

SS#2 SB 7 -- JOINDER AND VENUE

SPONSOR: Emery

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Judiciary by a vote of 8 to 4. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 6 to 3.

#### VENUE FOR INSURANCE COMPANIES

This bill specifies that an insurance company shall be deemed to reside in the county in which it maintains its registered office. A foreign insurance company without a registered office in any county in Missouri shall be deemed to reside in and be a resident of Cole County.

Venue for tort and contract claims in which there is a count against an insurer shall be in the county where the insurer resides, or in the county in which the insured's principal place of residence was located at the time the insurance was issued. Venue shall be determined by these provisions even if the insured's rights or claims under the policy have been assigned or transferred to another party. However, venue shall not be affected by intervention by an insurance company in an action where recovery has been contractually limited to the proceeds of an insurance policy. These provisions shall not apply to actions relating to uninsured or underinsured motorist coverage nor shall they apply to a vexatious refusal to pay claim to collect an amount due under uninsured or underinsured motorist coverage.

The bill also specifies how venue shall be determined in actions against an insurer relating to uninsured or underinsured motorist coverage. If the accident occurred in Missouri, venue shall be in the county in which the accident occurred. If the accident occurred outside of Missouri, venue shall be in the county where the insurer resides, or the Missouri county of the insured's principal place of residence at the time of the accident.

#### JOINDER

Claims arising out of separate purchases of the same product or separate incidents involving the same product shall not be joined regardless of whether the claims arise out of the same transaction, occurrence, or series of transactions or occurrences with a common question of law or fact.

This bill expressly adopts the holding of State ex rel. Johnson & Johnson v. Burlison, No. SC96704, issued on February 13, 2019, as it relates to joinder and venue.

If such terms are just, parties may be dropped, added, or severed by order of the court upon a motion by any party or by the court during any stage of the action.

#### VENUE

For the purposes of meeting the venue requirement, there is a rebuttable presumption that the principal place of residence for an individual is the county of voter registration at the time of the injury. For an individual whose employment conduct with a corporation in at least one count is at issue in the action, the principal place of residence shall be the corporation's principal place of residence. When all defendants are nonresidents, proper venue in a non-tort action is any county in this state if there is personal jurisdiction over each defendant, independent of each other defendant.

In tort actions where the plaintiff was first injured in Missouri, venue shall be the county where the plaintiff was first injured by the acts or conduct alleged in the action. In tort actions where the plaintiff was injured outside the state of Missouri and the defendant is an individual, venue for that individual plaintiff shall be the county where the defendant has his or her principal place of residence, which shall be that of his or her employer corporation if any count alleges conduct in the course of employment.

If the county where the action is filed is not a proper venue, the plaintiff shall be transferred to a county where proper venue can be established. If no such county exists, then the claim shall be dismissed without prejudice. If denied in error, a denial of a motion to transfer venue pursuant to this bill is required to be reversed and no finding of prejudice is required for such reversal. For the purposes of meeting the venue requirement, an insurance company resides in the county where it maintains its registered office. A foreign insurance company without a registered office in any county in Missouri shall be deemed to reside in and be a resident of Cole County.

At any time prior to the commencement of trial, if a plaintiff or defendant is added, removed, or severed from a petition filed in any Missouri court which would have if originally added, removed, or severed from the initial petition, altered the determination of venue, then the judge shall transfer the case to a proper forum upon application of any party.

Currently, any products liability order of dismissal for a defendant whose liability is based solely on his or her status as a seller shall not divest a court of venue or jurisdiction that was

proper at the beginning of the action. Further, the defendant seller dismissed in the action shall remain a party to such action for venue and jurisdiction purposes. This bill repeals these provisions.

The provisions of this bill shall apply to any action filed after February 13, 2019. A Missouri resident plaintiff may continue to trial in the venue as filed if the plaintiff has a case pending in a Missouri court as of February 13, 2019, has proper jurisdiction in Missouri, and such case has or had been set at any time prior to February 13, 2019, for a trial date beginning on or before August 28, 2019.

For actions pending as of February 13, 2019, a plaintiff whose claim has been found to have no Missouri county in which venue exists may proceed in a Missouri venue where such claim was dismissed without prejudice if the court finds that the claim was filed in the Missouri court within the statute of limitations applicable to the claim, has no proper venue in Missouri, and cannot be maintained, as of August 28, 2019, in any state where the claim may be brought because of applicable statutes of limitations and lack of a savings statute or similar law.

PROPOSERS: The sponsor of the legislation reviewed a chart summarizing the differences in the various iterations of the legislation, and others testifying asked to go on record in support of the legislation.

Testifying for the bill were Senator Emery; Missouri Hospital Association; National Federation of Independent Business; Missouri Insurance Coalition; Dana Frese, Missouri Organization of Defense Lawyers; American Tort Reform Association; Missouri Chamber of Commerce and Industry; Monsanto; Enterprise Leasing of St. Louis; The Doe Run Company; Associated Industries of Missouri; BNSF Railway Company; American Property Casualty Insurance Association; The Missouri Civil Justice Reform Coalition; The Doctors Company; General Motors LLC; and SSM Health Care.

OPPONENTS: Those who oppose the bill say that this will have a chilling affect on plaintiffs' bringing lawsuits because there are many separate plaintiffs with low damages who cannot join their claims.

Testifying against the bill was Kenneth Barnes, Missouri Association of Trial Attorneys.