

1983 Senate Bill 324

Date of enactment: April 20, 1984
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1983 Wisconsin Act 228

AN ACT *to repeal 799.11 (2) and (3), 801.54, 801.57, 801.60 and 814.61 (2) (c); to renumber 799.11 (4); to renumber and amend 799.11 (5); to amend 799.01 (intro.), 799.03, 799.29 (1) and 814.61 (2) (b); to repeal and recreate 799.11 (1) and 801.50 to 801.53; and to create 421.401 and 799.29 (1) (c) of the statutes, relating to venue in civil actions and special proceedings.*

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JUDICIAL COUNCIL PREFATORY NOTE: This substitute amendment contains the recommendations of the judicial council committee on venue, established pursuant to 1981 Senate Joint Resolution 58. The committee, whose membership is listed in the last paragraph of the NOTE, found that:

(1) Wisconsin's present venue laws contain archaic distinctions which unduly restrict the plaintiff's choice of venue.

(2) The present procedure for change of venue is unnecessarily cumbersome and contains traps for unwary litigants.

(3) Present venue for small claims arising out of consumer transactions can be so inconvenient to the customer that prosecuting or defending these claims becomes prohibitively expensive.

(4) Unnecessary litigation is caused by the statutes' failure to specify that a defect in venue is not jurisdictional and does not affect the validity of any order or judgment.

The committee therefore recommended, and this substitute amendment provides, simplification of the general venue statute for civil actions. By eliminating archaic distinctions under the prior statute, the substitute amendment liberalizes the plaintiff's initial choice of forum. The substitute amendment also simplifies the procedure for changing venue by eliminating one of the 2 steps required by prior statute. It establishes strict time deadlines for challenging improper venue but allows the court to change venue to another county of this state at any time in the interest of justice or for the convenience of the parties or witnesses.

The substitute amendment requires claims arising out of consumer transactions to be brought in the county where the customer resides, where the collateral is located or where the customer signed the document creating the obligation. It requires small claims procedures to be used for small claims if the defendant resides, and can be personally served, in this state. Finally, it clearly provides that a defect in venue does not affect the validity of any order or judgment. The substitute amendment does not change numerous special venue statutes, many of which are listed in the NOTE to proposed s. 801.50.

The committee on venue consisted of Thomas J. Curran (chair); Sen. Lynn S. Adelman; James A. Drill; Judge John P. Foley; Ms. Judy Hebbe; Prof. John J. Kircher; J. Denis Moran; Gordon Samuelsen; Adrian P. Schoone; Leon E. Sheehan; Judge Nathan E. Wiese; Judge Thomas Williams. Prof. Thomas Cannon was the committee reporter.

SECTION 1. 421.401 of the statutes is created to read:

421.401 Venue. (1) The venue for a claim arising out of a consumer transaction is the county:

- (a) Where the customer resides or is personally served;
- (b) Where collateral securing a consumer credit transaction is located; or
- (c) Where the customer signed the document evidencing his or her obligation under the terms of the transaction.

(2) When it appears from the return of service of the summons or otherwise that the county in which the action is pending is not a proper place of trial under sub. (1) and that another county would be a proper place of trial, the court shall, on motion of a party or its own motion, transfer the action to that county unless the defendant appears and waives the improper venue.

(3) If there are several defendants, and if venue is based on residence, venue may be in the county of residence of any of them.

NOTE: This SECTION limits the venue of claims arising out of consumer transactions to the county where the customer resides or is served, where the collateral is located or where the customer signed the document obligating payment. When it appears that an action is improperly venued, the court shall transfer the action to a proper county.

SECTION 2. 799.01 (intro.) of the statutes is amended to read:

799.01 Applicability of chapter. (intro.) Subject to the limitations of ss. 799.11 and 799.12, the procedure in this chapter ~~shall be used in circuit court in the following actions is the exclusive procedure to be used in circuit court in the actions specified in subs. (1) to (4), if all the defendants reside within the state and can be personally served in the state, and the procedure is permissive in those actions otherwise.~~ The applicable actions are:

NOTE: This SECTION specifies that the procedure provided for small claim type actions is the exclusive procedure if the defendant resides in and can be personally served in the state.

SECTION 3. 799.03 of the statutes is amended to read:

799.03 (title) Definition. ~~Sections 799.01 and 799.02 are procedural and not jurisdictional.~~ In this chapter unless otherwise designated, "court" means circuit court and "court" does not mean court commissioner.

NOTE: The first sentence of the statute is deleted because it has been construed to mean that actions for \$1,000 or less need not be jurisdictionally brought under ch. 799. *State v. Hervey*, 113 Wis. 2d 634 (1983). Under revised s. 799.01, the circuit court lacks jurisdiction over certain actions unless ch. 799 procedures are followed.

SECTION 4. 799.11 (1) of the statutes is repealed and recreated to read:

799.11 (1) The venue of actions in which the procedure of this chapter is used is as follows:

(a) In actions for garnishment, any county in which the garnishee resides or, if not a resident of the state, is found; or, the county in which the summons in the principal action has issued or where the judgment therein is entered.

