

Regular Session, 2009

HOUSE BILL NO. 245

BY REPRESENTATIVE TALBOT AND SENATOR WALSWORTH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/VENUE: Provides venue for actions involving latent disease

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 45 and to enact Code of Civil  
3 Procedure Article 78.1, relative to venue; to provide for exclusive venue; to provide  
4 venue for actions involving latent disease; to provide for a contradictory hearing; to  
5 provide for the transfer of certain actions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Civil Procedure Article 45 is hereby amended and reenacted and  
8 Code of Civil Procedure Article 78.1 is hereby enacted to read as follows:

9 Art. 45. Conflict between two or more articles in Chapter

10 The following rules determine the proper venue in cases where two or more  
11 articles in this Chapter may conflict:

12 (1) Article 78, 78.1, 79, 80, 81, 82, or 83 governs the venue exclusively, if  
13 this ~~article~~ Article conflicts with any of Articles 42 and 71 through 77;

14 (2) If there is a conflict between two or more Articles 78 through 83, the  
15 plaintiff may bring the action in any venue provided by any applicable article; and

16 (3) If Article 78, 78.1, 79, 80, 81, 82, or 83 is not applicable, and there is a  
17 conflict between two or more of Articles 42 and 71 through 77, the plaintiff may  
18 bring the action in any venue provided by any applicable article.

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1        Art. 78.1. Latent disease actions; forum non conveniens

2                A. An action involving a latent disease, including but not limited to asbestos  
3        or silica-related disease, shall be brought in the parish in which the plaintiff alleges  
4        substantial exposure to asbestos, silica, or any other alleged toxic or injury causing  
5        substance, except a direct action against a foreign or alien insurer may also be  
6        brought in accordance with Article 42(7).

7                B. If substantial exposure is alleged in more than one parish, a district court  
8        upon contradictory motion or upon the court's own motion after contradictory  
9        hearing, may transfer the case to a more appropriate district court where it may have  
10       been brought, considering the convenience of the parties and the witnesses, the  
11       amount and length of exposure alleged in each parish, and the interest of justice;  
12       however; no suit brought in the parish in which the plaintiff is domiciled, and in a  
13       court which is otherwise a court of competent jurisdiction and proper venue, shall be  
14       transferred to any other court pursuant to this Article.

15               C. Allegations, presentation of evidence, and findings in accordance with  
16       this Article shall not:

17               (1) Result in any presumption at trial that a party was exposed as alleged nor  
18       that he is impaired by an asbestos-related, silica-related, or other alleged latent  
19       disease.

20               (2) Be conclusive as to the liability of any defendant.

21               (3) Be admissible at trial, unless otherwise admissible in accordance with the  
22       Code of Evidence.

23               (4) Result in any instruction by the court to the jury with respect to the  
24       allegations, presentation of evidence, and findings in accordance with this Article  
25       and no counsel for any party, nor any witness, shall inform the jury or potential  
26       jurors of any showing or finding subject to appropriate sanctions.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Talbot

HB No. 245

**Abstract:** Provides venue and forum non conveniens procedures for actions involving asbestos and silica.

Proposed law provides that actions involving latent diseases, including asbestos and silica, shall be brought in the parish in which the plaintiff alleges substantial exposure, except direct actions against a foreign or alien insurer may also be brought in East Baton Rouge Parish.

Proposed law provides that if exposure is alleged in more than one parish, the court shall determine which parish has the most significant contacts based on the amount and length of exposure and may transfer the action to that parish.

Proposed law provides that when two or more venue articles conflict, proposed law governs the venue exclusively.

Proposed law prohibits the transfer of a suit brought in the domicile of the plaintiff and in a court of competent jurisdiction and proper venue.

Proposed law provides that allegations, evidence, and findings in accordance with proposed law shall not result in any presumptions at trial, be conclusive as to liability, be admissible at trial unless admissible under Code of Evidence, or result in any special instructions to the jury.

(Amends C.C.P. Art. 45; Adds C.C.P. Art. 78.1)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Deletes the residency requirement.
2. Adds an exception for direct actions against foreign or alien insurers.
3. Changes the transfer of the case from mandatory to discretionary, after contradictory hearing.
4. Prohibits the transfer of a suit brought in the domicile of the plaintiff and in a court of competent jurisdiction and proper venue.
5. Restricts the use of allegations, evidence, and findings resulting from proposed law.