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H.B. No. 2703

A BILL TO BE ENTITLED

AN ACT

relating to the testing of certain physical evidence, crime laboratory accreditation, and the admissibility of evidence examined or tested by a crime laboratory.

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

SECTION 1. The heading to Article 38.35, Code of Criminal Procedure, is amended to read as follows:

Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSIBILITY.

SECTION 2. Article 38.35(a)(1), Code of Criminal Procedure, is amended to read as follows:

(1) "Forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or ~~and~~ test performed on physical evidence, including DNA evidence, for the purpose of determining the ~~its~~ connection of the evidence to a criminal action. The term does not include:

(A) latent print examination;

(B) a test of a specimen of breath under Chapter 724, Transportation Code; or

(C) an examination or test excluded by rule under Section 411.0205(c), Government Code.

SECTION 3. Article 38.35, Code of Criminal Procedure, is amended by adding Subsections (d) and (e) to read as follows:

(d) Physical evidence subjected to a forensic analysis, and testimony regarding the evidence, under this article is not

1 admissible in a criminal case if, at the time of the analysis or the
2 time the evidence is submitted to the court, the crime laboratory or
3 other entity conducting the analysis was not accredited by the
4 Department of Public Safety under Section 411.0205, Government
5 Code.

6 (e) Notwithstanding Subsection (d), physical evidence
7 subjected to a forensic analysis under this article is not
8 inadmissible in a criminal case based solely on the accreditation
9 status of the crime laboratory or other entity conducting the
10 analysis if the laboratory or entity:

11 (1) has preserved one or more separate samples of the
12 physical evidence for use by the defense attorney or use under order
13 of the convicting court; and

14 (2) has agreed to preserve those samples until all
15 appeals in the case are final. This subsection expires September 1,
16 2005.

17 SECTION 4. Subchapter A, Chapter 411, Government Code, is
18 amended by adding Sections 411.0205, 411.0206, and 411.0207 to read
19 as follows:

20 Sec. 411.0205. CRIME LABORATORY ACCREDITATION PROCESS. (a)
21 In this section, "forensic analysis" and "physical evidence" have
22 the meanings assigned by Article 38.35, Code of Criminal Procedure,
23 and "DNA laboratory" has the meaning assigned by Section 411.141.

24 (b) The director by rule shall establish an accreditation
25 process for crime laboratories, including DNA laboratories, and
26 other entities conducting forensic analyses of physical evidence
27 for use in criminal proceedings.

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

5 (1) independent accreditation is unavailable or
6 inappropriate for the laboratory or entity or the type of
7 examination or test performed by the laboratory or entity;

8 (2) the type of examination or test performed by the
9 laboratory or entity is admissible under a well-established rule of
10 evidence or a statute other than Article 38.35, Code of Criminal
11 Procedure; and

12 (3) the type of examination or test performed by the
13 laboratory or entity is routinely conducted outside of a crime
14 laboratory or other applicable entity by a person other than an
15 employee of the crime laboratory or other applicable entity.

16 Sec. 411.0206. REGULATION OF DNA TESTING. The director
17 shall by rule regulate DNA testing, including regulation of DNA
18 laboratories.

19 Sec. 411.0207. ACCURACY OF DNA EXAMINATION OR TEST. (a) The
20 director may order a crime laboratory to conduct an additional DNA
21 examination or test of physical evidence if:

22 (1) the director receives a complaint alleging that
23 the results of the preceding DNA examination or test are
24 inaccurate; and

25 (2) the complaint is accompanied by an audit that
26 confirms that the results of the examination or test may be
27 inaccurate.

1 (b) The director may require a crime laboratory that is the
2 subject of an order under Subsection (a) to remit a fee sufficient
3 to pay the cost of administering the order.

4 SECTION 5. The public safety director of the Department of
5 Public Safety of the State of Texas shall adopt rules under Section
6 411.0205, Government Code, as added by this Act, not later than the
7 61st day after the effective date of this Act.

8 SECTION 6. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution, and
11 applies to evidence tested after September 1, 2003. If this Act
12 does not receive the vote necessary for immediate effect, this Act
13 takes effect September 1, 2003, and applies to evidence tested
14 after that date.