

HOUSE BILL 435

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO COURTS; AMENDING REQUIREMENTS FOR VENUE
DETERMINATION; PROVIDING REQUIREMENTS FOR DETERMINING VENUE 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
plaintiff or defendant, or any one of them in case there is

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

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

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

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

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

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

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

24 G. Suits against any state officers as such shall
25 be brought in the court of the county in which their offices

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

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

15 I. Subject to the provisions of Subsection H of
16 this section, venue in a claim asserting medical malpractice
17 shall be limited to the county in which the patient received
18 the medical treatment that is the basis for the medical
19 malpractice lawsuit. As used in this subsection:

20 (1) "medical malpractice lawsuit" means any
21 legal proceeding alleging a cause of action arising in this
22 state against a health care provider for medical treatment,
23 lack of medical treatment or other claim of departure from
24 accepted standards of health care that proximately results in
25 injury to a patient, whether the patient's cause of action

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1 sounds in tort or contract, including actions based on battery,
2 wrongful death, unfair trade practices or negligent hiring,
3 supervision, training, retention or credentialing and excluding
4 a cause of action arising out of nonmedical acts related to the
5 operation, use or maintenance of a vehicular or aircraft
6 ambulance; and

7 (2) "patient" means a natural person of any
8 age who received or should have received health care from a
9 health care provider."

10 SECTION 2. Section 41-5-4 NMSA 1978 (being Laws 1976,
11 Chapter 2, Section 4, as amended) is amended to read:

12 "41-5-4. AD DAMNUM CLAUSE--VENUE.--

13 A. A patient or ~~[his]~~ a patient's representative
14 having a malpractice claim for bodily injury or death may file
15 a complaint and demand right of trial by jury in ~~[any]~~ a court
16 of law having requisite jurisdiction ~~[and demand right of trial~~
17 ~~by jury]~~ and where venue is proper.

18 B. Venue in a medical malpractice claim shall be
19 proper when the claim is filed in the county in which the
20 patient received the medical treatment that is the basis for
21 the medical malpractice lawsuit.

22 C. No dollar amount or figure shall be included in
23 the demand in ~~[any]~~ a complaint asserting a malpractice claim
24 and filed after the effective date of this section, but the
25 request shall be for such damages as are reasonable. This

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1 section shall not prevent a patient or ~~[his]~~ the patient's
2 representative from alleging a requisite jurisdictional amount
3 in a malpractice claim filed in a court requiring such an
4 allegation."