(b) In any claim arising out of a consumer transaction, as defined in s. 421.301 (13), in the county specified by s. 421.401.

(c) In actions for a forfeiture, the county in which the act occurred on which the action for forfeiture is based.

(d) In actions to recover a tax, the county in which the tax was levied.

(e) In all other actions, the county specified by s. 801.50.

NOTE: Proposed sub. (1) (e), cross-referencing the general venue statute, is substituted for special provisions in prior sub. (2) (a), (b), (d) and (g). Revised s. 801.50, overlaps these special provisions and renders them redundant. Tort actions may be brought where the claim arose or defendant resides (s. 801.50 (2) (a) or (b)); contract actions may be brought where the defendant resides or does substantial business (s. 801.50 (2) (c)); replevin actions and lien foreclosures may be brought where the property or part thereof is situated (s. 801.50 (2) (b)); and landlord-tenant actions may be brought where the premises are situated under either a "property subject of the claim" or "substantial business" theory (s. 801.50 (2) (b) and (c)).

Proposed sub. (1) (b) makes venue in consumer small claims convenient to the customer. The amount in controversy is frequently too small to justify the expense of defending or prosecuting such a claim in an inconvenient forum.

SECTION 5. 799.11 (2) and (3) of the statutes are repealed.

SECTION 6. 799.11 (4) of the statutes is renumbered 799.11 (2).

SECTION 7. 799.11 (5) of the statutes is renumbered 799.11 (3) and amended to read:

799.11 (3) When, in any action under this chapter, it appears from the return of service of the summons or otherwise that the county in which the action is pending is not a proper place of trial ~~of such action under this section, the court shall, on motion of a party or on its own motion, on the return day of the summons or prior to taking any other action on the case, determine the correctness of the venue. If venue is correct the case shall continue. If venue is not correct, the action shall be dismissed unless the defendant appears and waives the improper venue and that another county would be a proper place of trial, the court or court commissioner shall, on motion of a party or its own motion, transfer the action to that county unless the defendant appears and waives the improper venue. The clerk of the court to which the action is transferred shall issue a new notice of return date upon payment of the fee required by s. 814.61 (2) (a).~~

NOTE: Subsection (5) is renumbered and amended to require transfer of an improperly venued action rather than dismissal thereof.

SECTION 8. 799.29 (1) of the statutes is amended to read:

799.29 (1) MOTION TO REOPEN. (a) There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown. ~~The~~

(b) ~~In ordinance violation cases, the notice of motion must be made within 20 days after entry of judgment in ordinance violation actions and within 90 days in other actions.~~ In ordinance violation cases, default judgments for purposes of this section include pleas of guilty, no contest and forfeitures of deposit.

SECTION 9. 799.29 (1) (c) of the statutes is created to read:

799.29 (1) (c) In other actions under this chapter, the notice of motion must be made within 90 days after entry of judgment unless venue was improper under s. 799.11. The court shall order the reopening of a default judgment in an action where venue was improper upon motion or petition duly made within one year after the entry of judgment.

NOTE: Proposed sub. (1) (c) liberalizes the time limit for reopening default judgments entered in improperly venued actions. This remedy supplements the court's authority under s. 799.11 (3) to correct venue on its own motion.

SECTION 10. 801.50 to 801.53 of the statutes are repealed and recreated to read:

801.50 Venue in civil actions or special proceedings. (1) A defect in venue shall not affect the validity of any order or judgment.

(2) Except as otherwise provided by statute, venue in civil actions or special proceedings shall be as follows:

(a) In the county where the claim arose;

(b) In the county where the real or tangible personal property, or some part thereof, which is the subject of the claim, is situated;

(c) In the county where a defendant resides or does substantial business; or

(d) If the provisions under par. (a) to (c) do not apply, then venue shall be in any county designated by the plaintiff.

(3) All actions in which the sole defendant is the state, any state board or commission or any state officer, employe or agent in an official capacity shall be venued in Dane county unless another venue is specifically authorized by law.

(4) Venue of an action seeking a remedy available by habeas corpus shall be in the county:

- (a) Where the plaintiff was convicted or sentenced if the action seeks relief from a judgment of conviction or sentence under which the plaintiff's liberty is restrained.
- (b) Where the liberty of the plaintiff is restrained if the action seeks relief concerning any other matter relating to a restraint on the liberty of the plaintiff.
- (5) Venue of an action to review a probation or parole revocation or a refusal of parole by certiorari shall be the county in which the relator was last convicted of an offense for which the relator was on probation or parole or for which the relator is currently incarcerated.
- (6) Venue under this section may be changed under s. 801.52.

NOTE: Subsection (1) is designed to separate questions of venue from questions of jurisdiction and competency. A defect in venue is not jurisdictional and does not affect the competence of the court. The cure for a defect in venue is to change the place of trial.

Subsection (2) liberalizes the present venue statute by providing the plaintiff with a broader range of initial venue choices. This subsection also deletes many of the archaic distinctions in the former statute.

