

**2013 HOUSE JUDICIARY**

**HB 1042**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1042  
January 9, 2013  
17039

Conference Committee

Committee Clerk Signature

*Kristie Helzlsouer*

## Explanation or reason for introduction of bill/resolution:

Relating to actions having venue where the defendant resides.

## Minutes:

Testimony attachments 1 and 2

**Chairman Koppleman:** Opened hearing of HB 1042.

**Vonette Richter, Legislative Council:** Provides written testimony (see attachment 1) indicating the amendment to Section 28-04-05 would accomplish the objective without violating the Privileges and Immunities Clause of the United States Constitution. Any questions?

**Representative Steiner:** What problem would you be solving with this change?

**Vonette Richter:** States that will be discussed further by Representative Klemin and he also provides written testimony (attachment 2).

**Representative Klemin:** Testifies in support of HB 1042, venue of civil actions, he includes written testimony (attachment 2). He addresses that costs are put on ND residents when non- residents file in the state of ND even when the action itself did not occur in ND. There needs to be some connection to ND whether it is where the plaintiff and/or the defendants reside or where the cause of action occurred.

There are valid reasons to prevent forum shopping such as ND court system already backed up with cases, and would cause them to be overburdened. Any questions?

**Allen Austad:** Representing ND Association of Justice, members are trial lawyers and they are in support of HB1042. He states that this change would help ND and its residents significantly because it reduces stress on the ND court system.

**Chairman Koppleman:** Is there any more testimony in support of HB 1042? Any testimony in opposition? Neutral testimony?

**Representative Delmore:** recommends do pass on HB 1042 since it was studied in the interim and there is no opposition.

**Representative Brabandt:** Seconds

**Roll call vote:** 13-0-1

Representative Maragos will be the carrier.

Date: 1-9-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1042

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Brabandt

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	X		Rep. Lois Delmore	X	
Vice Chairman Lawrence Klemin	X		Rep. Ben Hanson	X	
Rep. William Kretschmar	X		Rep. Kathy Hogan	X	
Rep. Andrew Maragos	X				
Rep. Diane Larson	X				
Rep. Gary Paur	X				
Rep. Randy Boehning					
Rep. Karen Karls	X				
Rep. Roger Brabandt	X				
Rep. Vicky Steiner	X				
Rep. Nathan Toman	X				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. maragos

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1042: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1042 was placed on the  
Eleventh order on the calendar.

**2013 SENATE JUDICIARY**

**HB 1042**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1042  
2/20/2013  
Job #19258

Conference Committee

Committee Clerk Signature



**Minutes:**

*Attached testimony*

## Relating to actions having venue where the defendant resides

### Senator David Hogue - Chairman

Vonnette Richter - Staff Council for the Interim Judiciary Committee - She is her to explain the bill. See handout, Excerpt from 2012 Interim Judiciary Committee Final Report. (1)

Representative Klemin - District 47 - See written testimony.

Senator Hogue asks if this bill will resolve the statute of limitations issue if these two issues are inter-related. Rep. Klemin says they are inter-related in the context of the type of case that he presented in his testimony. He says there were other reasons advanced for the statute of limitations issue. Rep. Klemin explains to the committee why in State residents would want to forum shop here.

Alan Austad - ND Association for Justice - States they are in support of the bill.

Opposition - none

Neutral - none

Close the hearing

### Discussion

Senator Hogue says this was a subject of the interim Judiciary and that there was a play between this and the six year statute. He said this is the solution that would prevent the fact pattern that Rep. Klemin talked about persons not from ND sue defendants who are not from ND and the injuries have nothing to do with ND except that we have a longer statute of limitations so they bring the lawsuit to ND. He said this bill says there must be a connection to ND.

Senator Armstrong moves a do pass  
Senator Grabinger seconded

Discussion

The committee discusses the venue of last resort. Senator Hogue explains how venues are decided. He says venue is not with the right to bring a lawsuit but where within the jurisdiction. Senator Nelson mentions that it also is a cost to the counties with salary and time.

Vote - 7 yes, 0 no

Motion passes

Senator Berry will carry

Date: 2/20/13  
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1042**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By S Armstrong Seconded By S Grabinger

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	<input checked="" type="checkbox"/>		Senator Carolyn Nelson	<input checked="" type="checkbox"/>	
Vice Chairman Margaret Sitte	<input checked="" type="checkbox"/>		Senator John Grabinger	<input checked="" type="checkbox"/>	
Senator Stanley Lyson	<input checked="" type="checkbox"/>				
Senator Spencer Berry	<input checked="" type="checkbox"/>				
Senator Kelly Armstrong	<input checked="" type="checkbox"/>				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment S Berry

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1042: Judiciary Committee (Sen. Hogue, Chairman)** recommends **DO PASS**  
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1042 was placed on the  
Fourteenth order on the calendar.

