

By: Whitmire, et al.

S.B. No. 1263

Substitute the following for S.B. No. 1263:

By: Hegar

C.S.S.B. No. 1263

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) five members appointed by the governor:

(A) one of whom must be a director or division head of a crime laboratory operated by the Department of Public Safety;

(B) two of whom must be directors or division heads of an accredited crime laboratory located in this state and not associated with the Department of Public Safety, and one of whom may be a director or division head of a non-governmental crime laboratory described by this paragraph;

(C) one of whom must be a prosecuting attorney that the governor selects from a list of ten names submitted by the

1 Texas District and County Attorneys Association; and

2 (D) one of whom must be a defense attorney that
3 the governor selects from a list of ten names submitted by the Texas
4 Criminal Defense Lawyers Association;

5 (2) two members appointed by the attorney general,
6 each of whom must have expertise in the field of forensic science,
7 and one of whom must be a faculty or staff member of the Sam Houston
8 State University College of Criminal Justice who is not affiliated
9 with any state, county, or local crime laboratory in this state;
10 and

11 (3) four members appointed by the lieutenant governor:

12 (A) two of must be faculty members of a medical
13 school who specialize in clinical laboratory medicine;

14 (B) one of whom must be a director or division
15 head of the University of North Texas Health Science Center at Fort
16 Worth Missing Persons DNA Database; and

17 (C) one of whom must specialize in statistical
18 analyses.

19 (b) Each member of the commission serves a two-year term.
20 The term of the members appointed under Subsections
21 (a)(1)(B)-(a)(1)(D) and (a)(2) expires on September 1 of each
22 odd-numbered year. The term of the members appointed under
23 Subsections (a)(1)(A) and (a)(3) expires on September 1 of each
24 even-numbered year.

25 (c) The governor shall designate a member of the commission,
26 other than a member appointed by the governor, to serve as the
27 presiding officer.

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

2 (1) develop and implement a reporting system through
3 which laboratories, facilities, or entities report professional
4 negligence or misconduct;

5 (2) require all laboratories, facilities, or entities
6 that conduct forensic analyses to report professional negligence or
7 misconduct to the commission;

8 (3) investigate, in a timely manner, any credible
9 allegation of professional negligence or misconduct that would
10 substantially affect the integrity of the results of a forensic
11 analysis conducted by a laboratory, facility, or entity that
12 conducts forensic analyses; and

13 (4) make recommendations to the governor, lieutenant
14 governor, and speaker of the house of representatives concerning
15 ways to improve quality assurance procedures at and the reliability
16 of forensic analyses from laboratories, facilities, or entities
17 that conduct forensic analyses.

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

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

22 (A) the alleged negligence or misconduct;

23 (B) whether negligence or misconduct occurred;

24 and

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

27 (2) may include one or more:

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

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

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

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

10 (c) The commission by contract may delegate the duties
11 described by Subsection (a)(3) to any person the commission
12 determines to be independent from and not otherwise associated with
13 the laboratory, facility, or entity being investigated and
14 qualified to assume those duties. A person to whom the commission
15 delegates duties under this subsection shall submit any report
16 completed by the person to the commission.

17 (d) The commission shall make all investigation reports
18 completed under Subsection (b) or received under Subsection (c)
19 available to the public. A report completed under Subsection (b) or
20 received under Subsection (c), in a subsequent civil or criminal
21 proceeding, is not prima facie evidence of the information or
22 findings contained in the report.

23 Sec. 5. ACCESS TO DOCUMENTS. (a) The commission shall be
24 given access to:

25 (1) reports of any entity that accredits or has
26 accredited a laboratory, facility, or entity that conducts forensic
27 analyses;

1 (2) communications between an accrediting entity
2 described by Subdivision (1) and a laboratory, facility, or entity
3 that conducts forensic analyses;

4 (3) communications between the Department of Public
5 Safety and an accrediting entity described by Subdivision (1);

6 (4) communications between the Department of Public
7 Safety and a laboratory, facility, or entity that conducts forensic
8 analyses regarding matters relating to accreditation;

9 (5) internal and external proficiency tests performed
10 by a laboratory, facility, or entity that conducts forensic
11 analyses; and

12 (6) any other laboratory, facility, or entity document
13 the commission finds necessary to fulfill the commission's duties
14 under Section 4(a)(3).

15 (b) Subsection (a) does not apply to a law enforcement
16 agency or a component of a law enforcement agency that collects
17 physical evidence but does not conduct forensic analyses.

18 (c) Subsection (a) applies to:

19 (1) a laboratory, facility, or entity that conducts
20 forensic analyses and is required to be accredited under Section
21 411.0205, Government Code; and

22 (2) a laboratory, facility, or entity that conducts
23 forensic analyses and is subject only to voluntary accreditation
24 under the rules adopted under Section 411.0205, Government Code.

25 Sec. 6. COSTS OF INVESTIGATION. A laboratory, facility, or
26 entity investigated under Section 4 shall pay all reasonable costs
27 incurred by the commission in conducting the investigation and any

1 follow-up evaluations of the laboratory, facility, or entity.

2 Sec. 7. REIMBURSEMENT. A member of the commission may not
3 receive compensation but is entitled to reimbursement for the
4 member's travel expenses as provided by Chapter 660, Government
5 Code, and the General Appropriations Act.

6 Sec. 8. ASSISTANCE. The Texas Legislative Council, the
7 Legislative Budget Board, and The University of Texas at Austin
8 shall assist the commission in performing the commission's duties.

9 Sec. 9. SUBMISSION. The commission shall submit any report
10 received under Section 4(a)(2) and any report prepared under
11 Section 4(b)(1) or received under Section 4(c) to the governor, the
12 lieutenant governor, and the speaker of the house of
13 representatives not later than December 1 of each even-numbered
14 year.

15 SECTION 2. (a) Initial appointments to the Texas Forensic
16 Science Commission must be made not later than the 60th day after
17 the effective date of this Act.

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

20 (1) the members appointed under Subsections
21 (a)(1)(B)-(a)(1)(D) and (a)(2), Section 3, Article 38.01, Code of
22 Criminal Procedure, as added by this Act, serve terms expiring
23 September 1, 2007; and

24 (2) the members appointed under Subsections (a)(1)(A)
25 and (a)(3), Section 3, Article 38.01, Code of Criminal Procedure,
26 as added by this Act, serve terms expiring September 1, 2006.

27 (c) A member whose term expires on September 1, 2006, is

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1 eligible to be reappointed for a two-year term under Subsection
2 (b), Section 3, Article 38.01, Code of Criminal Procedure, as added
3 by this Act.

4 SECTION 3. This Act takes effect September 1, 2005.