

**HOUSE COMMITTEE AMENDMENTS**

Amendments proposed by House Committee on Civil Law and Procedure to Engrossed Senate Bill No. 373 by Senator Johns

1 AMENDMENT NO. 1

2 On page 2, line 13, after "least" and before "calendar" change "twenty" to "thirty"

3 AMENDMENT NO. 2

4 On page 2, delete lines 17 through 28 in their entirety and insert the following:

5 "evidence at the hearing at least fifteen calendar days prior to the  
 6 hearing. The opposing memorandum shall include any objections to the  
 7 admissibility of any exhibits listed in or attached to the movant's  
 8 memorandum. All objections to the admissibility of any of the movant's  
 9 exhibits not raised in the non-moving party's memorandum shall be  
 10 waived.

11 (c) The movant may file a reply memorandum provided it is filed  
 12 and served on all other parties at least five calendar days prior to the  
 13 hearing on the motion for summary judgment. The movant's reply  
 14 memorandum shall include any objections to the admissibility of any  
 15 exhibits listed in or attached to the non-moving party's opposing  
 16 memorandum. All objections to the admissibility of any of the non-  
 17 moving party's exhibits not raised in the movant's reply memorandum  
 18 shall be waived.

19 (d) Documentary evidence may be filed in the record with the  
 20 motion or opposition in any electronically stored format authorized by  
 21 the local court rules of the district court or approved by the clerk of the  
 22 district court for receipt of evidence."

23 AMENDMENT NO. 3

24 On page 2, at the beginning of line 29, change "(f)" to "(e)"

25 AMENDMENT NO. 4

26 On page 3, at the beginning of line 2, change "(g)" to "(f)"

27 AMENDMENT NO. 5

28 On page 3, at the beginning of line 4, change "(h)" to "(g)"

29 AMENDMENT NO. 6

30 On page 3, at the beginning of line 5, change "(i)" to "(h)"

31 AMENDMENT NO. 7

32 On page 3, delete lines 7 through 10 in their entirety and insert the following:

33 "(i) The parties may stipulate that the motion for summary judgment  
 34 may be submitted for judgment on the respective pleadings, memoranda,  
 35 lists of exhibits, and copies of all exhibits filed alone, without the  
 36 necessity for a hearing."

1 AMENDMENT NO. 8

2 On page 3, at the beginning of line 11, change "(3)" to "(2)"

3 AMENDMENT NO. 9

4 On page 3, delete lines 13 through 27 in their entirety

5 AMENDMENT NO. 10

6 On page 3, at the beginning of line 28, change "C.(1)" to "(3)"

7 AMENDMENT NO. 11

8 On page 4, delete lines 7 through 18 in their entirety and insert the following:

9 "C.(1) After adequate discovery or after a case is set for trial, a  
10 motion which shows that there is no genuine issue as to material fact and that  
11 the mover is entitled to judgment as a matter of law shall be granted.

12 **(2) A summary judgment may be rendered only as to those issues**  
13 **set forth in the motion under consideration by the court at that time.**

14 ~~(2)~~**(3)** The burden of proof remains with the movant. However, if the  
15 movant will not bear the burden of proof at trial on the matter that is before  
16 the court on the motion for summary judgment, the movant's burden on the  
17 motion does not require him to negate all essential elements of the adverse  
18 party's claim, action, or defense; but rather to point out to the court that there  
19 is an absence of factual support for one or more elements essential to the  
20 adverse party's claim, action, or defense. Thereafter, if the adverse party fails  
21 to produce factual support sufficient to establish that he will be able to satisfy  
22 his evidentiary burden of proof at trial, there is no genuine issue of material  
23 fact. **The court shall not make a judicial determination of subjective**  
24 **facts, such as motive, intent, good faith or knowledge, nor shall it make**  
25 **any credibility determinations or weigh the evidence. Factual inferences**  
26 **reasonably drawn from the evidence shall be construed in favor of the**  
27 **party opposing the motion.**

28 AMENDMENT NO. 12

29 On page 4, at the beginning of line 19, change "(2)" to "D."

30 AMENDMENT NO. 13

31 On page 4, line 21, after "trial." delete the remainder of the line and lines 22 through 24 in  
32 their entirety

33 AMENDMENT NO. 14

34 On page 4, at the beginning of line 25, change "E.(3)" to "E."

35 AMENDMENT NO. 15

36 On page 5, at the beginning of line 11, change "D.(1)" to "F.(1)"

37 AMENDMENT NO. 16

38 On page 5, delete lines 24 and 25 in their entirety