

FIRST REGULAR SESSION

HOUSE BILL NO. 1171

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TRENT.

2125H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 517.051, 517.061, 517.071, and 517.091, 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Section A. Sections 517.051, 517.061, 517.071, and 517.091, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 517.051, 517.061, 517.071, 517.091, and 517.133, to read as follows: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, when the summons has been duly and timely served, or on a date to which the case has been continued]~~ **on a date set by the court after the defendant has been duly served and has appeared. All parties shall receive notice of the setting from the court either through the court's notification process known as e-filing or notice mailed to a pro se party.**

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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 5 (2) The agreement of all parties; or
6 (3) The application of any party and for good cause shown.
7 3. A case may be continued [~~generally~~] **for a period exceeding thirty days** as follows:
8 (1) By written agreement of all parties **and approved by the judge**; or
9 (2) When all defendants have not been timely served with process; or
10 (3) If it appears to the judge that there is discovery or other trial preparation to be done
11 that would reasonably require more than thirty days.

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

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

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

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

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

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

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

9 (4) **The provisions of subdivisions (1) to (3) of this subsection are shown by the**
10 **testimony of the custodian or another qualified witness or by a certification that complies**
11 **with section 490.692 or with a statute permitting certification; and**

12 (5) **The opponent does not show that the source of information or the method or**
13 **circumstances of preparation indicate a lack of trustworthiness.**

14 2. **Records of regularly conducted activity shall be admissible in cases under this**
15 **chapter, subject to other substantive or procedural objections, upon affidavit of the**
16 **custodian or another qualified person that complies with a statute or rule prescribed by**
17 **the Missouri supreme court. Seven days before the trial or hearing, the proponent shall**
18 **send an adverse party the affidavit of a custodian who is not expected to appear at the trial,**

19 with the records attached thereto, so that the party has a fair opportunity to challenge
20 such.

21 3. The affidavit permitted by this section may be in form and content substantially
22 as follows:

23 THE STATE OF COUNTY OF

24 **AFFIDAVIT**

25 Before me, the undersigned authority, personally appeared, who, being by
26 me duly sworn, deposed as follows:

27

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

30

31 I am the custodian of the records of Attached hereto are pages of
32 records from These pages of records are kept in the regular course of
33 business, and it was the regular course of business of for an employee or
34 representative with knowledge of the act, event, condition, opinion, or diagnosis recorded
35 to make the record or to transmit information thereof to be included in such record, and
36 the record was made at or near the time or reasonably soon thereafter.

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

38

39 **Affiant**

40 In witness whereof I have hereunto subscribed my name and affixed my official seal
41 this day of, 20....

42

43 **Notary Public**

44 **My Commission Expires:**

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