



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5369

Introduced 01/26/06, by Rep. Jay C. Hoffman

SYNOPSIS AS INTRODUCED:

735 ILCS 5/8-105 new
735 ILCS 5/8-405 new

Amends the Code of Civil Procedure. Provides for an affidavit by a person rendering services to a party in an action or proceeding that states the services the person rendered were necessary and that the charge for the services was reasonable. Provides that the affidavit is sufficient evidence to support a finding of fact by a judge or jury, unless a party files a controverting affidavit. Provides time limits as to when these affidavits must be filed. Provides that an affidavit of business records is sufficient to have the records attached to the affidavit be admissible as a business record, subject to other objections. Provides for the time by which a business records affidavit must be filed and the form of affidavit to be used.

LRB094 19406 RCE 55100 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by adding
5 Sections 8-102 and 8-405 as follows:

6 (735 ILCS 5/8-102 new)

7 Sec. 8-102. Affidavits and counter affidavits. This
8 Section shall apply to any action or proceeding.

9 (a) Unless a controverting affidavit is filed as provided
10 by this Section, an affidavit that the amount a person charged
11 for a service was reasonable at the time and place that the
12 service was provided and that the service was necessary is
13 sufficient evidence to support a finding of fact by a judge or
14 jury that the amount charged by that person was reasonable and
15 that the service was necessary.

16 (b) The affidavit shall:

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

19 (2) be made by the person, or that person's designee,
20 who provided the service;

21 (3) include an itemized statement of the services and
22 charges.

23 (c) The party offering the affidavit in evidence or the
24 party's attorney shall file the affidavit with the clerk of the
25 court and serve a copy of the affidavit on each other party to
26 the case at least 30 days before the day on which evidence is
27 to be first presented at the trial of the case.

28 (d) A party intending to controvert a claim based upon the
29 affidavit shall file a counter affidavit with the clerk of the
30 court and serve a copy of the counter affidavit on each other
31 party or the party's attorney of record no later than (i) 30
32 days after the day he or she receives a copy of the affidavit;

1 (ii) at least 14 days before the day on which evidence is first
2 to be presented at the trial of the case; or (iii) with leave
3 of the court, at any time before evidence is first presented at
4 trial.

5 (e) The counter affidavit shall give reasonable notice of
6 the basis on which the party filing it intends at trial to
7 controvert the claim which is based on the initial affidavit
8 and must be taken before a person authorized to administer
9 oaths. The counter affidavit shall be made by a person who is
10 qualified, by knowledge, skill, experience, training,
11 education, or other expertise, to testify in contravention of
12 all or part of any of the matters contained in the initial
13 affidavit.

14 (735 ILCS 5/8-405 new)

15 Sec. 8-405. Form of affidavit.

16 (a) Any records or copies of records that have been
17 photographed, microphotographed, microfilmed, optical imaged,
18 or otherwise reproduced either in the usual course of business,
19 or pursuant to any statute of this State authorizing the
20 reproduction of public records, papers, or documents, and the
21 reproduction, in either case, complies with the minimum
22 standards of quality for permanent records approved by the
23 State Records Commission, then such reproduction shall be
24 admissible as a business record, subject to other substantive
25 or procedural objections, in any action or proceeding upon the
26 affidavit of the person who would otherwise provide the records
27 attached to the affidavit.

28 (b) No party shall be permitted to offer business records
29 into evidence pursuant to this Section unless all other parties
30 to the action have been served with copies of the records and
31 the affidavit at least 7 days prior to the day upon which trial
32 of the cause commences.

33 (c) The affidavit permitted by this Section may be in form
34 and content substantially as follows:

35 "THE STATE OF

