

CIVIL PRACTICE AND REMEDIES CODE
TITLE 2. TRIAL, JUDGMENT, AND APPEAL
SUBTITLE B. TRIAL MATTERS
CHAPTER 18. EVIDENCE

SUBCHAPTER A. DOCUMENTARY EVIDENCE

Sec. 18.001. AFFIDAVIT CONCERNING COST AND NECESSITY OF SERVICES. (a) This section applies to civil actions only, but not to an action on a sworn account.

(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 showing the service provided and charge made; and

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

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

(1) 90 days after the date the defendant files an answer;

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

(3) the date the offering party must designate any expert witness as required by the Texas Rules of Civil Procedure.

(d-1) Notwithstanding Subsection (d), if services are provided for the first time by a provider after the date the defendant files an answer, the party offering the affidavit in evidence or the party's attorney must serve a copy of the affidavit for services provided by that provider on each other party to the case by the earlier of:

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

(2) the date the offering party must designate any expert witness as required by the Texas Rules of Civil Procedure.

(d-2) The party offering the affidavit in evidence or the party's attorney must file notice with the clerk of the court when serving the affidavit that the party or the attorney served a copy of the affidavit in accordance with this section. Except as provided by the Texas Rules of Evidence, the affidavit is not required to be filed with the clerk of the court before the trial commences.

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

(1) 120 days after the date the defendant files its answer;

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

(3) the date the party offering the counteraffidavit must designate any expert witness as required by the Texas Rules of Civil Procedure.

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

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

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

(3) the date the party offering the counteraffidavit

in evidence must designate any expert witness as required by the Texas Rules of Civil Procedure.

(f) The counteraffidavit must give reasonable notice of the basis on which the party serving it intends at trial to controvert the claim reflected by the initial affidavit and must be taken before a person authorized to administer oaths. The counteraffidavit must be made by a 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. The counteraffidavit may not be used to controvert the causation element of the cause of action that is the basis for the civil action.

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

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

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

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

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

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 3.04(a), eff. Sept. 1, 1987.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 978 (S.B. 763), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 560 (S.B. 679), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 779 (H.B. 1693), Sec. 1, eff. September 1, 2019.

Sec. 18.002. FORM OF AFFIDAVIT. (a) An affidavit concerning cost and necessity of services by the person who provided the service is sufficient if it follows the following form:

No. _____)
John Doe) _____ IN THE
(Name of) COURT IN AND
Plaintiff) FOR
v.) _____
John Roe) COUNTY,
(Name of) TEXAS
Defendant)

AFFIDAVIT

Before me, the undersigned authority, personally appeared _____(NAME OF AFFIANT)_____, who, being by me duly sworn, deposed as follows:

My name is _____(NAME OF AFFIANT)_____. I am of sound mind and capable of making this affidavit.

On _____(DATE)_____, I provided a service to _____(NAME OF PERSON WHO RECEIVED SERVICE)_____. An itemized statement of the service and the charge for the service is attached to this affidavit and is a part of this affidavit.

The service I provided was necessary and the amount that I charged for the service was reasonable at the time and place that the service was provided.

Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 19__.

My commission expires:

Notary Public, State of
Texas
Notary's printed name:

(b) An affidavit concerning cost and necessity of services by the person who is in charge of records showing the service provided and the charge made is sufficient if it follows the

following form:

No. _____)	
	John Doe)	IN THE
	(Name of)	COURT IN AND
Plaintiff))	FOR
	v.)	COUNTY,
)	TEXAS
	John Roe)	_____
	(Name of)	
Defendant)			

AFFIDAVIT

Before me, the undersigned authority, personally appeared _____(NAME OF AFFIANT)_____, who, being by me duly sworn, deposed as follows:

My name is _____(NAME OF AFFIANT)_____. I am of sound mind and capable of making this affidavit.

I am the person in charge of records of _____(PERSON WHO PROVIDED THE SERVICE)_____. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that _____(PERSON WHO PROVIDED THE SERVICE)_____ provided to _____(PERSON WHO RECEIVED THE SERVICE)_____ on _____(DATE)_____. The attached records are a part of this affidavit.

The attached records are kept by me in the regular course of business. The information contained in the records was transmitted to me in the regular course of business by _____(PERSON WHO PROVIDED THE SERVICE)_____ or an employee or representative of _____(PERSON WHO PROVIDED THE SERVICE)_____ who had personal knowledge of the information. The records were made at or near the time or reasonably soon after the time that the service was provided. The records are the original or an exact duplicate of the original.

The service provided was necessary and the amount charged for the service was reasonable at the time and place that the service was provided.

Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 19____.

My commission expires:

Texas

Notary Public, State of
Notary's printed name:

(b-1) Notwithstanding Subsection (b), an affidavit concerning proof of medical expenses is sufficient if it substantially complies with the following form:

Affidavit of Records Custodian of

STATE OF TEXAS §

§

COUNTY OF _____ §

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for _____. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that _____ provided to _____ on _____. The attached records are a part of this affidavit.

