

Stricken language would be deleted from and underlined language would be added to present law.

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As Engrossed: H2/23/15 S3/18/15
A Bill

HOUSE BILL 1252

By: Representatives Broadaway, Ballinger, Vines
By: Senators J. Hutchinson, Burnett, D. Johnson

For An Act To Be Entitled

AN ACT TO CLARIFY AND REORGANIZE THE GENERAL VENUE
STATUTES FOR CIVIL ACTIONS; AND FOR OTHER PURPOSE

Subtitle

TO CLARIFY AND REORGANIZE THE GENERAL
VENUE STATUTES FOR CIVIL ACTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 16-55-213 is repealed.

~~16-55-213. Venue.~~

~~(a) All civil actions other than those mentioned in §§ 16-60-101—16-60-103, 16-60-107, 16-60-114, 16-60-115, and 16-60-119 and subsection (e) of this section must be brought in any of the following counties:~~

~~(1) The county in which a substantial part of the events or omissions giving rise to the claim occurred;~~

~~(2)(A) The county in which an individual defendant resided;~~

~~(B) If the defendant is an entity other than an individual, the county where the entity had its principal office in this state at the time of the accrual of the cause of action; or~~

~~(3)(A) The county in which the plaintiff resided;~~

~~(B) If the plaintiff is an entity other than an individual, the county where the plaintiff had its principal office in this state at the time of the accrual of the cause of action.~~

~~(b)(1) The residence of any properly joined named class representative or representatives may be considered in determining proper venue in a class~~



action.

~~(2) The residency of any putative or actual member of a class other than a named representative shall not be considered in determining proper venue for a class action.~~

~~(c) In any civil action, venue must be proper as to each or every named plaintiff joined in the action unless:~~

~~(1) The plaintiffs establish that they assert any right to relief against the defendants jointly, severally, or arising out of the same transaction or occurrence; and~~

~~(2) The existence of a substantial number of questions of law or material fact common to all those persons not only will arise in the action, but also that:~~

~~(A) The questions will predominate over individualized questions pertaining to each plaintiff;~~

~~(B) The action can be maintained more efficiently and economically for all parties than if prosecuted separately; and~~

~~(C) The interest of justice supports the joinder of the parties as plaintiffs in one (1) action.~~

~~(d)(1) Unless venue objections are waived by the defendant or by unanimous agreement of multiple defendants, if venue is improper for any plaintiff joined in the action, then the claim of the plaintiff shall be severed and transferred to a court where venue is proper.~~

~~(2)(A) If severance and transfer is mandated and venue is appropriate in more than one (1) court, a defendant sued alone or multiple defendants, by unanimous agreement, shall have the right to select another court to which the action shall be transferred.~~

~~(B) If there are multiple defendants who are unable to agree on another court, the court in which the action was originally filed may transfer the action to another court.~~

~~(e) Any action for medical injury brought under § 16-114-201 et seq. against a medical care provider, as defined in § 16-114-201(2), shall be filed in the county in which the alleged act or omission occurred.~~

SECTION 2. Arkansas Code Title 16, Chapter 60, Subchapter 1, is amended to read as follows.

16-60-101. ~~Actions brought where subject of action situated~~ Venue in

circuit courts – General rules and exceptions.

~~Actions for the following causes must be brought in the county in which the subject of the action, or some part thereof, is situated, except as provided in § 16-60-116(d):~~

~~(1) The recovery of real property, or of an estate or interest therein;~~

~~(2) The partition of real property;~~

~~(3) The sale of real property under a mortgage, lien, or other encumbrance or charge; and~~

~~(4) An injury to real property.~~

(a) A civil action other than a civil action mentioned in §§ 16-60-102-16-60-109, § 16-106-101, and specific venue provisions codified in another title of the Arkansas Code shall be brought in any of the following counties:

(1) The county in which a substantial part of the event or omission giving rise to the cause of action occurred;

(2)(A) The county in which an individual defendant resided at the time of the event or omission giving rise to the cause of action.

(B) If the defendant is an entity other than an individual, the civil action shall be brought in the county where the entity had its principal office in this state at the time of the event or omission giving rise to the cause of action; or

(3)(A) The county in which the plaintiff resided at the time of the event or omission giving rise to the cause of action.

