

By: Smithee

H.B. No. 1693

Substitute the following for H.B. No. 1693:

By: Krause

C.S.H.B. No. 1693

A BILL TO BE ENTITLED

1 AN ACT

2 relating to affidavits concerning cost and necessity of services.

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

4 SECTION 1. Section 18.001, Civil Practice and Remedies
5 Code, is amended by amending Subsections (b), (d), (e), and (f) and
6 adding Subsections (d-1), (d-2), (e-1), (g), (h), and (i) to read as
7 follows:

8 (b) Unless a controverting affidavit is served as provided
9 by this section, an affidavit that the amount a person charged for a
10 service was reasonable at the time and place that the service was
11 provided and that the service was necessary is sufficient evidence
12 to support a finding of fact by judge or jury that the amount
13 charged was reasonable or that the service was necessary. The
14 affidavit is not evidence of and does not support a finding of the
15 causation element of the cause of action that is the basis for the
16 civil action.

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

20 (1) 90 [at least 30] days after [before] the date the
21 defendant files an answer;

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

24 (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) If services are first provided later than 90 days
4 after the date the defendant files an answer, the party offering the
5 affidavit in evidence or the party's attorney must serve a copy of
6 the affidavit on each other party to the case by the date the
7 offering party must designate any expert witness as required by the
8 Texas Rules of Civil Procedure.

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

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

19 (1) 120 days after the date the defendant files its
20 answer; [not later than:

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

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

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

27 (3) the date the party offering the counteraffidavit

1 must designate any expert witness as required by the Texas Rules of
2 Civil Procedure [~~with leave of the court, at any time before the~~
3 ~~commencement of evidence at trial~~].

4 (e-1) If the party offering the affidavit in evidence serves
5 a copy of the affidavit under Subsection (d-1), the party offering
6 the counteraffidavit in evidence or the party's attorney must serve
7 a copy of the counteraffidavit on each other party to the case by
8 the later of:

9 (1) 30 days after service of the affidavit on the party
10 offering the counteraffidavit in evidence; or

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

14 (f) The counteraffidavit must give reasonable notice of the
15 basis on which the party serving it intends at trial to controvert
16 the claim reflected by the initial affidavit and must be taken
17 before a person authorized to administer oaths. The
18 counteraffidavit must be made by a person who is qualified, by
19 knowledge, skill, experience, training, education, or other
20 expertise, to testify in contravention of all or part of any of the
21 matters contained in the initial affidavit. The counteraffidavit
22 may not be used to controvert the causation element of the cause of
23 action that is the basis for the civil action.

24 (g) The party offering the counteraffidavit in evidence or
25 the party's attorney must file written notice with the clerk of the
26 court when serving the counteraffidavit that the party or attorney
27 served a copy of the counteraffidavit in accordance with this

1 section.

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

4 (1) a party may supplement an affidavit served by the
5 party under Subsection (b) on or before the 60th day before the date
6 the trial commences; and

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

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

13 SECTION 2. The change in law made by this Act applies only
14 to an action commenced on or after the effective date of this Act.
15 An action commenced before the effective date of this Act is
16 governed by the law applicable to the action immediately before the
17 effective date of this Act, and that law is continued in effect for
18 that purpose.

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