

By: Farabee

H.B. No. 1966

A BILL TO BE ENTITLED

AN ACT

relating to the registration and regulation of certain collection facilities and certified professional collectors that provide collection services in this state; providing penalties.

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

SECTION 1. Title 12, Health and Safety Code, is amended by redesignating Chapter 1001 as Chapter 1001, Subtitle A, Title 12, and adding a heading for Subtitle A to read as follows:

SUBTITLE A. GENERAL PROVISIONS

SECTION 2. Title 12, Health and Safety Code, is amended by adding Subtitle B to read as follows:

SUBTITLE B. DEPARTMENT FUNCTIONS

CHAPTER 1051. COLLECTION FACILITIES AND CERTIFIED PROFESSIONAL COLLECTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1051.001. DEFINITIONS. In this chapter:

(1) "Certified professional collector" means an individual registered under this chapter to perform collection services.

(2) "Collection facility" means a facility registered under this chapter to perform collection services.

(3) "Department" means the Department of State Health Services.

(4) "Executive commissioner" means the executive

1 commissioner of the Health and Human Services Commission.

2 Sec. 1051.002. DEFINITION OF COLLECTION SERVICES. (a) In
3 this chapter, collection services means the provision to a school,
4 governmental agency, or employer of services to collect hair,
5 saliva, urine, sweat, or other specimens from a human body, by
6 persons who are trained and certified according to the type of
7 specimen collected, for:

8 (1) submission to a laboratory that tests the specimen
9 for the presence of drugs or alcohol; or

10 (2) testing of the specimen at an instrumented initial
11 test facility or by the use of a Federal Drug Administration
12 approved point of collection test device.

13 (b) The term does not include services that involve invasive
14 procedures other than tests conducted through an instrumented
15 initial test facility or by the use of a Federal Drug Administration
16 approved point of collection test device recognized by the United
17 States Department of Health and Human Services.

18 Sec. 1051.003. EXEMPTION. This chapter does not apply to:

19 (1) a laboratory certified under 42 U.S.C. Section
20 263a or regulated under other federal law or a facility regulated
21 under federal law that conducts scientific tests on specimens;

22 (2) a person employed by a laboratory or facility
23 described by Subdivision (1); or

24 (3) an individual who performs collection services for
25 a federal agency or who is regulated under 49 C.F.R. Part 40.

26 [Sections 1051.004-1051.050 reserved for expansion]

1 SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

2 Sec. 1051.051. ADMINISTRATION OF CHAPTER. The department
3 shall administer this chapter.

4 Sec. 1051.052. DEPARTMENT STAFF. The department may employ
5 administrative and clerical staff as necessary to carry out this
6 chapter.

7 Sec. 1051.053. RULES. The executive commissioner shall
8 adopt the rules necessary to administer this chapter, including
9 rules:

10 (1) establishing minimum requirements for
11 registration under this chapter;

12 (2) establishing grounds for suspending, denying, or
13 revoking a certificate of registration or placing a certificate
14 holder on probation; and

15 (3) adopting forms required by this chapter.

16 Sec. 1051.054. FEES. The executive commissioner by rule
17 shall prescribe fees in reasonable amounts sufficient to cover the
18 costs of administering this chapter, including fees for:

19 (1) an initial application for a certificate of
20 registration;

21 (2) issuance of a certificate of registration;

22 (3) issuance of a renewal certificate of registration;

23 and

24 (4) issuance of a duplicate certificate of
25 registration or duplicate renewal certificate of registration.

26 Sec. 1051.055. RULES REGARDING ADVERTISING OR COMPETITIVE
27 BIDDING. (a) The executive commissioner may not adopt rules

1 restricting advertising or competitive bidding by a registrant
2 except to prohibit false, misleading, or deceptive practices.

3 (b) In rules to prohibit false, misleading, or deceptive
4 practices, the executive commissioner may not include a rule that:

5 (1) restricts the use of any medium for advertising;

6 (2) restricts the use of a registrant's personal
7 appearance or voice in an advertisement;

8 (3) relates to the size or duration of an
9 advertisement by the registrant; or

10 (4) restricts the registrant's advertisement under a
11 trade name.

12 [Sections 1051.056-1051.100 reserved for expansion]

13 SUBCHAPTER C. CERTIFICATE OF REGISTRATION

14 Sec. 1051.101. REGISTRATION REQUIRED. (a) A person may not
15 own or operate a facility in this state that performs collection
16 services or represent to the public that the person performs
17 collection services in this state unless the person is registered
18 under this chapter.

