

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a commission to ensure the quality of forensic science.

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

SECTION 1. 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

1 Texas State University System, who must be a faculty or staff member
2 of the Sam Houston State University College of Criminal Justice;

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

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

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

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

13 (b) Each member of the commission serves a two-year term.
14 The term of the members appointed under Subsections (a)(1), (4),
15 and (5) expires on September 1 of each odd-numbered year. The term
16 of the members appointed under Subsections (a)(2), (3), (6), (7),
17 and (8) expires on September 1 of each even-numbered year.

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

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

21 (1) develop and implement:

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

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

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

3 (A) become accredited by the commission; and

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

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

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

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

14 (A) the alleged negligence or misconduct;

15 (B) whether negligence or misconduct occurred;

16 and

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

19 (2) may include one or more:

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

23 (B) follow-up evaluations of the laboratory,
24 facility, or entity to review:

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

27 (ii) the conclusion of any retrospective

1 reexamination under Paragraph (A).

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

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

7 (1) establish:

8 (A) minimum accreditation standards; and

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

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

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

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

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

25 Sec. 5. REIMBURSEMENT. A member of the commission may not
26 receive compensation but is entitled to reimbursement for the
27 member's travel expenses as provided by Chapter 660, Government

1 Code, and the General Appropriations Act.

2 Sec. 6. ASSISTANCE. The Texas Legislative Council, the
3 Legislative Budget Board, and The University of Texas at Austin
4 shall assist the commission in performing the commission's duties.

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

10 SECTION 2. Article 38.35, Code of Criminal Procedure, is
11 amended by amending Subsections (a), (d), and (e) and adding
12 Subsection (f) to read as follows:

13 (a) In this article:

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

19 (A) latent print examination; or

20 (B) a test of a specimen of breath under Chapter
21 724, Transportation Code [~~or~~

22 [~~(C) an examination or test excluded by rule~~
23 ~~under Section 411.0205(c), Government Code].~~

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

26 (d) Physical evidence subjected to a forensic analysis, and
27 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 Texas Forensic Science Commission [~~Department of Public Safety~~]
5 under Article 38.01 [~~Section 411.0205, Government 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 2007 [~~2005~~].

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

20 SECTION 3. Sections 411.0205 and 411.0206, Government Code,
21 are repealed.

22 SECTION 4. Article 38.35, Code of Criminal Procedure, as
23 amended by this Act, applies only to the admissibility of physical
24 evidence in a criminal proceeding that commences on or after the
25 effective date of this Act. The admissibility of physical evidence
26 in a criminal proceeding that commenced before the effective date
27 of this Act is governed by the law in effect at the time the

1 proceeding commenced, and that law is continued in effect for that
2 purpose.

3 SECTION 5. (a) Initial appointments to the Texas Forensic
4 Science Commission must be made not later than the 60th day after
5 the effective date of this Act.

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

8 (1) the members appointed under Subdivision (1), (4),
9 or (5), Subsection (a), Section 3, Article 38.01, Code of Criminal
10 Procedure, as added by this Act, serve terms expiring September 1,
11 2007; and

12 (2) the other members serve terms expiring September
13 1, 2006.

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

18 SECTION 6. This Act takes effect September 1, 2005.