The following list contains many, but not all, of the specialized venue provisions not found in chapter 801: s. 48.185 (children's code proceedings); s. 48.83 (adoption of minors); s. 51.45 (13) (n) (civil mental commitments); s. 52.10 (11) (proceedings under the uniform reciprocal enforcement of support act); s. 77.12 (forest croplands tax act); s. 111.60 (Wisconsin employment relations act); s. 144.73 (4) (hazardous waste act); s. 185.44 (1) (cooperative contracts); s. 195.07 (railroad regulation act); s. 196.44 (3) (public utilities regulation act); s. 198.12 (2) (municipal power and water district act); s. 215.02 (5) (savings and loan association act); s. 227.16 (1) (administrative procedure act); s. 232.38 (solid waste recycling authority act); s. 234.22 (housing finance authority act); s. 345.31 (motor vehicle act); s. 421.401 (Wisconsin consumer act); s. 645.04 (1) (insurers rehabilitation and liquidation act); s. 701.14 (4) (living trusts); s. 752.21 (court of appeals); s. 753.065 (naturalization proceedings); s. 757.89 (Wisconsin judicial commission); s. 776.13 (annulment of corporate charters); s. 779.20 (log liens); s. 799.11 (small claims actions); s. 800.15 (municipal court appeals); s. 880.05 (guardianship actions); s. 882.03 (adult adoptions); s. 971.19 (criminal proceedings); s. 979.01 (inquests of the dead); s. 23.90 (conservation act); s. 45.50 (3) (soldiers and sailors civil relief); and s. 753.34 (5) (Menominee and Shawano counties).

Subsection (3) remains the same in substance.

Subsections (4) and (5) remain unchanged.

Subsection (6) recognizes the authority of the judge to change venue under s. 801.52.

801.51 Challenges to improper venue. Any party may challenge venue, on the grounds of noncompliance with s. 801.50 or any other statute designating proper venue, by filing a motion for change of venue:

- (1) At or before the time the party serves his or her first motion or responsive pleading in the action.
- (2) After the time set forth in sub. (1), upon a showing that despite reasonable diligence, the party did not discover the grounds therefor at or before that time.

NOTE: This SECTION sets forth the procedure for challenging the plaintiff's initial choice of venue on the grounds that it fails to comply with the provisions of s. 801.50 or any other statute specifying proper venue. The former statute's 2-stage proceeding was unnecessary and tended to create confusion for unwary litigants.

801.52 Discretionary change of venue. The court may at any time, upon its own motion, the motion of a party or the stipulation of the parties, change the venue to any county in the interest of justice or for the convenience of the parties or witnesses.

NOTE: This SECTION authorizes grounds for changing venue beyond the failure to comply with s. 801.50. It permits the court to apply traditional *forum non conveniens* principles to requests for discretionary change of venue. The court has discretion to change venue to any county in the state.

801.53 Determination of motion for change of venue. Motions under ss. 801.51 and 801.52 shall be determined on the basis of proofs submitted by the parties unless the court orders a hearing or oral argument. Oral argument shall be heard by telephonic conference unless the court otherwise orders for cause shown.

NOTE: The provisions of the prior statute are revised in the proposed new s. 801.51. Motions under s. 801.51 are rarely contested and usually decided on affidavit. As on other nonevidentiary motions, oral argument should, if desired, be heard by 3-way or conference telephone call. Motions under s. 801.52, while requiring a factual foundation, usually are based not on dispute of fact but on balance of equities. Unless good cause to the contrary is advanced, arguments should be heard by 3-way or telephonic conference call.

SECTION 11. 801.54 of the statutes is repealed.

NOTE: Section 801.54 is repealed because its provisions are revised in the proposed new s. 801.52.

SECTION 12. 801.57 of the statutes is repealed.

NOTE: Section 801.57 is repealed because its provisions are adequately covered under proposed new ss. 801.51 and 801.52.

SECTION 13. 801.60 of the statutes is repealed.

NOTE: Section 801.60 is repealed because its provisions are revised in the proposed new ss. 801.51 and 801.52.

SECTION 14. 814.61 (2) (b) of the statutes is amended to read:

814.61 (2) (b) ~~If the court orders a change of venue is ordered for the reasons set forth in s. 801.54 (1), (2) or (4) under s. 801.52,~~ no fee may be charged.

SECTION 15. 814.61 (2) (c) of the statutes is repealed.

SECTION 16. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
18.13 (2)	801.50 (9)	801.50
18.61 (3)(e)	801.50 (9)	801.50
18.76 (2), as created by 1983 Wis. Act 3	801.50 (9)	801.50
66.902 (1)(d)	801.54 (1) to (3)	801.52
801.61	801.53	801.51
802.06 (2)	801.53	801.51

SECTION 17. **Initial applicability.** This act applies to actions and proceedings commenced on or after the effective date of this act.

SECTION 18. **Effective date.** This act takes effect on the first day of the 3rd month commencing after its publication.