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HOUSE BILL 395

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Zachary J. Cook

AN ACT

RELATING TO COURTS; AMENDING A SECTION OF CHAPTER 38, ARTICLE 3
NMSA 1978 TO PROVIDE FOR VENUES IN CASES INVOLVING MEDICAL
MALPRACTICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 38-3-1 NMSA 1978 (being Laws
1875-1876, Chapter 2, Section 1, as amended) is amended to
read:

"38-3-1. COUNTY IN WHICH CIVIL ACTION IN DISTRICT COURT
MAY BE COMMENCED.--All civil actions commenced in the district
courts shall be brought and shall be commenced in counties as
follows and not otherwise.

A. First, except as provided in Subsection F of
this section relating to foreign corporations, all transitory
actions shall be brought in the county where either the

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1 plaintiff or defendant, or any one of them in case there is
2 more than one of either, resides; or second, in the county
3 where the contract sued on was made or is to be performed or
4 where the cause of action originated or indebtedness sued on
5 was incurred; or third, in any county in which the defendant or
6 either of them may be found in the judicial district where the
7 defendant resides.

8 B. When the defendant [~~has rendered himself~~] is
9 liable to a civil action by any criminal act, suit may be
10 instituted against the defendant in the county in which the
11 offense was committed or in which the defendant may be found or
12 in the county where the plaintiff resides.

13 C. When suit is brought for the recovery of
14 personal property other than money, it may be brought as
15 provided in this section or in the county where the property
16 may be found.

17 D. [~~(1)~~] When lands or any interest in lands [~~are~~]
18 is the object of any suit in whole or in part, the suit shall
19 be brought in the county where the land or any portion of the
20 land is situate [~~(2)~~]; provided that [~~where~~] if such lands are
21 located in more than one county and are contiguous, [~~that~~] the
22 suit may be brought as to all of the lands in any county in
23 which a portion of the lands is situate, with the same force
24 and effect as though the suit had been prosecuted in each
25 county in which any of the lands are situate. In all such

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1 cases in which suit is prosecuted in one county as to
2 contiguous lands in more than one county, notice of lis pendens
3 shall be filed pursuant to Sections 38-1-14 and 38-1-15 NMSA
4 1978 in each county. For purposes of service of process
5 pursuant to Rule [4] 1-004 of the Rules of Civil Procedure for
6 the District Courts, any such suit involving contiguous lands
7 located in more than one county shall be deemed pending in each
8 county in which any portion of the land is located from the
9 date of filing of the lis pendens notice.

10 E. Suits for trespass on land shall be brought as
11 provided in Subsection A of this section or in the county where
12 the land or any portion of the land is situate.

13 F. Except as provided in Subsection H of this
14 section, suits may be brought against transient persons or
15 nonresidents in any county of this state, except that suits
16 against foreign corporations admitted to do business and
17 [~~which~~] that designate and maintain a statutory agent in this
18 state upon whom service of process may be had shall only be
19 brought in the county where the plaintiff, or any one of them
20 in case there is more than one, resides or in the county where
21 the contract sued on was made or is to be performed or where
22 the cause of action originated or indebtedness sued on was
23 incurred or in the county where the statutory agent designated
24 by the foreign corporation resides.

25 G. Suits against any state officers as such shall

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1 be brought in the court of the county in which their offices
2 are located, at the capital or in the county where a plaintiff,
3 or any one of them in case there is more than one, resides,
4 except that suits against the officers or employees of a state
5 educational institution as defined in Article 12, Section 11 of
6 the constitution of New Mexico, as such, shall be brought in
7 the district court of the county in which the principal office
8 of the state educational institution is located or the district
9 court of the county where the plaintiff resides.

10 H. In a claim asserted by a personal representative
11 pursuant to Section 41-2-3 NMSA 1978, or a conservator, a
12 guardian or guardian ad litem appointed pursuant to Chapter 45,
13 Article 5 NMSA 1978, or a third person acting in any
14 representative capacity, the residence of the person bringing
15 the claim shall not be considered in determining venue in any
16 civil action.

17 I. Subject to the provisions of Subsection H of
18 this section, venue in a claim asserting medical malpractice
19 shall be limited to the county in which the patient received
20 the medical treatment that is the basis for the medical
21 malpractice suit; the county that is the principal place of
22 business of the health care provider, or any of the health care
23 providers if there is more than one located at the time the
24 medical malpractice lawsuit is filed; or the county in which
25 the patient resided at the time the patient received medical

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1 treatment that is the basis for the medical malpractice
2 lawsuit. As used in this subsection:

3 (1) "health care provider" means a person
4 providing health care services of any type and includes the
5 entity that provides such services or employs individuals who
6 provide such services, and its parent entities, including all
7 transient or foreign corporations or similar entities;

8 (2) "medical malpractice lawsuit" means any
9 legal proceeding alleging a cause of action arising in this
10 state against a health care provider for medical treatment,
11 lack of medical treatment or other claim of departure from
12 accepted standards of health care that proximately results in
13 injury to a patient, whether the patient's cause of action
14 sounds in tort or contract, including actions based on battery,
15 wrongful death, unfair trade practices or negligent hiring,
16 supervision, training, retention or credentialing and excluding
17 a cause of action arising out of nonmedical acts related to the
18 operation, use or maintenance of a vehicular or aircraft
19 ambulance; and

20 (3) "patient" means a natural person of any
21 age who received or should have received health care from a
22 health care provider."