The attached records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the service provided, to make the record or to transmit information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount paid for the services was \$_____ and the amount currently unpaid but which _____ has a right to be paid after any adjustments or credits is \$_____.

Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____,
_____.

Notary Public, State of Texas

Notary's printed name: _____

My commission expires: _____

(b-2) If a medical bill or other itemized statement attached to an affidavit under Subsection (b-1) reflects a charge that is not recoverable, the reference to that charge is not admissible.

(c) The form of an affidavit provided by this section is not exclusive and an affidavit that substantially complies with Section 18.001 is sufficient.

Added by Acts 1993, 73rd Leg., ch. 248, Sec. 1, eff. Aug. 30, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 560 (S.B. 679), Sec. 2, eff. September 1, 2013.

SUBCHAPTER B. PRESUMPTIONS

Sec. 18.031. FOREIGN INTEREST RATE. Unless the interest rate of another state or country is alleged and proved, the rate is presumed to be the same as that established by law in this state and interest at that rate may be recovered without allegation or proof. Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 18.032. TRAFFIC CONTROL DEVICE PRESUMED TO BE LAWFUL.
(a) In a civil case, proof of the existence of a traffic control device on or alongside a public thoroughfare by a party is prima facie proof of all facts necessary to prove the proper and lawful installation of the device at that place, including proof of competent authority and an ordinance by a municipality or order by the commissioners court of a county.

(b) Proof of the existence of a one-way street sign is prima facie proof that the public thoroughfare on or alongside which the sign is placed was designated by proper and competent authority to

be a one-way thoroughfare allowing traffic to go only in the direction indicated by the sign.

(c) In this section, "traffic control device" includes a control light, stop sign, and one-way street sign.

(d) Any party may rebut the prima facie proof established under this section.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 2, eff. Sept. 1, 1995.

Sec. 18.033. STATE LAND RECORDS. (a) In a dispute between the State of Texas and an upland owner of property fronting on the Gulf of Mexico and the arms of the Gulf of Mexico within the boundaries of the State of Texas, the maps, surveys, and property descriptions filed in the General Land Office in connection with any conveyance by the state or any predecessor government by patent, deed, lease, or other authorized forms of grant shall be presumed to accurately depict the boundary between adjacent upland owners and the state-owned submerged lands.

(b) This presumption applies only to those surveys conducted by a surveyor duly appointed, elected, or licensed, and qualified.

(c) This presumption may be overcome only on a showing of clear and convincing evidence that the boundary as described and depicted in the archives of the General Land Office is erroneous.

Added by Acts 2003, 78th Leg., ch. 148, Sec. 1, eff. September 1, 2003.

SUBCHAPTER C. ADMISSIBILITY

Sec. 18.061. COMMUNICATIONS OF SYMPATHY. (a) A court in a civil action may not admit a communication that:

(1) expresses sympathy or a general sense of benevolence relating to the pain, suffering, or death of an individual involved in an accident;

(2) is made to the individual or a person related to the individual within the second degree by consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code; and

(3) is offered to prove liability of the communicator in relation to the individual.

(b) In this section, "communication" means:

(1) a statement;

(2) a writing; or

(3) a gesture that conveys a sense of compassion or commiseration emanating from humane impulses.

(c) Notwithstanding the provisions of Subsections (a) and (b), a communication, including an excited utterance as defined by Rule 803(2) of the Texas Rules of Evidence, which also includes a statement or statements concerning negligence or culpable conduct pertaining to an accident or event, is admissible to prove liability of the communicator.

Added by Acts 1999, 76th Leg., ch. 673, Sec. 1, eff. Sept. 1, 1999.

Sec. 18.062. CERTAIN INFORMATION RELATING TO IDENTITY THEFT. (a) Except as provided by Subsection (b), a business record is not admissible in a civil action if the business record is provided to law enforcement personnel in connection with an investigation of an alleged violation of Section 32.51, Penal Code (fraudulent use or possession of identifying information).

(b) A business record described by Subsection (a) is admissible if the party offering the record has obtained the record from a source other than law enforcement personnel.

Added by Acts 2005, 79th Leg., Ch. 1059 (H.B. 1379), Sec. 1, eff. June 18, 2005.

SUBCHAPTER D. CERTAIN LOSSES

Sec. 18.091. PROOF OF CERTAIN LOSSES; JURY INSTRUCTION.

(a) Notwithstanding any other law, if any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, evidence to prove the loss must be presented in the form of a net loss after reduction for income tax payments or unpaid tax liability pursuant to any federal income tax law.

(b) If any claimant seeks recovery for loss of earnings,

loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, the court shall instruct the jury as to whether any recovery for compensatory damages sought by the claimant is subject to federal or state income taxes.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 13.09, eff. Sept. 1, 2003.