

SECOND REGULAR SESSION

SENATE BILL NO. 1083

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Read 1st time February 27, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5695S.011

AN ACT

To repeal sections 517.051, 517.061, 517.071, and 571.091, RSMo, and to enact in lieu thereof five new sections relating to civil procedure.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 517.051, 517.061, 517.071, and 517.091, RSMo, are repealed
2 and five new sections enacted in lieu thereof, to be known as sections 517.051,
3 517.061, 517.071, 517.091, and 517.133, to read as follows:

517.051. Every case shall be tried [upon the return date of the summons,
2 when the summons has been duly and timely served, or on a date to which the
3 case has been continued] **on a date set by the court after the defendant has
4 been duly served and has appeared. All parties shall receive notice of
5 the setting from the court either through the court's electronic filing
6 process or notice mailed to a pro se party.**

517.061. Change of venue and change of judge shall be for the same
2 reasons and in the same manner as provided in the rules of civil procedure except
3 that the application shall be filed not later than [five days before the return date
4 of the summons. If the cause is not tried on the return date but continued and
5 if all parties are given fifteen days' advance notice of] **fifteen days prior to a
6 trial setting before the particular judge. If the trial judge changes after the
7 initial trial setting**, then any application for change of judge or change of venue
8 shall be made not later than [five] **fifteen** days before the **subsequent** date set
9 for trial.

517.071. 1. A case shall be continued to a day certain upon the request
2 of any party made on or before the return date of the summons.

3 2. A case may be continued to a day certain, not exceeding thirty days,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

4 upon:

5 (1) The motion of the judge without consent of any party; or

6 (2) The agreement of all parties; or

7 (3) The application of any party and for good cause shown.

8 3. A case may be continued [generally] **for a period exceeding thirty**
9 **days** as follows:

10 (1) By written agreement of all parties **and approved by the judge**; or

11 (2) When all defendants have not been timely served with process; or

12 (3) If it appears to the judge that there is discovery or other trial
13 preparation to be done that would reasonably require more than thirty days.

14 4. [When a case has been continued generally, it may be rescheduled for
15 trial or other proceeding before the court on fifteen days' written notice to all
16 parties] **Regardless of the reason for a continuance, any matter that is**
17 **continued shall be continued to a date certain.**

517.091. 1. In any case triable before a jury, a trial by jury shall be
2 deemed waived unless written demand be filed not later than [five] **fifteen** days
3 before the return date of summons or the date set for trial, whichever is
4 later. For good cause shown, the judge may grant any party's request for jury
5 trial.

6 2. A jury shall be composed of twelve qualified jurors, unless all parties
7 agree on a lesser number, but not less than six, in which case the number of
8 veniremen shall be reduced accordingly. Three-fourths or more of any jury
9 concurring may return a verdict.

517.133. 1. **A record of an act, event, condition, opinion, or**
2 **diagnosis is not excluded by the rule against hearsay in cases in which**
3 **this chapter is applicable, regardless of whether the declarant is**
4 **available as a witness, if:**

5 (1) **The record was made at or near the time by, or from**
6 **information transmitted by, a person with knowledge;**

7 (2) **The record was kept in the course of a regularly conducted**
8 **activity of a business, organization, occupation, or calling, regardless**
9 **of whether such business, organization, occupation, or calling is for**
10 **profit;**

11 (3) **Making the record was a regular practice of that activity;**

12 (4) **The provisions of subdivisions (1) to (3) of this subsection are**
13 **shown by the testimony of the custodian or another qualified witness**

14 or by a certification that complies with section 490.692 or with a statute
15 permitting certification; and

16 (5) The opponent does not show that the source of information
17 or the method or circumstances of preparation indicate a lack of
18 trustworthiness.

19 2. Records of regularly conducted activity shall be admissible in
20 cases under this chapter, subject to other substantive or procedural
21 objections, upon affidavit of the custodian or another qualified person
22 that complies with a statute of this state or a rule prescribed by the
23 Missouri supreme court. Seven days before the trial or hearing, the
24 proponent shall send an adverse party the affidavit of a custodian who
25 is not expected to appear at the trial, with the records attached thereto,
26 so that the party has a fair opportunity to challenge such affidavit.

27 3. The affidavit permitted by subsection 2 of this section may be
28 in form and content substantially as follows:

29 THE STATE OF

30 COUNTY OF

31 AFFIDAVIT

32 Before me, the undersigned authority, personally
33 appeared, who, being by me duly sworn, deposed as
34 follows:

35 My name is I am of sound mind, capable of
36 making this affidavit, and personally acquainted with the
37 facts herein stated:

38 I am the custodian of the records of Attached
39 hereto are pages of records from These
40 pages of records are kept in the regular course of business,
41 and it was the regular course of business of for an
42 employee or representative with knowledge of the act,
43 event, condition, opinion, or diagnosis recorded to make
44 the record or to transmit information thereof to be
45 included in such record, and the record was made at or
46 near the time or reasonably soon thereafter.

47 The records attached hereto are the original or exact
48 duplicates of the original.

49

50 Affiant

51 **In witness whereof I have hereunto subscribed my**
52 **name and affixed my official seal this day of, 20....**
53
54 **Notary Public**
55 **My Commission Expires**
56

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Bill

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