

By: Schofield

H.B. No. 2301

A BILL TO BE ENTITLED

AN ACT

relating to affidavits concerning cost and necessity of services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 18.001, Civil Practice and Remedies Code, is amended by amending Subsections (b), (d), (e), and (f) and adding Subsection (d-1) to read as follows:

(b) Unless a controverting affidavit is served as provided by this section, an affidavit that the amount a person charged for a service was reasonable at the time and place that the service was provided and that the service was necessary may be admitted as ~~[is sufficient]~~ evidence ~~[to support a finding of fact by judge or jury]~~ that the amount charged was reasonable or that the service was necessary. The affidavit does not create a presumption that the amount charged was reasonable or that the service was necessary.

(d) The party offering the affidavit in evidence or the party's attorney must serve a copy of the affidavit on each other party to the case not later than the earlier of:

(1) 60 ~~[at least 30]~~ days before the date ~~[day on which evidence is first presented at]~~ the trial commences; or

(2) the date the offering party must designate any expert witnesses under the Texas Rules of Civil Procedure ~~[of the case].~~

(d-1) The party offering the affidavit in evidence or the party's attorney must file notice with the clerk of the court, not

1 later than the latest date for serving a copy of the affidavit under
2 Subsection (d), that the party or the attorney served a copy of the
3 affidavit in accordance with this section. Except as provided by
4 the Texas Rules of Evidence, [~~the records attached to~~] the
5 affidavit is [~~are~~] not required to be filed with the clerk of the
6 court before the trial commences.

7 (e) Regardless of the date the party offering the affidavit
8 in evidence serves a copy of the affidavit under Subsection (d), a
9 [A] party intending to controvert a claim reflected by the
10 affidavit must serve a copy of the counteraffidavit on each other
11 party or the party's attorney of record by the earlier of:

12 (1) 30 days before the date the trial commences [~~not~~
13 ~~later than:~~

14 [~~(A) 30 days after the day the party receives a~~
15 ~~copy of the affidavit; and~~

16 [~~(B) at least 14 days before the day on which~~
17 ~~evidence is first presented at the trial of the case]; or~~

18 (2) the date the party must designate expert witnesses
19 under the Texas Rules of Civil Procedure [~~with leave of the court,~~
20 ~~at any time before the commencement of evidence at trial].~~

21 (f) The counteraffidavit must:

22 (1) give reasonable notice of the basis on which the
23 party serving it intends at trial to controvert the claim reflected
24 by the initial affidavit;

25 (2) [~~and must~~] be taken before a person authorized to
26 administer oaths; and

27 (3) [~~. The counteraffidavit must~~] be made by:

1 (A) the party that seeks to offer the
2 counteraffidavit or the party's attorney if the initial affidavit
3 was made by a person described by Subsection (c)(2)(B); or

4 (B) a person who is qualified, by knowledge,
5 skill, experience, training, education, or other expertise, to
6 testify in contravention of all or part of any of the matters
7 contained in the initial affidavit.

8 SECTION 2. The change in law made by this Act applies only
9 to an action commenced on or after the effective date of this Act.
10 An action commenced before the effective date of this Act is
11 governed by the law applicable to the action immediately before the
12 effective date of this Act, and that law is continued in effect for
13 that purpose.

14 SECTION 3. This Act takes effect September 1, 2017.