(B) If the plaintiff is an entity other than an individual, the civil action shall be brought in the county where the plaintiff had its principal office in this state at the time of the events or omissions giving rise to the cause of action.

(b)(1) The residence of a properly joined named class representative may be considered in determining proper venue in a class action.

(2) The residence of a putative or actual member of a class other than a named representative shall not be considered in determining proper venue for a class action.

(c) In a civil action with multiple plaintiffs, venue shall be proper as to each named plaintiff joined in the civil action unless:

(1) The plaintiffs establish that they assert any right to

relief against the defendant jointly, severally, or arising out of the same transaction or occurrence; and

(2) The existence of a substantial number of questions of law or material fact common to all the plaintiffs not only will arise in the civil action, but also that:

(A) The common questions of law or material fact will predominate over individual questions of law or material fact pertaining to each plaintiff;

(B) The civil action can be maintained more efficiently and economically for all parties than if prosecuted separately; and

(C) The interest of justice supports the joinder of the parties as plaintiffs in one (1) civil action.

(d)(1) Unless venue objections are waived by the defendant or by unanimous agreement of multiple defendants, if venue is improper for any plaintiff joined in the civil action, then the claim of the plaintiff shall be severed and transferred to a court where venue is proper.

(2)(A) If severance and transfer is mandated and venue is appropriate in more than one (1) court, a defendant sued alone or multiple defendants, by unanimous agreement, may select another court to which the civil action shall be transferred.

(B) If there are multiple defendants who are unable to agree on another court, the court in which the civil action was originally filed may transfer the action to another court.

(e) When venue is proper as to one (1) defendant, it is also proper as to any other defendant with respect to all causes of action arising out of the same transaction or occurrence.

~~16-60-102. Actions brought where cause of action arose. Local actions. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:~~

~~(1) An action for the recovery of a fine, penalty, or forfeiture imposed by a statute, except that where the offense for which the claim is made was committed on a watercourse or road which is the boundary of two (2) counties, the action may be brought in either of them;~~

~~(2) An action against a public officer for an act done by him or her in virtue or under color of his or her office, or for a neglect of~~

~~official duty; and~~

~~(3) An action upon the official bond of a public officer, except as provided in §§ 16-106-101 and 16-106-104.~~

A civil action for the following causes shall be brought in the county in which the subject of the civil action, or some part of the civil action, is situated:

(1) The recovery of real property, or of an estate or interest in real property;

(2) The partition of real property;

(3) The sale of real property under a mortgage, lien, or other encumbrance or charge; and

(4) An injury to real property.

~~16-60-103. Actions which must be brought in Pulaski County Actions brought where cause of action arose.~~

~~The following actions must be brought in the county in which the seat of government is situated:~~

~~(1) All civil actions in behalf of the state, or which may be brought in the name of the state, or in which the state has or claims an interest, except as provided in § 16-106-101;~~

~~(2) All actions brought by state boards, state commissioners, or state officers in their official capacity, or on behalf of the state, except as provided in § 16-106-101;~~

~~(3) All actions against the state and all actions against state boards, state commissioners, or state officers on account of their official acts, except that if an action could otherwise be brought in another county or counties under the venue laws of this state, as provided in § 16-60-101 et seq., then the action may be brought either in Pulaski County or the other county or counties;~~

~~(4) All civil actions brought against an organization that regulates extracurricular interscholastic activities in grades seven through twelve (7-12) in both public and private schools if the organization's main administrative office is located in Pulaski County; and~~

~~(5) All other actions required by law to be brought in Pulaski County.~~

A civil action for the following causes shall be brought in the county

where the cause, or some part of the cause, arose:

(1) A civil action for the recovery of a fine, penalty, or forfeiture imposed by a statute, except that when the violation of the statute for which the claim is made was committed on a watercourse or road that is the boundary of two (2) counties, the civil action may be brought in either county;

(2) A civil action against a public officer for an act done by him or her in virtue or under color of his or her office, or for a neglect of official duty; and

(3) A civil action upon the official bond of a public officer, except as provided in § 16-106-101.

~~16-60-104. Actions against corporations~~ Actions that shall be brought in Pulaski County.