**2013 TESTIMONY**

**HB 1042**

## EXCERPT FROM 2012 INTERIM JUDICIARY COMMITTEE FINAL REPORT

### VENUE REQUIREMENTS IN CIVIL ACTIONS

In order to hear and decide a case, a court must have jurisdiction over the parties involved (personal jurisdiction); jurisdiction over the subject matter involved (subject matter jurisdiction); and proper venue.

Venue, as commonly understood, is the place where the power of the court to adjudicate is to be exercised--the place where a case may be or should be heard. The primary function of a venue requirement is to provide a convenient, logical, and orderly forum for litigation.

**Chapter 28-04** addresses the appropriate venue for civil actions in the state's courts. Under Section 28 04 01, an action relating to real property must be brought in the county in which the subject matter of the action is situated.

**Section 28-04-02** provides for the recovery of personal property that is being held in order to compel payment and for recovery on an insurance policy for loss or damage to the property insured, the action must be tried in the county in which the subject of the action or some part of the subject is situated.

For the recovery of a penalty or forfeiture imposed by statute or a cause of action against a public officer, **Section 28-04-03** provides the case must be tried in the county where the cause or some part of the cause arose.

**Section 28-04-03.1** provides an action against the owner or driver of any motor vehicle arising out of negligent driving, operation, management, or control of the motor vehicle must be brought either in the county where the action arose, in the county of the residence of the defendant, or in the county of the residence of the majority of the defendants.

**Section 28-04-04** provides an action against a domestic corporation or limited liability company must be brought in the county designated in the plaintiff's complaint if the corporation or company transacts business in that county.

**Section 28-04-05** addresses those actions having venue where the defendant resides. This section provides in all other cases, except motor vehicle cases, the action must be brought in the county in which the defendant or one of the defendants resides at the time of the commencement of the action. This section provides if no defendant resides in the state, the action must be brought in the county that the plaintiff designates in the summons.

**Section 28-04-07** authorizes the court to change venue if the county designated in the complaint is not the proper county; if there is reason to believe an impartial trial cannot be had in that county; if the convenience of witnesses and the ends of justice would be promoted by the change; or if taking into account the court's calendar and the number of jury cases for trial, moving the venue would allow for a prompt trial of those cases.

### TESTIMONY AND COMMITTEE CONSIDERATIONS

In its review of the venue requirements for bringing a civil action in North Dakota and whether the venue requirements should be amended to limit claims being brought in this state by nonresidents who have no connection to this state, the committee reviewed the venue statutes contained in Chapter 28-

04. The committee focused on the requirements of Section 28 04-05, which contains the venue requirements in situations in which none of the defendants reside in the state. Current law provides that in this instance, the "action must be brought in the county which the plaintiff shall designate in the summons." The committee received testimony that amending this section would prevent forum shopping by both resident and nonresident plaintiffs when none of the defendants reside in the state.

During the course of the committee's review of the venue statutes, the committee considered a bill draft to amend Section 28-04-05 to provide that "[i]f none of the defendants reside in the state the action either must be brought in the county in which the plaintiff resides or in the county in which the cause of action arose."

Testimony in opposition to the bill draft indicated this change to the venue statute would violate the Privileges and Immunities Clause of the United States Constitution (U.S. Const. Art. IV, Sec. 2) by precluding a nonresident from suing a nonresident in North Dakota in situations in which a state resident could do so. According to the testimony, even if the bill draft did not violate the Privileges and Immunities Clause, many would conclude that it operates unfairly when the accident happens in the state, the defendant is a resident of another state, and the plaintiff is also a resident of another state--either never having lived here or having moved away since the accident. It was argued the best way to eliminate forum shopping by out-of-state plaintiffs is to have a statute of limitations period that is similar to what most other states have. It was also noted a change to the venue statutes would not address two fundamental matters that a short statute of limitations would address--to prevent stale claims and to bring North Dakota into the mainstream.

The committee amended the bill draft to provide that "[i]f none of the defendants reside in the state, the action either must be brought in the county in which the plaintiff or one of the plaintiffs resides or in the county in which the cause of actions arose.

