff shall independently establish proper venue. It is**  
81 **not sufficient that venue is proper for any other plaintiff joined in the civil action. Venue**  
82 **cannot be established by joinder or intervention. The claims of any plaintiff who cannot**  
83 **independently establish venue shall be deemed misjoined, and the claims of any such**  
84 **plaintiff shall be severed and transferred to a county in which venue exists. If there is no**  
85 **county in Missouri in which venue exists, such claims shall be dismissed without prejudice.**

86           **16. For the purposes of this section, the residence of a domestic insurance company**  
87 **shall be the county where its registered office is maintained. The residence of a foreign**  
88 **insurance company shall be in the county where its registered office is maintained, unless**  
89 **it does not maintain such an office within the state. If a foreign insurance company does**

90 **not maintain a registered office in any county in Missouri, the residence of the foreign**  
91 **insurance company shall be in Cole County.**

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

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

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

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

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

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

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

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