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## CIVIL PRACTICE Civil Practice Generally: Expand Provisions Relating to Venue Under the Long-Arm Statute

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## CIVIL PRACTICE

### *Civil Practice Generally: Expand Provisions Relating to Venue Under the Long-Arm Statute*

CODE SECTION: O.C.G.A. § 9-10-93 (amended)  
BILL NUMBER: HB 592  
ACT NUMBER: 69  
GEORGIA LAWS: 1997 Ga. Laws 480  
SUMMARY: The Act adds to the criteria that a Georgia court can use in determining where proper venue lies for a nonresident. The Act provides for venue over a nonresident to lie in the county where a resident joint obligor or joint tortfeasor lives. The Act also provides for the maintenance of venue over such a nonresident in the event that the resident defendant's participation in the suit terminates.  
EFFECTIVE DATE: July 1, 1997

#### *History*

Under the Georgia Constitution, civil cases must be tried in the county in which the defendant resides.<sup>1</sup> For a nonresident, venue is proper only in the places specified by the state's Long-Arm Statute.<sup>2</sup> In cases involving two or more defendants, one of whom is a nonresident, the previous law would not provide for venue to lie for the nonresident in the resident's home county unless the nonresident was subject to venue by his own contacts with that county.<sup>3</sup> This potentially raised serious problems for a plaintiff. One such problem was the sheer inconvenience of having to bring two separate suits in two counties.<sup>4</sup> Even more serious, the suit would have to be dismissed if either the nonresident or the resident were an indispensable party in a suit against the other.<sup>5</sup>

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1. GA. CONST. art. VI, § 2, ¶ 6.
  2. See Telephone Interview with Rep. Robert Reichert, House District No. 126 (Apr. 24, 1997) [hereinafter Reichert Interview].
  3. See *id.*
  4. See *id.*
  5. See Telephone Interview with Quintus Sibley, Lobbyist for the State Bar of Georgia (Apr. 24, 1997) [hereinafter Sibley Interview].

The Georgia Court of Appeals case of *Goodman v. Vilston, Inc.*<sup>6</sup> is indicative of the problem the Act is intended to remedy.<sup>7</sup> There, the Court of Appeals held that a plaintiff must sue two joint obligors, one a resident and one a nonresident, in two separate venues.<sup>8</sup> The court stated that “[a]ny correction of this anomaly must be left to the General Assembly.”<sup>9</sup>

The State Bar of Georgia initiated the legislation.<sup>10</sup> The State Bar attempted to have a similar bill passed in the 1996 session, but after clearing the House, the measure stalled in the Senate and the legislative session ended before it could be passed.<sup>11</sup> The State Bar’s Judicial Procedure and Administration Committee and Professor Ron Ellington, a civil procedure professor at the University of Georgia School of Law, drafted the original version of HB 592.<sup>12</sup> Much of the Act takes its language from the Georgia non-resident motorist act.<sup>13</sup>

### HB 592

The House Judiciary Committee, assigned to consider HB 592,<sup>14</sup> offered a substitute version of the bill, affecting only the portion of the bill relating to the resident/nonresident venue situation discussed above.<sup>15</sup> The substitute included only minor grammatical, punctuation, and wording differences, none of which affected the substance of the bill.<sup>16</sup> Both the House and Senate unanimously passed this version of the bill, with no further substitutes or amendments.<sup>17</sup> The Act amends the Civil Practice Act by striking Code section 9-10-93,<sup>18</sup> relating to venue over nonresidents, and replacing it with a new, more expansive Code section 9-10-93.<sup>19</sup> The changes in the new Code section make it easier for a Georgia court to exercise venue over a nonresident by allowing a plaintiff to sue a resident and a nonresident in the same venue.<sup>20</sup>

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6. 197 Ga. App. 718, 399 S.E.2d 241 (1990).

7. See Sibley Interview, *supra* note 5.

8. *Goodman*, 197 Ga. App. at 721, 399 S.E.2d at 244.

9. *Id.*

10. See Sibley Interview, *supra* note 5.

11. See *id.*

12. See *id.*

13. See *id.*; 1947 Ga. Laws 305 (codified at O.C.G.A. § 40-12-3 (1997)).

14. See Final Composite Status Sheet, Mar. 28, 1997.

15. HB 592 (HCS), 1997 Ga. Gen. Assem.

16. Compare HB 592, as introduced, 1997 Ga. Gen. Assem., with O.C.G.A. § 9-10-93 (Supp. 1997).

17. See Final Composite Status Sheet, Mar. 28, 1997.

18. 1970 Ga. Laws 443, § 3, at 445 (formerly found at O.C.G.A. § 9-10-93 (1982)).