Testimony in support of the amended bill draft indicated Section 28-04-05, as amended, would apply equally to both resident and nonresident. The support indicated this bill draft would prevent forum shopping by resident plaintiffs and nonresident plaintiffs. According to the testimony, only in those cases in which there is no connection to the state would a plaintiff be precluded from using the state's courts. The testimony also contended that if the case does not have a connection to North Dakota, taxpayers of the state should not be required to bear the cost to the judicial system. It was noted the state's judicial system is overworked and understaffed, and the courts should not be burdened by litigation from nonresident plaintiffs against nonresident defendants for causes of action which did not arise in the state. The amendment to Section 28-04-05 would accomplish that objective without violating the Privileges and Immunities Clause of the United States Constitution.

### **RECOMMENDATION**

The committee recommends a bill draft relating to venue in civil cases which would provide that if none of the defendants reside in the state, the action either must be brought in the county in which the plaintiff or one of the plaintiffs resides or in the county in which the cause of action arose.

TESTIMONY OF REP. LAWRENCE R. KLEMIN  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
HOUSE BILL NO. 1042  
JANUARY 9, 2013

Mr. Chairman and Members of the House Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am appearing before you today in support of House Bill 1042, relating to the venue of civil actions.

Venue is the county where a civil action is litigated. North Dakota law sets out a hierarchy of places where venue is appropriate for a civil action. Section 28-04-05 applies only after all of the other venue provisions have been found to be inapplicable. This section currently provides that if none of the defendants reside in North Dakota, then the venue for the action is in the county which the plaintiff designates in the Summons, which could be any county in the state. It's the plaintiff's choice and no connection to any particular county is necessary. A plaintiff is not required to commence an action in his home county, where either he or his attorney might not be well liked by the local judge or by people who might be called for jury duty. A resident plaintiff can engage in forum shopping to use a court in a county where he thinks he might get more favorable treatment.

HB 1042 changes this to provide that if none of the defendants reside in this state, then the action must be brought in the county where the plaintiff, or one of the plaintiffs, resides, or in the county in which the cause of action arose. This venue requirement applies equally to both resident and nonresident plaintiffs and will prevent forum shopping by both resident plaintiffs and nonresident plaintiffs.

The proposed amendment to Section 28-04-05 will only deny access to the courts of the State of North Dakota in those situations where:

1. None of the plaintiffs are residents of this state;
2. None of the defendants are residents of this state; and
3. The cause of action did not arise in this state.

In other words, only in those cases where there is no connection to the State of North Dakota would a plaintiff be precluded from using the North Dakota state courts. If there is no connection of the case to the State of North Dakota, then why should the taxpayers of North Dakota be required to bear the cost to the judicial system of such litigation? Our judicial system is overworked and understaffed. Our courts should not be burdened by litigation from nonresident plaintiffs against nonresident defendants for causes of action that did not arise here.

Section 28-04-05 currently follows the "venue-giving defendant principle," whereby once venue is proper for one defendant, it is proper for all other defendants subject to service of process. The action must be brought in the county in which the defendant, *or one of the*

Testimony of Rep. Klemin  
HB 1042  
January 9, 2013  
Page 2

*defendants*, resides at the time of the commencement of the action. This is the existing law and is not changed by this venue bill. The only change is that if none of the defendants reside in North Dakota, then the action can't be brought in North Dakota by a nonresident plaintiff unless the cause of action arose here.

The amendment to Section 28-04-05 would create a "venue-giving *plaintiff* principle" in that if venue is appropriate for one plaintiff in an action, it is also appropriate for all co-plaintiffs, regardless of their residency. The amendment provides that the action must be brought in the county in which the plaintiff, *or one of the plaintiffs*, resides, or in the county in which the cause of action arose.

There is a rational basis for the differing treatment of nonresident plaintiffs who have no connection to North Dakota. The North Dakota courts are stressed at the present time by the amount of litigation, in both civil and criminal cases, as a result of the economic activity and population increase in North Dakota. Caseloads are increasing substantially. This is evidenced by the Justice System Energy Impact Task Force Report dated August 16, 2012, which was sponsored by the State Bar Association of North Dakota (SBAND). The Task Force concluded that there is a growing need for additional judges and other court personnel in the judicial districts of North Dakota, particularly in the western half of North Dakota. The SBAND Task Force also found that there is a need for additional judges in non-energy impact parts of the state, such as in Cass County. The North Dakota Supreme Court has introduced a bill to add three judges in North Dakota, two in the northwest and one in the east. It is likely that we will see requests for additional judges in the future as the population continues to grow.