~~An action, other than those in §§ 16-60-101—16-60-103, against a corporation created by the laws of this state may be brought in the county in which it is situated or has its principal office or place of business, or in which its chief officer resides. However, if the corporation is a bank or insurance company, the action may be brought in the county in which there is a branch of the bank or agency of the company, where it arises out of a transaction of the branch or agency.~~

The following civil actions shall be brought in Pulaski County:

(1) A civil action in behalf of the state, or which may be brought in the name of the state, or in which the state has or claims an interest, except as provided in § 16-106-101;

(2) A civil action brought by a state board, state commissioner, or state officer in his or her official capacity, or on behalf of the state, except as provided in § 16-106-101;

(3)(A) A civil action against the state or a civil action against a state board, state commissioner, or state officer because of his or her or the board's official acts.

(B) However, if a civil action could otherwise be brought in another county or counties under the venue laws of this state, including without limitation § 16-60-101 et seq., then the civil action may be brought either in Pulaski County or the other county or counties;

(4) A civil action brought against an organization that

regulates extracurricular interscholastic activities in grades seven through twelve (7-12) in both public and private schools if the organization's main administrative office is located in Pulaski County; and

(5) Other civil actions required by law to be brought in Pulaski County.

~~16-60-105. Actions against persons, partnerships, or associations maintaining more than one office~~ Actions for medical injury.

~~An action, other than those mentioned in §§ 16-60-101, 16-60-102, 16-60-106—16-60-108, 16-60-110, against a person, firm, copartnership, or association engaged in business in this state which has or maintains more than one (1) office or place of business in this state, may be brought in any county in which the person, firm, copartnership, or association has or maintains any office, branch office, suboffice, or place of business, and service of process upon an agent of any person, firm, copartnership, or association at any such office, branch office, suboffice, or place of business shall be service upon such person, firm, copartnership, or association.~~

A civil action for medical injury brought under § 16-114-201 et seq. against a medical care provider, as defined in § 16-114-201, shall be filed in the county in which the alleged act or omission occurred.

~~16-60-106. Actions against railroad or stage line~~ Actions on debt, account, or note.

~~An action against a railroad company or an owner of a line of mail-stages or other coaches, upon a liability as a carrier, may be brought in any county through or into which the road or line of stages or coaches of the defendant upon which the cause of action arose passes.~~

A civil action on a debt, account, or note, or for goods or services against a city of the first class, a city of the second class, an incorporated town, a public facilities board, or a county shall be brought in the county in which the city, town, public facilities board, or county lies.

~~16-60-107. Actions against turnpike company~~ Contract actions by resident subcontractor, supplier, or materialman against nonresident prime contractor or subcontractor – Affidavit of contractor.

~~An action, other than one of those mentioned in §§ 16-60-101—16-60-103, against a turnpike road company may be brought in any county in which any part of the road of the defendant lies.~~

(a) A civil action in contract by a resident subcontractor, supplier, or materialman against a prime contractor or subcontractor who is a nonresident of this state or who is a foreign corporation may be brought in the county in which the plaintiff resided at the time the cause of action arose.

(b) When a judgment is recovered in a civil action in contract against a nonresident prime contractor or subcontractor, the prevailing party is entitled to an attorney's fee in the amount to which he or she is entitled by contract or, if an amount is not fixed, a reasonable compensation for the services rendered by the attorney on behalf of the prevailing party.

(c) The prevailing party in a civil action contract is also entitled to recover costs and fees paid, as well as interest at the rate of ten percent (10%) on the balance due from the date the prime contractor received his or her final payment.

(d)(1) A foreign corporation providing services in this state shall furnish, before receiving payment for its services, or in the case of installment payment, before receiving the last installment, a sworn affidavit to the person or entity employing the foreign corporation stating that all subcontractors have been paid in full.

(2) A person signing a sworn affidavit under subdivision (d)(1) of this section when in fact all subcontractors have not been paid in full upon conviction is guilty of a Class D felony.

~~16-60-108. Actions against nonresident individual or foreign corporation~~ Action by insured or beneficiary against surety on contractor's performance bond.

