

1-1 By: Schwertner, Buckingham, Campbell S.B. No. 207  
 1-2 (In the Senate - Filed November 17, 2020; March 3, 2021,  
 1-3 read first time and referred to Committee on State Affairs;  
 1-4 April 7, 2021, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 6, Nays 3; April 7, 2021,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
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		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 207 By: Nelson

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to recovery of medical or health care expenses in civil  
 1-22 actions.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 41.0105, Civil Practice and Remedies  
 1-25 Code, is amended to read as follows:

1-26 Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC  
 1-27 DAMAGES. (a) In addition to any other limitation under law,  
 1-28 recovery of medical or health care expenses in a civil action  
 1-29 ~~[incurred] is determined in accordance with this section [limited~~  
 1-30 ~~to the amount actually paid or incurred by or on behalf of the~~  
 1-31 ~~claimant].~~

1-32 (b) In a civil action in which medical or health care  
 1-33 expenses are actually paid by the claimant, a health benefit plan,  
 1-34 workers' compensation insurance, an employer-provided plan,  
 1-35 Medicaid, or Medicare, a party may introduce in evidence only the  
 1-36 amounts actually paid to the medical or health care provider for the  
 1-37 services provided to the person whose injury or death is the subject  
 1-38 of the action.

1-39 (c) In a civil action other than an action described by  
 1-40 Subsection (b), a party may introduce evidence that has a tendency  
 1-41 to prove the fair and reasonable value of the necessary medical or  
 1-42 health care services provided to the person whose injury or death is  
 1-43 the subject of the action.

1-44 (d) In any civil action, a party may introduce in evidence  
 1-45 the amounts paid to a medical or health care provider for services  
 1-46 provided to the person whose injury or death is the subject of the  
 1-47 action by a cafeteria plan or health savings account or by any  
 1-48 person to satisfy a copayment or deductible.

1-49 (e) In any civil action in which a claimant seeks recovery  
 1-50 of medical or health care expenses, the claimant shall disclose to  
 1-51 all parties any formal or informal agreement under which the  
 1-52 medical or health care provider who provided the services may  
 1-53 wholly or partly refund, rebate, or remit any amount of money or  
 1-54 give anything of value to the claimant or anyone associated with the  
 1-55 claimant.

1-56 SECTION 2. Section 18.001, Civil Practice and Remedies  
 1-57 Code, is amended by amending Subsections (b), (c), (e), (e-1), (h),  
 1-58 and (i) and adding Subsection (b-1) to read as follows:

1-59 (b) Unless notice of intent to controvert the  
 1-60 reasonableness of the amounts charged or the necessity for medical

2-1 services [a controverting affidavit] is served as provided by this  
2-2 section, an affidavit complying with this section and stating that  
2-3 the amount a person charged for a service was reasonable at the time  
2-4 and place that the service was provided and that the service was  
2-5 necessary is sufficient evidence to support a finding of fact by  
2-6 judge or jury that the amount charged was reasonable or that the  
2-7 service was necessary. The affidavit is not evidence of and does  
2-8 not support a finding of the causation element of the cause of  
2-9 action that is the basis for the civil action.

2-10 (b-1) Notwithstanding Subsection (b), the reasonableness of  
2-11 charges and the necessity of services are matters for decision by  
2-12 the finder of fact, and the affidavit described by Subsection (b)  
2-13 has no effect except to prove the authenticity of the medical  
2-14 records described by the affidavit if notice of intent to  
2-15 controvert the reasonableness of the amounts charged or necessity  
2-16 for medical services is served as provided by this section.

2-17 (c) The affidavit must:

2-18 (1) be taken before an officer with authority to  
2-19 administer oaths;

2-20 (2) be made by:

2-21 (A) the person who provided the service; or

2-22 (B) the person in charge of records showing the  
2-23 service provided and charge made; and

2-24 (3) include an itemized statement of the service and  
2-25 charge using the current version of the form CMS-1450 or UB-04 or  
2-26 CMS-1500 or HFCA-1500, as applicable.

2-27 (e) A party intending to controvert the reasonableness of  
2-28 the amounts charged or necessity for medical services [a claim  
2-29 reflected by the affidavit] must serve notice of that intent [a copy  
2-30 of the counteraffidavit] on each other party or the party's  
2-31 attorney of record by the earlier of:

2-32 (1) 120 days after the date the defendant files its  
2-33 answer;

2-34 (2) the date the party serving notice [offering the  
2-35 counteraffidavit] must designate expert witnesses under a court  
2-36 order; or

2-37 (3) the date the party serving notice [offering the  
2-38 counteraffidavit] must designate any expert witness as required by  
2-39 the Texas Rules of Civil Procedure.

2-40 (e-1) Notwithstanding Subsection (e), if the party offering  
2-41 the affidavit [in evidence] serves a copy of the affidavit under  
2-42 Subsection (d-1), notice of intent to controvert the reasonableness  
2-43 of the amounts charged or necessity for medical services must be  
2-44 served [the party offering the counteraffidavit in evidence or the  
2-45 party's attorney must serve a copy of the counteraffidavit] on each  
2-46 other party to the case by the later of:

2-47 (1) 30 days after service of the affidavit on the party  
2-48 serving notice [offering the counteraffidavit in evidence];

2-49 (2) the date the party serving notice [offering the  
2-50 counteraffidavit] must designate any expert witness under a court  
2-51 order; or

2-52 (3) the date the party serving notice [offering the  
2-53 counteraffidavit in evidence] must designate any expert witness as  
2-54 required by the Texas Rules of Civil Procedure.

2-55 (h) If continuing services are provided after a relevant  
2-56 deadline under this section:

2-57 (1) a party may supplement an affidavit served by the  
2-58 party under Subsection (d) or (d-1) on or before the 60th day before  
2-59 the date the trial commences; and

2-60 (2) a party that served notice [a counteraffidavit]  
2-61 under Subsection (e) or (e-1) may serve notice related to the  
2-62 supplemental affidavit [supplement the counteraffidavit] on or  
2-63 before the 30th day before the date the trial commences.

2-64 (i) Notwithstanding Subsections (d), (d-1), (d-2), (e),  
2-65 (e-1), [~~(g)~~] and (h), a deadline under this section may be altered  
2-66 by all parties to an action by agreement or with leave of the court.

2-67 SECTION 3. Sections 18.001(f) and (g), Civil Practice and  
2-68 Remedies Code, are repealed.

2-69 SECTION 4. Sections 18.001 and 41.0105, Civil Practice and

3-1 Remedies Code, as amended by this Act, apply only to an action  
3-2 commenced on or after the effective date of this Act. An action  
3-3 commenced before the effective date of this Act is governed by the  
3-4 law applicable to the action immediately before the effective date  
3-5 of this Act, and that law is continued in effect for that purpose.  
3-6 SECTION 5. This Act takes effect immediately if it receives  
3-7 a vote of two-thirds of all the members elected to each house, as  
3-8 provided by Section 39, Article III, Texas Constitution. If this  
3-9 Act does not receive the vote necessary for immediate effect, this  
3-10 Act takes effect September 1, 2021.

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