

1 AN ACT

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

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

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

8 Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSIBILITY.

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

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

16 (A) latent print examination;

17 (B) a test of a specimen of breath under Chapter  
18 724, Transportation Code; or

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

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

23 (d) Physical evidence subjected to a forensic analysis, and  
24 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 and 411.0206 to read as  
19 follows:

20 Sec. 411.0205. CRIME LABORATORY ACCREDITATION PROCESS.

21 (a) In this section, "forensic analysis" and "physical evidence"  
22 have the meanings assigned by Article 38.35, Code of Criminal  
23 Procedure, and "DNA laboratory" has the meaning assigned by Section  
24 411.141.

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

1 for use in criminal proceedings.

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

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

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

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

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

20 SECTION 5. The public safety director of the Department of  
21 Public Safety of the State of Texas shall adopt rules under Section  
22 411.0205, Government Code, as added by this Act, not later than the  
23 61st day after the effective day of this Act.

24 SECTION 6. This Act takes effect immediately if it receives  
25 a vote of two-thirds of all the members elected to each house, as  
26 provided by Section 39, Article III, Texas Constitution, and  
27 applies to evidence tested after September 1, 2003. If this Act

H.B. No. 2703

1 does not receive the vote necessary for immediate effect, this Act  
2 takes effect September 1, 2003, and applies to evidence tested  
3 after that date.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2703 was passed by the House on May 1, 2003, by the following vote: Yeas 140, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2703 on May 28, 2003, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2703 was passed by the Senate, with amendments, on May 26, 2003, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor