

## CHAPTER 617

## S.B. No. 344

An Act relating to evidence of necessity of service and reasonableness of cost in certain civil actions; amending Subsection (b), Section 1, Chapter 721, Acts of the 66th Legislature, Regular Session, 1979 (Article 3737h, Vernon's Texas Civil Statutes).

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Subsection (b), Section 1, Chapter 721, Acts of the 66th Legislature, Regular Session, 1979 (Article 3737h, Vernon's Texas Civil Statutes), is amended to read as follows:

"(b) As a condition precedent to applicability of Subsection (a) of this Section 1, the party asserting such applicability, or such party's attorney of record, shall file the affidavit provided for in said Subsection (a) with the clerk of the court and shall serve a copy thereof on each other party to the cause, or such other party's attorney of record, at least 30 [~~14~~] days prior to the day on which presentation of evidence at trial of the cause commences. As a condition precedent to controverting a claim covered by an affidavit so filed and served, any party intending to controvert all or part of any such claim shall, within 30 [~~10~~] days after receipt of such party's copy of such affidavit *but not later than 14 days prior to the day on which presentation of evidence at trial of the cause commences*, or with leave of court first had and obtained at any time prior to commencement of evidence at trial of the cause, file a counter-affidavit with the clerk of the court and serve a copy thereof on each other party to the cause, or such other party's attorney of record. The counter-affidavit shall give reasonable notice of the basis upon which the party filing it intends at trial to controvert all or part of the claim covered by the initial affidavit. The counter-affidavit shall be taken before a person authorized to administer oaths and *shall be made by any person who is qualified, by knowledge, skill, experience, training, education, or other expertise, to testify in contravention of all or part of any of the matters contained in the initial affidavit* [~~may be made upon information and belief by the party filing it, or such party's attorney of record~~]. When a counter-affidavit is so filed and served, then Subsection (a) of this Section 1 shall thereafter have no force or effect at the trial of the cause."

**SECTION 2.** This Act takes effect September 1, 1985, and applies only to actions filed on or after that date. An affidavit concerning the cost and necessity of services in an action filed before the effective date of this Act is governed by Chapter 721, Acts of the 66th Legislature, Regular Session, 1979 (Article 3737h, Vernon's Texas Civil Statutes), as it existed at the time the action was filed, and that law is continued in effect for that purpose.

**SECTION 3.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 22, 1985, by a viva-voce vote; passed the House on May 24, 1985, by a non-record vote.

Approved: June 14, 1985

Effective: September 1, 1985