~~An action, other than one of those mentioned in §§ 16-60-101—16-60-103, against a nonresident of this state, or a foreign corporation, may be brought in any county in which there may be property of or debts owing to the defendant.~~

A civil action brought in this state by or in behalf of an insured or beneficiary against a domestic or foreign surety on a contractor's payment or performance bond may be brought in the county:

- (1) In which the loss occurred;
- (2) Of the insured's residence at the time of loss; or
- (3) Of the beneficiary's residence at the time of loss.

~~16-60-109. Contract actions against nonresident~~ Actions against a public school district.

~~(a) Contract actions against a nonresident of this state or a foreign corporation may be brought in the county in which the plaintiff resided at the time the cause of action arose.~~

~~(b) Venue provided in this section shall be cumulative, and this section shall in no way repeal or modify any other existing venue statute.~~

A civil action, other than a civil action described in § 16-60-104 or a civil action for personal injury or death, against a public school district, a public school district board of directors, or a public school district's officer, agent, servant, or employee acting within the course and scope of his or her agency or employment shall be brought in the county or in the judicial district of the county in which the public school district is situated or has its principal office.

~~16-60-110. Actions against person in penitentiary or asylum.~~

~~An action, other than one of those mentioned in §§ 16-60-101—16-60-103, against a person confined in the penitentiary or a facility for treatment for mental disease must be brought in the county in which he or she resided or claimed his or her residence prior to his confinement, unless otherwise provided by law.~~

~~16-60-111. Actions on debt, account, or note.~~

~~(a)(1) An action on a debt, account, or note, or for goods or services may be brought in the county where the defendant resided at the time the cause of action arose.~~

~~(2) However, if a city of the first class, a city of the second class, an incorporated town, a public facilities board, or a county is the defendant, the action shall be brought in the county in which the city, town, public facilities board, or county lies.~~

~~(b) In all such actions, summons may be served upon the defendant in any county in this state.~~

~~(c) The provisions of this section are cumulative to the venue laws of the State of Arkansas and shall not amend or repeal any other laws unless expressly in conflict therewith.~~

~~16-60-112. Actions for personal injury or death.~~

~~(a) All actions for damages for personal injury or death by wrongful act shall be brought in the county where the accident occurred which caused the injury or death, or in the county where the person injured or killed resided at the time of injury.~~

~~(b) All civil actions for the recovery of damages brought against a nonresident of the State of Arkansas may be commenced in the county where the accident occurred which caused the injury or death or in the county where the person injured or killed resided at the time of the injury.~~

~~(c) Actions for damages for personal injury or death by wrongful act, where the accident which caused the injury or death occurred outside this state, shall be brought in the county in this state where the person injured or killed resided at the time of injury or in any county in which the defendant, or one (1) of several defendants, resides or is summoned.~~

~~16-60-113. Actions for damage to, or conversion of, personal property — Actions for fraud.~~

~~(a) Any action for damages to personal property by wrongful or negligent act, whether arising from contract, tort, or conversion of personal property, may be brought:~~

~~(1) In the county where the damage occurred;~~

~~(2) In the county where the property was converted; or~~

~~(3) In the county of residence of the person who was the owner of the property at the time the cause of action arose.~~

~~(b) Any action for any type of fraud may be brought:~~

~~(1) In the county where any one (1) plaintiff resides or any one (1) defendant is located;~~

~~(2) In the county where one (1) or more of the acts utilized to induce, perpetuate, or conceal the fraud was performed; or~~

~~(3) In the county from which an act or one (1) or more of the fraudulent acts or part of a scheme to defraud was originated or was communicated from or into by telephone, mail, or other means orally or in~~

~~writing.~~

~~16-60-114.—Contract actions by resident subcontractor, supplier, or materialman against nonresident prime contractor or subcontractor—Affidavit of contractor.~~

~~(a) Contract actions by a resident subcontractor, supplier, or materialman against a prime contractor or subcontractor who is a nonresident of this state or who is a foreign corporation may be brought in the county in which the plaintiff resided at the time the cause of action arose.~~

~~(b) When any judgment is recovered in an action against the nonresident, the prevailing party shall be entitled to an attorney's fee in the amount to which he or she is entitled by contract or, if no amount is fixed, a reasonable compensation for the services rendered by the attorney on behalf of the prevailing party.~~

