

By: Bonnen

H.B. No. 71

A BILL TO BE ENTITLED

AN ACT

relating to evidence examined or tested by crime laboratories and similar entities and the regulation of those entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 38.35, Code of Criminal Procedure, as amended by Chapter 698, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Subsection (f) to read as follows:

(f) Subsections (d) and (e) do not apply to:

(1) physical evidence subjected to a forensic analysis

by:

(A) a medical examiner operating under Subchapter B, Chapter 49; or

(B) a pathologist, physician, or other expert consulted or retained by a person performing duties under Chapter 49; or

(2) testimony regarding evidence described by Subdivision (1).

SECTION 2. Section 411.0205, Government Code, as added by Chapter 698, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Subsection (b-1) and amending Subsection (c) to read as follows:

(b-1) The director by rule shall exempt the following persons from the accreditation process established under

1 Subsection (b):

2 (1) a medical examiner operating under Subchapter B,
3 Chapter 49, Code of Criminal Procedure; and

4 (2) a pathologist, physician, or other expert
5 consulted or retained by a person performing duties under Chapter
6 49, Code of Criminal Procedure.

7 (c) The director by rule may exempt from the accreditation
8 process established under Subsection (b) a crime laboratory or
9 other entity conducting a forensic analysis of physical evidence
10 for use in criminal proceedings if the director determines that:

11 (1) independent accreditation is unavailable or
12 inappropriate for the laboratory or entity or the type of
13 examination or test performed by the laboratory or entity;

14 (2) the type of examination or test performed by the
15 laboratory or entity is admissible under a well-established rule of
16 evidence or a statute other than Article 38.35, Code of Criminal
17 Procedure; ~~and~~

18 (3) the type of examination or test performed by the
19 laboratory or entity is routinely conducted outside of a crime
20 laboratory or other applicable entity by a person other than an
21 employee of the crime laboratory or other applicable entity;

22 (4) the laboratory or entity is independently
23 accredited or certified by a national organization that regularly
24 accredits or certifies competency to practice in the science or
25 discipline associated with the type of examination or test
26 performed by the laboratory or entity; or

27 (5) the laboratory or entity has a historical record

1 of accuracy with respect to the type of examination or test
2 performed by the laboratory or entity.

3 SECTION 3. The public safety director of the Department of
4 Public Safety of the State of Texas shall adopt rules under Section
5 411.0205, Government Code, as amended by this Act, not later than
6 the 61st day after the effective date of this Act.

7 SECTION 4. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution, and
10 applies to evidence tested after December 15, 2003. If this Act does
11 not receive the vote necessary for immediate effect, this Act takes
12 effect January 15, 2004, and applies to evidence tested after that
13 date.