Consequently, there are valid reasons for amendment of the venue statute in North Dakota: to prevent forum shopping by both resident and nonresident plaintiffs when none of the defendants reside in this state, and to prevent our already over-burdened courts from becoming even more over-burdened by out-of-state cases that have no connection to North Dakota. The venue amendment to Section 28-04-05 will accomplish that objective.

I urge you to give favorable consideration to HB 1042.

Rep. Lawrence R. Klemin  
District 47, Bismarck, ND

February 20, 2013

## EXCERPT FROM 2012 INTERIM JUDICIARY COMMITTEE FINAL REPORT

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**Section 28-04-07** authorizes the court to change venue if the county designated in the complaint is not the proper county; if there is reason to believe an impartial trial cannot be had in that county; if the convenience of witnesses and the ends of justice would be promoted by the change; or if taking into account the court's calendar and the number of jury cases for trial, moving the venue would allow for a prompt trial of those cases.

### TESTIMONY AND COMMITTEE CONSIDERATIONS

In its review of the venue requirements for bringing a civil action in North Dakota and whether the venue requirements should be amended to limit claims being brought in this state by nonresidents who have no connection to this state, the committee reviewed the venue statutes contained in Chapter 28-

04. The committee focused on the requirements of Section 28-04-05, which contains the venue requirements in situations in which none of the defendants reside in the state. Current law provides that in this instance, the "action must be brought in the county which the plaintiff shall designate in the summons." The committee received testimony that amending this section would prevent forum shopping by both resident and nonresident plaintiffs when none of the defendants reside in the state.

During the course of the committee's review of the venue statutes, the committee considered a bill draft to amend Section 28-04-05 to provide that "[i]f none of the defendants reside in the state the action either must be brought in the county in which the plaintiff resides or in the county in which the cause of action arose."

Testimony in opposition to the bill draft indicated this change to the venue statute would violate the Privileges and Immunities Clause of the United States Constitution (U.S. Const. Art. IV, Sec. 2) by precluding a nonresident from suing a nonresident in North Dakota in situations in which a state resident could do so. According to the testimony, even if the bill draft did not violate the Privileges and Immunities Clause, many would conclude that it operates unfairly when the accident happens in the state, the defendant is a resident of another state, and the plaintiff is also a resident of another state--either never having lived here or having moved away since the accident. It was argued the best way to eliminate forum shopping by out-of-state plaintiffs is to have a statute of limitations period that is similar to what most other states have. It was also noted a change to the venue statutes would not address two fundamental matters that a short statute of limitations would address--to prevent stale claims and bring North Dakota into the mainstream.

The committee amended the bill draft to provide that "[i]f none of the defendants reside in the state, the action either must be brought in the county in which the plaintiff or one of the plaintiffs resides or in the county in which the cause of actions arose.

Testimony in support of the amended bill draft indicated Section 28-04-05, as amended, would apply equally to both resident and nonresident. The support indicated this bill draft would prevent forum shopping by resident plaintiffs and nonresident plaintiffs. According to the testimony, only in those cases in which there is no connection to the state would a plaintiff be precluded from using the state's courts. The testimony also contended that if the case does not have a connection to North Dakota, taxpayers of the state should not be required to bear the cost to the judicial system. It was noted the state's judicial system is overworked and understaffed, and the courts should not be burdened by litigation from nonresident plaintiffs against nonresident defendants for causes of action which did not arise in the state. The amendment to Section 28-04-05 would accomplish that objective without violating the Privileges and Immunities Clause of the United States Constitution.

### **RECOMMENDATION**

The committee recommends a bill draft relating to venue in civil cases which would provide that if none of the defendants reside in the state, the action either must be brought in the county in which the plaintiff or one of the plaintiffs resides or in the county in which the cause of action arose.

TESTIMONY OF REP. LAWRENCE R. KLEMIN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
HOUSE BILL NO. 1042  
February 20, 2013

Mr. Chairman and Members of the Senate Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am appearing before you today in support of House Bill 1042, relating to the venue of civil actions. This bill was introduced as a result of a study by the interim Judiciary Committee.