~~(c) The prevailing party shall also be entitled to recover costs and fees paid, as well as interest at the rate of ten percent (10%) on the balance due from the date the prime contractor received his or her final payment.~~

~~(d)(1) All foreign corporations providing services in this state shall furnish, prior to receiving payment for their services, or in the case of installment payment prior to receiving the last installment, a sworn affidavit to the person or entity employing the foreign corporations stating that all subcontractors have been paid in full.~~

~~(2) Any person signing such a sworn affidavit when in fact all subcontractors have not been paid in full shall be deemed guilty of a Class D felony.~~

~~16-60-115.—Action by insured or beneficiary against surety on contractor's performance bond.~~

~~An action brought in this state by or in behalf of an insured or beneficiary against a domestic or foreign surety on a contractor's payment or performance bond may be brought in the county:~~

~~(1) In which the loss occurred;~~

~~(2) Of the insured's residence at the time of loss; or~~

~~(3) Of the beneficiary's residence at the time of loss.~~

~~16-60-116. Other actions—County where defendant resides or is summoned—Effective service.~~

~~(a) Every other action may be brought in any county in which the defendant or one (1) of several defendants resides or is summoned.~~

~~(b) Where any action embraced in subsection (a) of this section is against a single defendant, the plaintiff shall not be entitled to judgment against him or her on the service of a summons in any other county than that in which the action is brought, unless he or she resided in that county at the commencement of the action or unless, having appeared in the action, he or she fails to object before the trial to its proceeding against him or her.~~

~~(c) Where any action embraced in subsection (a) of this section is against several defendants, the plaintiff shall not be entitled to judgment against any of them on the service of summons in another county than that in which the action is brought, where no one of the defendants is summoned in that county or resided in that county at the commencement of the action, or where, if any of them resided or were summoned in that county, the action is discontinued or dismissed as to them, or judgment in the action is rendered in their favor, unless the defendant summoned in another county, having appeared in the action, failed to object before the judgment to its proceeding against him.~~

~~(d) The objection that one (1) of several defendants was summoned in another county shall be deemed to be waived if he or she appears, unless it is made before judgment as to that defendant.~~

~~(e) If after the commencement of an action in the county of the defendant's residence, he or she moves therefrom, the service of a summons upon him or her in any other county shall have the same effect as if it had been made in the county from which he or she moved.~~

~~16-60-117. Actions local in nature—Service anywhere in state.~~

~~In any action which may lawfully be brought only in some one (1) or more particular counties in this state and not in any county of the state in which service may be had on the defendant, so that the venue for the action is local and not transitory in nature, summons may be served upon the defendant or defendants in the action in any county in this state.~~

~~16-60-118. Civil actions in Pulaski County.~~

~~(a) For any civil action filed in circuit court in Pulaski County pursuant to a law that declares Pulaski County to be the venue for all such actions in the state, the action may be heard by a judge of another judicial district who agrees to hear such actions pursuant to this section.~~

~~(b) A judge may agree to hear the actions by notifying the Administrative Office of the Courts on a form provided by the office.~~

~~(c)(1) The assignment of a judge from another judicial district shall be made pursuant to procedures prescribed by the Administrative Office of the Courts unless the Arkansas Supreme Court adopts rules for the assignment of judges.~~

~~(2) The rules shall provide for the random selection of the participating judges.~~

~~(d) If an action is assigned to a judge of another judicial district, the judge may hear the action in a court in Pulaski County or in the judicial district of the judge.~~

~~16-60-119. Actions against a public school district.~~

~~An action, other than an action described in § 16-60-103 or § 16-60-112, against a public school district, a public school district board of directors, or a public school district's officer, agent, servant, or employee acting within the course and scope of his or her agency or employment shall be brought in the county or in the judicial district of the county in which the public school district is situated or has its principal office.~~

SECTION 3. Arkansas Code § 23-79-204(c), concerning venue in actions brought by the state against an insurer, is amended to read as follows:

(c) The venue of all other actions against a domestic insurer shall be as provided in ~~§ 16-60-104~~ § 16-60-101.

/s/Broadaway