

BILL ANALYSIS

Senate Research Center

H.B. 1693
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

While the affidavit process currently in use for certain civil actions in which a party seeks to prove the cost and necessity of services may be a useful and relatively inexpensive one, certain aspects may require clarification to ensure fair treatment for all parties. H.B. 1693 seeks to provide greater clarity by revising certain deadlines and clarifying the nature of findings supported by these affidavits.

H.B. 1693 amends current law relating to affidavits concerning cost and necessity of services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 18.001, Civil Practice and Remedies Code, by amending Subsections (b), (d), (e), and (f) and adding Subsections (d-1), (d-2), (e-1), (g), (h), and (i), as follows:

(b) Provides that an affidavit that the amount a person charged for a service was reasonable at the time and place that the service was provided is not evidence of and does not support a finding of the causation element of the cause of action that is the basis for the civil action.

(d) Requires the party offering the affidavit in evidence or the party's attorney to serve a copy of the affidavit on each other party to the case by the earlier of:

(1) 90 days after the date the defendant files an answer, rather than at least 30 days before the day on which evidence is first presented at the trial of the case;

(2) the date the offering party is required to designate any expert witness under a court order; or

(3) the date the offering party is required to designate any expert witness as required by the Texas Rules of Civil Procedure.

(d-1) Requires the party offering the affidavit in evidence or the party's attorney, notwithstanding Subsection (d), if services are provided for the first time by a provider after the date the defendant files an answer, to serve a copy of the affidavit for services provided by that provider on each other party to the case by the earlier of:

(1) the date the offering party must designate any expert witness under a court order; or

(2) the date the offering party must designate any expert witness as required by the Texas Rules of Civil Procedure.

(d-2) Requires the party offering the affidavit in evidence or the party's attorney to file notice with the clerk of the court when serving the affidavit that the party or the attorney served a copy of the affidavit in accordance with this section (Affidavit Concerning Cost and Necessity of Services). Provides that, except as provided by the Texas Rules of Evidence, the affidavit is not required, rather than the records attached to the affidavit are not required, to be filed with the clerk of the court before the trial commences.

(e) Requires a party intending to controvert a claim reflected by the affidavit to serve a copy of the counteraffidavit on each other party or the party's attorney of record by the earlier of:

(1) 120 days after the date the defendant files its answer, rather than not later than 30 days after the day the party receives a copy of the affidavit and at least 14 days before the day on which evidence is first presented at the trial of the case;

(2) the date the party offering the counteraffidavit is required to designate expert witnesses under a court order; or

(3) the date the party offering the counteraffidavit is required to designate any expert witness as required by the Texas Rules of Civil Procedure, rather than with leave of the court, at any time before the commencement of evidence at trial.

(e-1) Requires the party offering the counteraffidavit in evidence or the party's attorney, notwithstanding Subsection (e), if the party offering the affidavit in evidence serves a copy of the affidavit under Subsection (d-1), to serve a copy of the counteraffidavit on each other party to the case by the later of:

(1) 30 days after service of the affidavit on the party offering the counteraffidavit in evidence;

(2) the date the party offering the counteraffidavit is required to designate any expert witness under a court order; or

(3) the date the party offering the counteraffidavit in evidence is required to designate any expert witness as required by the Texas Rules of Civil Procedure.

(f) Prohibits the counteraffidavit from being used to controvert the causation element of the cause of action that is the basis for the civil action.

(g) Requires the party offering the counteraffidavit in evidence or the party's attorney to file written notice with the clerk of the court when serving the counteraffidavit that the party or attorney served a copy of the counteraffidavit in accordance with this section.

(h) Provides that, if continuing services are provided after a relevant deadline under this section:

(1) a party is authorized to supplement an affidavit served by the party under Subsection (d) or (d-1) on or before the 60th day before the date the trial commences; and

(2) a party that served a counteraffidavit under Subsection (e) or (e-1) is authorized to supplement the counteraffidavit on or before the 30th day before the date the trial commences.

(i) Authorizes a deadline under this section, notwithstanding Subsections (d), (d-1), (d-2), (e), (e-1), (g), and (h), to be altered by all parties to an action by agreement or with leave of the court.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2019.