

1-1 By: Smithee (Senate Sponsor - Hughes) H.B. No. 1693  
 1-2 (In the Senate - Received from the House April 26, 2019;  
 1-3 April 29, 2019, read first time and referred to Committee on State  
 1-4 Affairs; May 14, 2019, reported favorably by the following vote:  
 1-5 Yeas 9, Nays 0; May 14, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to affidavits concerning cost and necessity of services.  
 1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-21 SECTION 1. Section 18.001, Civil Practice and Remedies  
 1-22 Code, is amended by amending Subsections (b), (d), (e), and (f) and  
 1-23 adding Subsections (d-1), (d-2), (e-1), (g), (h), and (i) to read as  
 1-24 follows:  
 1-25 (b) Unless a controverting affidavit is served as provided  
 1-26 by this section, an affidavit that the amount a person charged for a  
 1-27 service was reasonable at the time and place that the service was  
 1-28 provided and that the service was necessary is sufficient evidence  
 1-29 to support a finding of fact by judge or jury that the amount  
 1-30 charged was reasonable or that the service was necessary. The  
 1-31 affidavit is not evidence of and does not support a finding of the  
 1-32 causation element of the cause of action that is the basis for the  
 1-33 civil action.  
 1-34 (d) The party offering the affidavit in evidence or the  
 1-35 party's attorney must serve a copy of the affidavit on each other  
 1-36 party to the case by the earlier of:  
 1-37 (1) 90 [at least 30] days after [before] the date the  
 1-38 defendant files an answer;  
 1-39 (2) the date the offering party must designate any  
 1-40 expert witness under a court order; or  
 1-41 (3) the date the offering party must designate any  
 1-42 expert witness as required by the Texas Rules of Civil Procedure  
 1-43 [day on which evidence is first presented at the trial of the case].  
 1-44 (d-1) Notwithstanding Subsection (d), if services are  
 1-45 provided for the first time by a provider after the date the  
 1-46 defendant files an answer, the party offering the affidavit in  
 1-47 evidence or the party's attorney must serve a copy of the affidavit  
 1-48 for services provided by that provider on each other party to the  
 1-49 case by the earlier of:  
 1-50 (1) the date the offering party must designate any  
 1-51 expert witness under a court order; or  
 1-52 (2) the date the offering party must designate any  
 1-53 expert witness as required by the Texas Rules of Civil Procedure.  
 1-54 (d-2) The party offering the affidavit in evidence or the  
 1-55 party's attorney must file notice with the clerk of the court when  
 1-56 serving the affidavit that the party or the attorney served a copy  
 1-57 of the affidavit in accordance with this section. Except as  
 1-58 provided by the Texas Rules of Evidence, [the records attached to]  
 1-59 the affidavit is [are] not required to be filed with the clerk of  
 1-60 the court before the trial commences.  
 1-61 (e) A party intending to controvert a claim reflected by the

2-1 affidavit must serve a copy of the counteraffidavit on each other  
2-2 party or the party's attorney of record by the earlier of:

2-3 (1) 120 days after the date the defendant files its  
2-4 answer; [not later than:

2-5 [~~(A) 30 days after the day the party receives a~~  
2-6 ~~copy of the affidavit; and~~

2-7 [~~(B) at least 14 days before the day on which~~  
2-8 ~~evidence is first presented at the trial of the case; or]~~

2-9 (2) the date the party offering the counteraffidavit  
2-10 must designate expert witnesses under a court order; or

2-11 (3) the date the party offering the counteraffidavit  
2-12 must designate any expert witness as required by the Texas Rules of  
2-13 Civil Procedure [with leave of the court, at any time before the  
2-14 commencement of evidence at trial].

2-15 (e-1) Notwithstanding Subsection (e), if the party offering  
2-16 the affidavit in evidence serves a copy of the affidavit under  
2-17 Subsection (d-1), the party offering the counteraffidavit in  
2-18 evidence or the party's attorney must serve a copy of the  
2-19 counteraffidavit on each other party to the case by the later of:

2-20 (1) 30 days after service of the affidavit on the party  
2-21 offering the counteraffidavit in evidence;

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

2-24 (3) the date the party offering the counteraffidavit  
2-25 in evidence must designate any expert witness as required by the  
2-26 Texas Rules of Civil Procedure.

2-27 (f) The counteraffidavit must give reasonable notice of the  
2-28 basis on which the party serving it intends at trial to controvert  
2-29 the claim reflected by the initial affidavit and must be taken  
2-30 before a person authorized to administer oaths. The  
2-31 counteraffidavit must be made by a person who is qualified, by  
2-32 knowledge, skill, experience, training, education, or other  
2-33 expertise, to testify in contravention of all or part of any of the  
2-34 matters contained in the initial affidavit. The counteraffidavit  
2-35 may not be used to controvert the causation element of the cause of  
2-36 action that is the basis for the civil action.

2-37 (g) The party offering the counteraffidavit in evidence or  
2-38 the party's attorney must file written notice with the clerk of the  
2-39 court when serving the counteraffidavit that the party or attorney  
2-40 served a copy of the counteraffidavit in accordance with this  
2-41 section.

2-42 (h) If continuing services are provided after a relevant  
2-43 deadline under this section:

2-44 (1) a party may supplement an affidavit served by the  
2-45 party under Subsection (d) or (d-1) on or before the 60th day before  
2-46 the date the trial commences; and

2-47 (2) a party that served a counteraffidavit under  
2-48 Subsection (e) or (e-1) may supplement the counteraffidavit on or  
2-49 before the 30th day before the date the trial commences.

2-50 (i) Notwithstanding Subsections (d), (d-1), (d-2), (e),  
2-51 (e-1), (g), and (h), a deadline under this section may be altered by  
2-52 all parties to an action by agreement or with leave of the court.

2-53 SECTION 2. The change in law made by this Act applies only  
2-54 to an action commenced on or after the effective date of this Act.  
2-55 An action commenced before the effective date of this Act is  
2-56 governed by the law applicable to the action immediately before the  
2-57 effective date of this Act, and that law is continued in effect for  
2-58 that purpose.

2-59 SECTION 3. This Act takes effect September 1, 2019.

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