

Amend **HB 1068** (Senate committee printing) as follows:

(1) Strike SECTIONS 1 and 2 of the bill (page 1, line 13, through page 3, line 31) and substitute the following appropriately numbered SECTIONS:

SECTION \_\_\_\_\_. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.01 to read as follows:

Art. 38.01. TEXAS FORENSIC SCIENCE COMMISSION

Sec. 1. CREATION. The Texas Forensic Science Commission is created.

Sec. 2. DEFINITION. In this article, "forensic analysis" has the meaning assigned by Article 38.35(a).

Sec. 3. COMPOSITION. (a) The commission is composed of the following 11 members:

(1) one member appointed by the governor, one member appointed by the lieutenant governor, and one member appointed by the speaker of the house of representatives;

(2) one member appointed by the attorney general, who must have expertise in the field of forensic science;

(3) one member appointed by the chancellor of The Texas A&M University System and one member appointed by the chancellor of The University of Texas System, both of whom must be faculty members of a medical school and specialize in clinical laboratory medicine;

(4) one member appointed by the chancellor of the Texas State University System, who must be a faculty or staff member of the Sam Houston State University College of Criminal Justice;

(5) one member appointed by the chancellor of the University of North Texas System, who must be a faculty member and specialize in clinical laboratory medicine;

(6) one member appointed by the president of Texas Southern University, who must be a faculty member of the College of Pharmacy and Health Sciences;

(7) one member appointed by the executive director of the Texas District and County Attorneys Association; and

(8) one member appointed by the executive director of the Texas Criminal Defense Attorneys Association.

(b) Each member of the commission serves a two-year term.

The term of the members appointed under Subsections (a)(1), (4), and (5) expires on September 1 of each odd-numbered year. The term of the members appointed under Subsections (a)(2), (3), (6), (7), and (8) expires on September 1 of each even-numbered year.

(c) The governor shall designate a member of the commission to serve as the presiding officer.

Sec. 4. DUTIES. (a) The commission shall:

(1) develop and implement:

(A) an accreditation process for all laboratories, facilities, or entities that conduct forensic analyses; and

(B) a reporting system through which accredited laboratories, facilities, or entities report professional negligence or misconduct;

(2) require all laboratories, facilities, or entities that conduct forensic analyses to:

(A) become accredited by the commission; and

(B) report professional negligence or misconduct to the commission; and

(3) investigate, in a timely manner, any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility, or entity.

(b) An investigation under Subsection (a)(3):

(1) must include the preparation of a written report that identifies and also describes the methods and procedures used to identify:

(A) the alleged negligence or misconduct;

(B) whether negligence or misconduct occurred;

and

(C) any corrective action required of the laboratory, facility, or entity; and

(2) may include one or more:

(A) retrospective reexaminations of other forensic analyses conducted by the laboratory, facility, or entity that may involve the same kind of negligence or misconduct; and

(B) follow-up evaluations of the laboratory,

facility, or entity to review:

(i) the implementation of any corrective action required under Subdivision (1)(C); or

(ii) the conclusion of any retrospective reexamination under Paragraph (A).

(c) The commission by contract may delegate the duties described by Subsections (a)(1) and (3) to any person the commission determines to be qualified to assume those duties.

(d) As part of the accreditation process developed and implemented under Subsection (a)(1), the commission may:

(1) establish:

(A) minimum accreditation standards;

(B) mandatory training requirements for individuals employed by a laboratory, facility, or entity that conducts forensic analyses; and

(C) minimum standards that relate to the timely production of a forensic analysis to the agency requesting the analysis and that are consistent with this article and code;

(2) validate or approve specific forensic methods or methodologies; and

(3) establish procedures, policies, and practices to improve the quality of forensic analyses conducted in this state.

(e) The commission may require that a laboratory, facility, or entity required to be accredited under this section pay any costs incurred to ensure compliance with Subsection (b)(1).

(f) The commission shall make all accreditation reviews conducted under Subsection (a)(2) and investigation reports completed under Subsection (b)(1) available to the public. A report completed under Subsection (b)(1), in a subsequent civil or criminal proceeding, is not prima facie evidence of the information or findings contained in the report.

Sec. 5. REIMBURSEMENT. A member of the commission may not receive compensation but is entitled to reimbursement for the member's travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

Sec. 6. ASSISTANCE. The Texas Legislative Council, the Legislative Budget Board, and The University of Texas at Austin

shall assist the commission in performing the commission's duties.

Sec. 7. SUBMISSION. The commission shall submit any report received under Section 4(a)(2) and any report prepared under Section 4(b)(1) to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1 of each even-numbered year.

SECTION \_\_\_\_\_. Article 38.35, Code of Criminal Procedure, is amended by amending Subsections (a), (d), and (e) and adding Subsection (f) to read as follows:

(a) In this article:

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

(A) latent print examination; or

(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].~~

(2) "Physical evidence" means any tangible object, thing, or substance relating to a criminal offense.

(d) Physical evidence subjected to a forensic analysis, and testimony regarding the evidence, under this article is not admissible in a criminal case if, at the time of the analysis or the time the evidence is submitted to the court, the crime laboratory or other entity conducting the analysis was not accredited by the Texas Forensic Science Commission [~~Department of Public Safety~~] under Article 38.01 [~~Section 411.0205, Government Code~~].

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

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

(2) has agreed to preserve those samples until all appeals in the case are final. This subsection expires September 1, 2007 [~~2005~~].

(f) This article does not apply to the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(2) In SECTION 7 of the bill, in Subsection (c) of amended Section 411.145, Government Code (page 6, line 57), strike "and Section 411.0205".

(3) In Subdivision (2) of SECTION 21 of the bill, between "Sections" and "411.0206" (page 15, line 19), insert "411.0205,".

(4) Add the following appropriately numbered sections to the bill and renumber subsequent sections of the bill accordingly:

SECTION \_\_\_\_\_. Section 11, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) A sample or specimen taken as part of a test for controlled substances that is a condition of placement on community supervision must be analyzed by a laboratory certified by:

(1) the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services;

(2) the College of American Pathologists Forensic Urine Drug Testing Accreditation Program;

(3) the American Board of Forensic Toxicology;

(4) the American Society of Crime Laboratory Directors; or

(5) the National Association of Medical Examiners.

SECTION \_\_\_\_\_. Article 38.35, Code of Criminal Procedure, as amended by this Act, applies only to the admissibility of physical evidence in a criminal proceeding that commences on or after the effective date of this Act. The admissibility of physical evidence in a criminal proceeding that commenced before the effective date of this Act is governed by the law in effect at the time the proceeding commenced, and that law is continued in effect for that purpose.

SECTION \_\_\_\_\_. (a) Initial appointments to the Texas

Forensic Science Commission must be made not later than the 60th day after the effective date of this Act.

(b) Of the initial members of the Texas Forensic Science Commission:

(1) the members appointed under Subdivision (1), (4), or (5), Subsection (a), Section 3, Article 38.01, Code of Criminal Procedure, as added by this Act, serve terms expiring September 1, 2007; and

(2) the other members serve terms expiring September 1, 2006.

(c) A member whose term expires on September 1, 2006, is eligible to be reappointed for a two-year term as provided by Subsection (b), Section 3, Article 38.01, Code of Criminal Procedure, as added by this Act.