



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB1724

Introduced 2/25/2005, by Sen. Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-101	from Ch. 110, par. 2-101
735 ILCS 5/2-102	from Ch. 110, par. 2-102
735 ILCS 5/2-103	from Ch. 110, par. 2-103
735 ILCS 5/2-104	from Ch. 110, par. 2-104
735 ILCS 5/2-106	from Ch. 110, par. 2-106
735 ILCS 5/2-107	from Ch. 110, par. 2-107
735 ILCS 5/2-404	from Ch. 110, par. 2-404
735 ILCS 5/2-405	from Ch. 110, par. 2-405
735 ILCS 5/2-105 rep.	from Ch. 110, par. 2-105
735 ILCS 5/2-108 rep.	from Ch. 110, par. 2-108

Amends the Code of Civil Procedure. Provides that proper venue shall be: (1) in the county of residence of all defendants (instead of the county of residence of any defendant who is joined in the action); (2) in the county in which the most significant act or omission or the most significant event or transaction occurred (instead of the county in which the transaction or some part of the transaction occurred) out of which the cause of action arose; or (3) in the county in which the most significant act or omission or the most significant event or transaction occurred out of which the cause of action arose, where there is more than one defendant and the defendants reside in different counties or outside the State. Removes language allowing the cause of action to be commenced in any county when all of the defendants are nonresidents of the State. Provides that venue for a corporation, railroad or bridge company, foreign corporation, partnership, or voluntary unincorporated association shall be in the county in which the corporation, company, partnership, or association has its principal place of business. Provides that venue of a cause of action brought against a public, municipal, governmental, or quasi-municipal corporation shall be in the county in which its principal office is located or the county in which the most significant act or omission or the most significant event or transaction occurred. Provides that when venue is based on the defendant's or defendants' residence, and additional defendants or third party defendants are added to the claim or cause of action, venue remains proper only if all defendants and third party defendants are residents of the county where the claim or cause of action is filed. Requires that, if the additional defendants or third party defendants are not residents of the same county, upon motion of any party, the claim or cause of action shall be transferred to the county where the most significant act or omission or the most significant event or transaction occurred out of which the cause of action arose. Provides that, if there is no proper venue in this State for any reason, the claim or cause of action shall be dismissed without prejudice. Lists factors that the court shall consider when determining whether to dismiss a cause of action or transfer the cause of action to another venue. Provides that where more than one plaintiff is joined, each plaintiff shall independently establish proper venue. Makes other changes. Effective immediately.

LRB094 11119 LCB 41751 b

1 AN ACT concerning civil procedure.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Sections 2-101, 2-102, 2-103, 2-104, 2-106, 2-107,
6 2-109, 2-404, and 2-405 as follows:

7 (735 ILCS 5/2-101) (from Ch. 110, par. 2-101)

8 Sec. 2-101. Generally. Except as otherwise provided in this
9 Act, every action must be commenced: (1) in the county of
10 residence of all defendants; ~~any defendant who is joined in~~
11 ~~good faith and with probable cause for the purpose of obtaining~~
12 ~~a judgment against him or her and not solely for the purpose of~~
13 ~~fixing venue in that county, or~~ (2) in the county in which the
14 most significant act or omission or the most significant event
15 or transaction or some part thereof occurred out of which the
16 cause of action arose; or (3) in the county in which the most
17 significant act or omission or the most significant event or
18 transaction occurred out of which the cause of action arose,
19 where there is more than one defendant and the defendants
20 reside in different counties or outside this State.

21 If a check, draft, money order, or other instrument for the
22 payment of child support payable to or delivered to the State
23 Disbursement Unit established under Section 10-26 of the
24 Illinois Public Aid Code is returned by the bank or depository
25 for any reason, venue for the enforcement of any criminal
26 proceedings or civil cause of action for recovery and attorney
27 fees shall be in the county where the principal office of the
28 State Disbursement Unit is located.

29 ~~If all defendants are nonresidents of the State, an action~~
30 ~~may be commenced in any county.~~

31 If the corporate limits of a city, village or town extend
32 into more than one county, then the venue of an action or

1 proceeding instituted by that municipality to enforce any fine,
2 imprisonment, penalty or forfeiture for violation of any
3 ordinance of that municipality, regardless of the county in
4 which the violation was committed or occurred, may be in the
5 appropriate court (i) in the county wherein the office of the
6 clerk of the municipality is located or (ii) in any county in
7 which at least 35% of the territory within the municipality's
8 corporate limits is located.

9 The changes made by this amendatory Act of the 94th General
10 Assembly apply to causes of action filed on or after its
11 effective date.

12 (Source: P.A. 91-212, eff. 7-20-99.)

13 (735 ILCS 5/2-102) (from Ch. 110, par. 2-102)

14 Sec. 2-102. Residence of corporations, voluntary
15 unincorporated associations and partnerships defined. For
16 purposes of venue, the following definitions apply:

17 (a) Any private corporation or railroad or bridge company,
18 organized under the laws of this State, and any foreign
19 corporation authorized to transact business in this State is a
20 resident of the county in which the corporation or company has
21 its principal place of business. ~~any county in which it has its~~
22 ~~registered office or other office or is doing business. A~~
23 ~~foreign corporation not authorized to transact business in this~~
24 ~~State is a nonresident of this State.~~

25 (b) A partnership sued in its firm name is a resident of
26 the county in which the partnership has its principal place of
27 business. ~~any county in which any partner resides or in which~~
28 ~~the partnership has an office or is doing business. A~~
29 ~~partnership sued in its firm name, of which all partners are~~
30 ~~nonresidents of this State and which does not have an office or~~
31 ~~do business in this State, is a nonresident of this State.~~

32 (c) A voluntary unincorporated association sued in its own
33 name is a resident of the county in which the association has
34 its principal place of business. ~~any county in which the~~
35 ~~association has an office or, if on due inquiry no office can~~

1 ~~be found, in which any officer of the association resides. A~~
2 ~~voluntary unincorporated association sued in its own name, of~~
3 ~~which all its members are nonresidents of this State and which~~
4 ~~does not have an office or do business in this State, is a~~
5 ~~nonresident of this State.~~

6 (d) The changes made by this amendatory Act of the 94th
7 General Assembly apply to causes of action filed on or after
8 its effective date.

9 (Source: P.A. 83-901.)

10 (735 ILCS 5/2-103) (from Ch. 110, par. 2-103)

11 Sec. 2-103. Public corporations - Local actions - ~~Libel~~
12 ~~Insurance companies.~~

13 (a) Actions must be brought against a public, municipal,
14 governmental or quasi-municipal corporation in the county in
15 which its principal office is located or in the county in which
16 the most significant act or omission or the most significant
17 event or transaction ~~the transaction or some part thereof~~
18 occurred out of which the cause of action arose. Except as
19 otherwise provided in Section 7-102 of this Code, if the cause
20 of action is related to an airport owned by a unit of local
21 government or the property or aircraft operations thereof,
22 however, including an action challenging the constitutionality
23 of this amendatory Act of the 93rd General Assembly, the action
24 must be brought in the county in which the unit of local
25 government's principal office is located. Actions to recover
26 damage to real estate which may be overflowed or otherwise
27 damaged by reason of any act of the corporation may be brought
28 in the county where the real estate or some part of it is
29 situated, or in the county where the corporation is located, at
30 the option of the party claiming to be injured. Except as
31 otherwise provided in Section 7-102 of this Code, any cause of
32 action that is related to an airport owned by a unit of local
33 government, and that is pending on or after the effective date
34 of this amendatory Act of the 93rd General Assembly in a county
35 other than the county in which the unit of local government's

1 principal office is located, shall be transferred, upon motion
2 of any party under Section 2-106 of this Code, to the county in
3 which the unit of local government's principal office is
4 located.

5 (b) Any action to quiet title to real estate, or to
6 partition or recover possession thereof or to foreclose a
7 mortgage or other lien thereon, must be brought in the county
8 in which the real estate or some part of it is situated.

9 (c) Any action which is made local by any statute must be
10 brought in the county designated in the statute.

11 (d) Every action against any owner, publisher, editor,
12 author or printer of a newspaper or magazine of general
13 circulation for libel contained in that newspaper or magazine
14 may be commenced only in the county in which the defendant
15 resides or has his, her or its principal office or in which the
16 article was composed or printed, except when the defendant
17 resides or the article was printed without this State, in
18 either of which cases the action may be commenced in any county
19 in which the libel was circulated or published.

20 (e) The changes made by this amendatory Act of the 94th
21 General Assembly apply to causes of action filed on or after
22 its effective date. ~~Actions against any insurance company~~
23 ~~incorporated under the law of this State or doing business in~~
24 ~~this State may also be brought in any county in which the~~
25 ~~plaintiff or one of the plaintiffs may reside.~~

26 (Source: P.A. 93-450, eff. 8-6-03.)

27 (735 ILCS 5/2-104) (from Ch. 110, par. 2-104)

28 Sec. 2-104. Wrong venue - More proper venue - Waiver -
29 Motion to transfer.

30 (a) No order or judgment is void because rendered in the
31 wrong venue, except in case of judgment by confession as
32 provided in subsection (c) of Section 2-1301 of this Act. No
33 action shall abate or be dismissed because commenced in the
34 wrong venue if there is a proper venue to which the cause may
35 be transferred.

1 (b) If venue is improper in the county where the claim or
2 cause of action is filed, upon motion of any party, the claim
3 or cause of action shall be transferred to the county where
4 venue is proper. Where there are multiple claims or causes of
5 action and venue is improper for one or more of the claims or
6 causes of action, upon motion of any party, those claims or
7 causes of action shall be severed and transferred to the county
8 where venue is proper as to each such claim or cause of action.
9 If there is no proper venue for a claim or cause of action in
10 this State for any reason, the claim or cause of action shall
11 be dismissed without prejudice. All objections of improper
12 venue are waived by a defendant unless a motion to transfer to
13 a proper venue is made by the defendant on or before the date
14 upon which he or she is required to appear or within any
15 further time that may be granted him or her to answer or move
16 with respect to the complaint, except that if a defendant upon
17 whose residence venue depends is dismissed upon motion of
18 plaintiff, a remaining defendant may promptly move for transfer
19 as though the dismissed defendant had not been a party.

20 (b-3) When venue is based on the defendant's or defendants'
21 residence, and additional defendants or third party defendants
22 are added to the claim or cause of action, venue remains proper
23 only if all defendants and third party defendants are residents
24 of the county where the claim or cause of action is filed. If
25 the additional defendants or third party defendants are not
26 residents of the same county, upon motion of any party, the
27 claim or cause of action shall be transferred to the county
28 where the most significant act or omission or the most
29 significant event or transaction occurred out of which the
30 cause of action arose. If there is no proper venue in this
31 State for any reason, the claim or cause of action shall be
32 dismissed without prejudice.

33 (b-5) If a court, on its own or upon motion by any party,
34 finds that in the interest of justice and for the convenience
35 of the parties and witnesses: (i) a claim or cause of action
36 would be more properly heard in a forum outside this State, the

1 court shall dismiss the claim or cause of action; or (ii) a
2 claim or cause of action would be more properly heard in a
3 different county of proper venue within this State, the court
4 shall order the claim or cause of action transferred to the
5 more proper county.

6 In determining whether to dismiss or transfer an action
7 under this subsection, the court shall consider the following
8 factors:

9 (1) the convenience of the parties, including
10 unnecessary expense to a defendant not necessary to the
11 plaintiffs cause of action;

12 (2) the unfairness of imposing trial costs and jury
13 duty on citizens of a county with little connection to the
14 action;

15 (3) administrative difficulties that arise from
16 congested venues;

17 (4) the ease of access to sources of testimonial,
18 documentary, and real evidence;

19 (5) the availability to secure attendance of unwilling
20 witnesses with compulsory process;

21 (6) the cost to procure the attendance of willing
22 witnesses;

23 (7) the possibility of viewing of the premises, if
24 viewing would be appropriate to the action; and

25 (8) the court can reasonably conclude that the
26 plaintiff engaged in forum shopping.

27 (b-7) A court may not dismiss a claim or cause of action
28 under this Section until the defendant files with the court or
29 with the clerk of the court a written stipulation that, with
30 respect to a new claim or cause of action commenced by the
31 plaintiff, the defendant waives the right to assert a statute
32 of limitations defense in all other states of the United States
33 in which the claim or cause of action was not barred by
34 limitations at the time the claim or cause of action was filed
35 in this State as necessary to effect a tolling of the
36 limitations periods in those states for a period of 90 days

1 following the dismissal of the claim or cause of action. In any
2 civil action where more than one defendant or third party
3 defendant is named, any defendant or third party defendant that
4 files the required stipulation with the court or the clerk of
5 the court shall be dismissed from the civil action independent
6 of any other defendant or third party defendant.

7 (b-9) To comply with subsection (b) of this Section in
8 relation to an action that involves both claims that would and
9 would not be more properly heard in a forum outside this State
10 or in a different county within this State, a court shall
11 consider each claim individually and shall sever from the
12 action the claims that are subject to subsection (b) of this
13 Section.

14 (c) Motions to dismiss or for transfer to a proper venue
15 may be supported and opposed by affidavit. In determining
16 issues of fact raised by affidavits, any competent evidence
17 adduced by the parties shall also be considered. The
18 determination of any issue of fact in connection with a motion
19 to transfer does not constitute a determination of the merits
20 of the case or any aspect thereof.

21 (d) The changes made by this amendatory Act of the 94th
22 General Assembly apply to causes of action filed on or after
23 its effective date.

24 (Source: P.A. 83-707.)

25 (735 ILCS 5/2-106) (from Ch. 110, par. 2-106)

26 Sec. 2-106. ~~Transfer. (a) Transfer for wrong venue. If a~~
27 ~~motion to transfer is allowed on the ground that the action was~~
28 ~~commenced in a wrong venue, the cause shall be transferred to~~
29 ~~the court in a proper venue, subject to any equitable terms and~~
30 ~~conditions that may be prescribed.~~

31 ~~(b)~~ Method of transfer. The clerk of the court from which a
32 transfer is granted shall immediately certify and transmit to
33 the clerk of the court to which the transfer is ordered the
34 originals of all papers filed in the case together with copies
35 of all orders entered therein. In the event of a severance,

1 certified copies of papers filed and orders entered shall be
2 transmitted. The clerk of the court to which the transfer is
3 ordered shall file the papers and transcript transmitted to him
4 or her and docket the case, and the action shall proceed and be
5 determined as if it had originated in that court.

6 The changes made by this amendatory Act of the 94th General
7 Assembly apply to causes of action filed on or after its
8 effective date.

9 (Source: P.A. 82-280.)

10 (735 ILCS 5/2-107) (from Ch. 110, par. 2-107)

11 Sec. 2-107. Costs and expenses of transfer. The costs
12 attending a transfer shall be taxed by the clerk of the court
13 from which the transfer is granted, and, together with the
14 filing fee in the transferee court, shall be paid by plaintiff,
15 unless otherwise ordered by the court. ~~If the court granting~~
16 ~~the transfer finds that venue was fixed by plaintiff in bad~~
17 ~~faith and without probable cause, then it may order the~~
18 ~~reasonable expenses of defendant in attending and obtaining a~~
19 ~~transfer to a proper venue, including a reasonable attorney's~~
20 ~~fee, to be paid by plaintiff.~~ If the costs and expenses are not
21 paid within a reasonable time, the transferring court shall on
22 motion dismiss the action or take such other action as it deems
23 appropriate.

24 The changes made by this amendatory Act of the 94th General
25 Assembly apply to causes of action filed on or after its
26 effective date.

27 (Source: P.A. 82-280.)

28 (735 ILCS 5/2-404) (from Ch. 110, par. 2-404)

29 Sec. 2-404. Joinder of plaintiffs. All persons may join in
30 one action as plaintiffs, in whom any right to relief in
31 respect of or arising out of the same transaction or series of
32 transactions is alleged to exist, whether jointly, severally or
33 in the alternative, whenever if those persons had brought
34 separate actions any common question of law or fact would

1 arise. Where more than one plaintiff is joined, each plaintiff
2 shall independently establish proper venue, and it is not
3 sufficient that venue is proper for other plaintiffs joined in
4 the civil action. If upon the application of any party it shall
5 appear that joinder may embarrass or delay the trial of the
6 action, the court may order separate trials or enter any other
7 order that may be expedient. Judgment may be entered for any
8 one or more of the plaintiffs who may be found to be entitled
9 to relief, for the relief to which he or she or they may be
10 entitled.

11 If any one who is a necessary plaintiff, counterclaimant or
12 third-party plaintiff declines to join, he or she may be made a
13 defendant, cross defendant or third-party defendant, as the
14 case may be, the reason therefor being stated in the complaint,
15 counterclaim or third-party complaint.

16 The changes made by this amendatory Act of the 94th General
17 Assembly apply to causes of action filed on or after its
18 effective date.

19 (Source: P.A. 83-707.)

20 (735 ILCS 5/2-405) (from Ch. 110, par. 2-405)

21 Sec. 2-405. Joinder of defendants. (a) Any person may be
22 made a defendant who, either jointly, severally or in the
23 alternative, is alleged to have or claim an interest in the
24 controversy, or in any part thereof, or in the transaction or
25 series of transactions out of which the controversy arose, or
26 whom it is necessary to make a party for the complete
27 determination or settlement of any question involved therein,
28 or against whom a liability is asserted either jointly,
29 severally or in the alternative arising out of the same
30 transaction or series of transactions, regardless of the number
31 of causes of action joined.

32 (b) Where more than one defendant or third party defendant
33 is named, venue must be proper as to each defendant, and it is
34 not sufficient that venue is proper for other defendants or
35 third party defendants joined in the civil action. It is not

1 necessary that each defendant be interested as to all the
2 relief prayed for, or as to every cause of action included in
3 any proceeding against him or her; but the court may make any
4 order that may be just to prevent any defendant from being
5 embarrassed or put to expense by being required to attend any
6 proceedings in which such defendant may have no interest.

7 (c) If the plaintiff is in doubt as to the person from whom
8 he or she is entitled to redress, he or she may join two or more
9 defendants if venue is proper as to each, and state his or her
10 claim against them in the alternative in the same count or
11 plead separate counts in the alternative against different
12 defendants, to the intent that the question which, if any, of
13 the defendants is liable, and to what extent, may be determined
14 as between the parties.

15 (d) Where multiple claims or causes of action are combined
16 in a single lawsuit, venue must be proper as to each separate
17 claim or cause of action.

18 (e) The changes made by this amendatory Act of the 94th
19 General Assembly apply to causes of action filed on or after
20 its effective date.

21 (Source: P.A. 82-280.)

22 (735 ILCS 5/2-105 rep.) (from Ch. 110, par. 2-105)

23 (735 ILCS 5/2-108 rep.) (from Ch. 110, par. 2-108)

24 Section 10. The Code of Civil Procedure is amended by
25 repealing Sections 2-105 and 2-108.

26 Section 99. Effective date. This Act takes effect upon
27 becoming law.