19. O.C.G.A. § 9-10-93 (Supp. 1997).

20. See Reichert Interview, *supra* note 2.

While retaining the language from previous Code section 9-10-93, the Act makes numerous additions to it.<sup>21</sup> Previously, venue was proper in any county where “the business was transacted.”<sup>22</sup> The Act requires only that “a substantial part of the business” be transacted in a county for venue to lie therein.<sup>23</sup> This change is intended to avoid an interpretation of the law that only one county holds the proper venue in situations when the business has taken place in more than one county.<sup>24</sup>

Previously, venue was proper in any county where “the act or omission occurred.”<sup>25</sup> The Act modifies this language to state that venue is proper in any county where “the tortious act, omission, or injury occurred.”<sup>26</sup> This change is meant to provide for venue over each of the bases for personal jurisdiction provided for in Code section 9-10-91.<sup>27</sup> Prior to this change, the provisions for personal jurisdiction over nonresidents under the Long-Arm Statute were broader than those for venue, resulting in the possibility that a Georgia court could have personal jurisdiction over a nonresident, while having no proper venue available in which to exercise that jurisdiction.<sup>28</sup> The changes noted above were part of the bill as it was originally introduced on the House floor and were not affected by any subsequent legislative process.<sup>29</sup>

The remainder of the Act adds new language to the Code section and provides a substantial change to Georgia law.<sup>30</sup> The Act provides for venue over nonresident defendants in situations when a resident of Georgia is sued and a nonresident “who is involved in the same transaction or occurrence” as the resident is also joined as a defendant.<sup>31</sup> The Act provides that venue over such a nonresident is proper in any county where it would be proper over the resident.<sup>32</sup> This avoids the situation in which, under the previous law, the resident defendant is sued in his home county, but that county is not a proper

21. Compare 1970 Ga. Laws 443, § 3, at 445 (formerly found at O.C.G.A. § 9-10-93 (1982)), with O.C.G.A. § 9-10-93 (Supp. 1997).

22. 1966 Ga. Laws 343, § 4 at 344 (formerly found at O.C.G.A. § 9-10-93 (1982)).

23. O.C.G.A. § 9-10-93 (Supp. 1997).

24. See State Bar of Georgia, Brief in Support of HB 592 [hereinafter State Bar Brief] (available in Georgia State University College of Law Library).

25. 1970 Ga. Laws 443, § 3, at 445 (formerly found at O.C.G.A. § 9-10-93 (1982)).

26. O.C.G.A. § 9-10-93 (Supp. 1997).

27. See State Bar Brief, *supra* note 24; 1983 Ga. Laws 1304, § 1 (codified at O.C.G.A. § 9-10-91 (Supp. 1997)).

28. See State Bar Brief, *supra* note 24; 1983 Ga. Laws 1304, § 1 (codified at O.C.G.A. § 9-10-91 (Supp. 1997)).

29. HB 592, as introduced, 1997 Ga. Gen. Assem.; see Final Composite Status Sheet, Mar. 28, 1997.

30. See Sibley Interview, *supra* note 5.

31. O.C.G.A. § 9-10-93 (Supp. 1997).

32. *Id.*

venue for the nonresident because no part of the business, act, omission, or injury occurred there.<sup>33</sup> This method of providing for venue over nonresidents borrows heavily from the Georgia Non-Resident Motorist Act.<sup>34</sup> The Non-Resident Motorist Act provides that when a nonresident co-defendant is sued over an accident occurring in Georgia, venue is proper for both defendants in the county where the resident defendant lives.<sup>35</sup> The Act further provides that venue over such a nonresident will not be lost "if at trial a verdict or judgment is returned in favor of such resident defendant."<sup>36</sup> This result is similar to the provisions in the Non-Resident Motorist Act.<sup>37</sup>

Finally, the Act provides that if the "resident defendant is dismissed from the action prior to commencement of the trial, the action against the nonresident defendant shall not abate but shall be transferred to a court in a county where venue is proper."<sup>38</sup> This provision is not found in the Non-Resident Motorist Act, but instead follows the Uniform Transfer Rules.<sup>39</sup>

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33. See Sibley Interview, *supra* note 5.

34. See *id.*; 1947 Ga. Laws 305, § 2, at 306 (codified at O.C.G.A. § 40-12-3 (1997)).

35. O.C.G.A. § 40-12-3 (1997).

36. *Id.* § 9-10-93.

37. Compare 1959 Ga. Laws 120, § 1, at 121, and 1955 Ga. Laws 650, § 1 (codified at O.C.G.A. § 40-12-3 (1997)), with O.C.G.A. § 9-10-93 (Supp. 1997).

38. O.C.G.A. § 9-10-93 (Supp. 1997).

39. See State Bar Brief, *supra* note 24.