

By: Hughes

S.B. No. 1465

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), (c), (d), (e), and (f) and adding Subsections (d-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.

(c) The affidavit must:

(1) be taken before an officer with authority to administer oaths;

(2) be made by:

(A) the person who provided the service; or

(B) the person in charge of records for the provider showing the service provided and charge made; and

(3) include an itemized statement of the service and charge.

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

4 (1) 90 [~~at least 30~~] days before the date [~~day on which~~
5 ~~evidence is first presented at~~] the trial commences; or

6 (2) the date the offering party must designate any
7 expert witnesses under a scheduling order [~~of the case~~].

8 (d-1) The party offering the affidavit in evidence or the
9 party's attorney must file notice with the clerk of the court, not
10 later than the latest date for serving a copy of the affidavit under
11 Subsection (d), that the party or the attorney served a copy of the
12 affidavit in accordance with this section. Except as provided by
13 the Texas Rules of Evidence, [~~the records attached to~~] the
14 affidavit is [~~are~~] not required to be filed with the clerk of the
15 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) 60 days before the date the trial commences [~~not~~
20 ~~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 controverting party must designate
26 expert witnesses under a scheduling order [~~with leave of the court,~~
27 ~~at any time before the commencement of evidence at trial~~].

1 (f) The counteraffidavit must give reasonable notice of the
2 basis on which the party serving it intends at trial to controvert
3 the claim reflected by the initial affidavit and must be taken
4 before a person authorized to administer oaths. The
5 counteraffidavit must be made by a person who is qualified, by
6 knowledge, skill, experience, training, education, or other
7 expertise, to testify in contravention of all or part of any of the
8 matters contained in the initial affidavit. The counteraffidavit
9 may not be used to controvert the causation element of the cause of
10 action that is the basis for the civil action.

11 (g) Not later than the last date for serving a copy of the
12 counteraffidavit under Subsection (e), the party offering the
13 counteraffidavit in evidence or the party's attorney must file
14 written notice with the clerk of the court that the party or
15 attorney served a copy of the counteraffidavit in accordance with
16 this section.

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

19 (1) a party may supplement an affidavit served by the
20 party under Subsection (b) on or before the 30th day before the date
21 trial commences; and

22 (2) a party that served a counteraffidavit under
23 Subsection (e) may supplement the counteraffidavit on or before the
24 14th day before the date trial commences.

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

1 SECTION 2. The change in law made by this Act applies only
2 to an action commenced on or after the effective date of this Act.
3 An action commenced before the effective date of this Act is
4 governed by the law applicable to the action immediately before the
5 effective date of this Act, and that law is continued in effect for
6 that purpose.

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