Venue is the county where a civil action is litigated. North Dakota law sets out a hierarchy of places where venue is appropriate for a civil action. Section 28-04-05 applies only after all of the other venue provisions have been found to be inapplicable. This section currently provides that if none of the defendants reside in North Dakota, then the venue for the action is in the county which the plaintiff designates in the Summons, which could be any county in the state. It's the plaintiff's choice and no connection to any particular county is necessary. A plaintiff is currently not required to commence an action in his home county. A resident plaintiff can engage in forum shopping to use a court in a county where he thinks he might get more favorable treatment.

HB 1042 changes the current venue requirement to provide that if none of the defendants reside in this state, then the action must be brought in the county where the plaintiff, or one of the plaintiffs, resides, or in the county in which the cause of action arose. This venue requirement applies equally to both resident and nonresident plaintiffs and will prevent forum shopping by both resident plaintiffs and nonresident plaintiffs.

The proposed amendment to Section 28-04-05 will only deny access to the courts of the State of North Dakota in those situations where:

1. None of the plaintiffs are residents of this state;
2. None of the defendants are residents of this state; and
3. The cause of action did not arise in this state.

In other words, only in those cases where there is no connection to the State of North Dakota would a plaintiff be precluded from using the North Dakota state courts. If there is no connection of the case to the State of North Dakota, then why should the taxpayers of North Dakota be required to bear the cost to the judicial system of such litigation? Our judicial system is overworked and understaffed. Our courts should not be burdened by litigation from nonresident plaintiffs against nonresident defendants for causes of action that did not arise here.

Section 28-04-05 currently follows the "venue-giving defendant principle," whereby once venue is proper for one defendant, it is proper for all other defendants subject to service of process. The action must be brought in the county in which the defendant, *or one of the defendants*, resides at the time of the commencement of the action. This is the existing law and is not changed by this venue bill. The only change is that if none of the defendants

reside in North Dakota, then the action can't be brought in North Dakota by a nonresident plaintiff unless the cause of action arose here.

The amendment to Section 28-04-05 would create a "venue-giving *plaintiff* principle" in that if venue is appropriate for one plaintiff in an action, it is also appropriate for all co-plaintiffs, regardless of their residency. The amendment provides that the action must be brought in the county in which the plaintiff, *or one of the plaintiffs*, resides, or in the county in which the cause of action arose.

The issue of venue arises mainly because of the asbestos litigation that has been pervasive in North Dakota and over the entire United States for the past 20 years. We have now had cases where out of state plaintiffs have been trying to use the North Dakota courts to litigate claims against out of state defendants for claims that did not arise in North Dakota. See, *Vicknair v. Phelps Dodge Industries*, 2011 ND 39. This case involved 15 plaintiffs from Louisiana who sued 135 defendant companies in a single action. None of these plaintiffs had anything to do with North Dakota or any North Dakota company. They sued in North Dakota because they had missed the statute of limitations in Louisiana and North Dakota has a longer limitations period. Although the North Dakota Supreme Court dismissed the case under the Uniform Conflict of Laws - Limitations Act, N.D.C.C. Ch. 28-01.2, it only happened after about 9 years of litigation in North Dakota, thousands of hours of attorney and District Court time, and two trips the North Dakota Supreme Court. If we'd had the venue requirement contained in HB 1042, the plaintiffs would not have been able to use the North Dakota courts for their litigation.

There is a rational basis for the differing treatment of nonresident plaintiffs who have no connection to North Dakota. The North Dakota courts are stressed by the amount of litigation, in both civil and criminal cases, as a result of the economic activity and population increase in North Dakota. Caseloads are increasing substantially. This is evidenced by the Justice System Energy Impact Task Force Report dated August 16, 2012, which was sponsored by the State Bar Association of North Dakota (SBAND). The Task Force concluded that there is a growing need for additional judges and other court personnel in the judicial districts of North Dakota, particularly in the western half of North Dakota. The SBAND Task Force also found that there is a need for additional judges in non-energy impact parts of the state, such as in Cass County. The North Dakota Supreme Court has introduced a bill to add three judges in North Dakota, two in the northwest and one in the east. It is likely that we will see requests for additional judges in the future as the population continues to grow.

Consequently, there are valid reasons for amendment of the venue statute in North Dakota: to prevent forum shopping by both resident and nonresident plaintiffs when none of the defendants reside in this state, and to prevent our already over-burdened courts from becoming even more over-burdened by out-of-state cases that have no connection to North Dakota. The venue amendment to Section 28-04-05 will accomplish that objective.

I urge you to give favorable consideration to HB 1042.

Rep. Lawrence R. Klemin  
District 47, Bismarck, ND