

By: Smithee

H.B. No. 1693

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 Subsections (d-1), (d-2), (e-1), (g), (h), and (i) 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 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 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) 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 by the earlier of:

(1) 90 [at least 30] days after [before] the date the defendant files an answer;

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

(3) the date the offering party must designate any

1 expert witness as required by the Texas Rules of Civil Procedure
2 [day on which evidence is first presented at the trial of the case].

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

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

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

13 (d-2) The party offering the affidavit in evidence or the
14 party's attorney must file notice with the clerk of the court when
15 serving the affidavit that the party or the attorney served a copy
16 of the affidavit in accordance with this section. Except as
17 provided by the Texas Rules of Evidence, [the records attached to]
18 the affidavit is [are] not required to be filed with the clerk of
19 the court before the trial commences.

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

23 (1) 120 days after the date the defendant files its
24 answer; [not later than:

25 [(A) 30 days after the day the party receives a
26 copy of the affidavit; and

27 [(B) at least 14 days before the day on which

1 ~~evidence is first presented at the trial of the case; or]~~

2 (2) the date the party offering the counteraffidavit
3 must designate expert witnesses under a court order; or

4 (3) the date the party offering the counteraffidavit
5 must designate any expert witness as required by the Texas Rules of
6 Civil Procedure [~~with leave of the court, at any time before the~~
7 ~~commencement of evidence at trial~~].

8 (e-1) Notwithstanding Subsection (e), if the party offering
9 the affidavit in evidence serves a copy of the affidavit under
10 Subsection (d-1), the party offering the counteraffidavit in
11 evidence or the party's attorney must serve a copy of the
12 counteraffidavit on each other party to the case by the later of:

13 (1) 30 days after service of the affidavit on the party
14 offering the counteraffidavit in evidence;

15 (2) the date the party offering the counteraffidavit
16 must designate any expert witness under a court order; or

17 (3) the date the party offering the counteraffidavit
18 in evidence must designate any expert witness as required by the
19 Texas Rules of Civil Procedure.

20 (f) The counteraffidavit must give reasonable notice of the
21 basis on which the party serving it intends at trial to controvert
22 the claim reflected by the initial affidavit and must be taken
23 before a person authorized to administer oaths. The
24 counteraffidavit must be made by a person who is qualified, by
25 knowledge, skill, experience, training, education, or other
26 expertise, to testify in contravention of all or part of any of the
27 matters contained in the initial affidavit. The counteraffidavit

1 may not be used to controvert the causation element of the cause of
2 action that is the basis for the civil action.

3 (g) The party offering the counteraffidavit in evidence or
4 the party's attorney must file written notice with the clerk of the
5 court when serving the counteraffidavit that the party or attorney
6 served a copy of the counteraffidavit in accordance with this
7 section.

8 (h) If continuing services are provided after a relevant
9 deadline under this section:

10 (1) a party may supplement an affidavit served by the
11 party under Subsection (d) or (d-1) on or before the 60th day before
12 the date the trial commences; and

13 (2) a party that served a counteraffidavit under
14 Subsection (e) or (e-1) may supplement the counteraffidavit on or
15 before the 30th day before the date the trial commences.

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

19 SECTION 2. The change in law made by this Act applies only
20 to an action commenced on or after the effective date of this Act.
21 An action commenced before the effective date of this Act is
22 governed by the law applicable to the action immediately before the
23 effective date of this Act, and that law is continued in effect for
24 that purpose.

25 SECTION 3. This Act takes effect September 1, 2019.