19 (b) An individual may not perform collection services in
20 this state or represent to the public that the individual performs
21 collection services in this state unless the individual is
22 registered under this chapter.

23 Sec. 1051.102. ISSUANCE OF CERTIFICATE; QUALIFICATIONS.
24 The department shall issue a certificate of registration to an
25 applicant who:

26 (1) applies and pays a registration fee;

27 (2) presents evidence satisfactory to the department

1 that the applicant:

2 (A) has successfully completed the number of
3 hours of training required by the department; and

4 (B) holds a current certification by a national
5 certifying body recognized by the department or is certified by a
6 professional collector trainer who is certified by a national
7 certifying body recognized by the department; and

8 (3) maintains professional liability insurance in
9 coverage amounts that meet at least the minimum limits of coverage
10 required by executive commissioner rule.

11 Sec. 1051.103. TERM OF CERTIFICATE. (a) A certificate of
12 registration is valid for two years after the date of issuance.

13 (b) The department shall adopt a system under which
14 certificates of registration expire and are renewed on various
15 dates.

16 (c) Not later than the 30th day before the date a person's
17 certificate of registration is scheduled to expire, the department
18 shall send written notice of the impending expiration to the person
19 at the person's last known address according to the records of the
20 department.

21 (d) A person whose certificate of registration has expired
22 may not make a representation for which a certificate of
23 registration is required under Section 1051.101 or perform
24 collection services until the certificate has been renewed.

25 Sec. 1051.104. RENEWAL OF CERTIFICATE. (a) To renew a
26 certificate of registration, a person must submit an application
27 for renewal in the manner prescribed by the department.

1 (b) The application must be accompanied by evidence that the
2 applicant has successfully completed the continuing education
3 courses required by executive commissioner rule.

4 (c) A person who is otherwise eligible to renew a
5 certificate of registration may renew an unexpired certificate by
6 paying the required renewal fee to the department before the
7 expiration date of the certificate.

8 (d) A person whose certificate of registration has been
9 expired for 90 days or less may renew the certificate by paying to
10 the department a renewal fee that is equal to 1-1/2 times the
11 normally required renewal fee.

12 (e) A person whose certificate of registration has been
13 expired for more than 90 days but less than one year may renew the
14 certificate by paying to the department a renewal fee that is equal
15 to two times the normally required renewal fee.

16 (f) A person whose certificate of registration has been
17 expired for one year or more may not renew the certificate. The
18 person may obtain a new certificate of registration by complying
19 with the requirements and procedures, including the examination
20 requirements, for an original certificate.

21 Sec. 1051.105. CONTINUING EDUCATION. The department shall
22 recognize continuing education programs for registrants under this
23 chapter. A person registered under this chapter must participate
24 in the programs to the extent required by the department to keep the
25 person's certificate of registration.

26 [Sections 1051.106-1051.150 reserved for expansion]

1 SUBCHAPTER D. DISCIPLINARY PROCEDURES

2 Sec. 1051.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.

3 The department shall deny an application for a certificate of
4 registration, suspend or revoke a certificate of registration, or
5 reprimand a person who is registered under this chapter if the
6 person:

7 (1) obtains a certificate of registration by means of
8 fraud, misrepresentation, or concealment of a material fact;

9 (2) sells, barter, or offers to sell or barter a
10 certificate of registration;

11 (3) violates a rule adopted by the executive
12 commissioner; or

13 (4) violates Section 1051.101.

14 Sec. 1051.152. INVESTIGATION. (a) The department shall
15 investigate:

16 (1) a person who engages in a practice that violates
17 this chapter; and

18 (2) each complaint filed with the department against a
19 person registered under this chapter.

20 (b) For a complaint related to collection and testing, the
21 department in conducting an investigation shall consult with a peer
22 review committee composed of collection service industry
23 professionals who are registered with the department under this
24 chapter and in good standing.

25 Sec. 1051.153. PROBATION. The department may place on
26 probation a person whose certificate of registration is suspended.
27 If the suspension is probated, the department may require the

1 person to:

2 (1) report regularly to the department on matters that
3 are the basis of the probation;

4 (2) limit practice to the areas prescribed by the
5 department; or

6 (3) continue or review professional education until
7 the person attains a degree of skill satisfactory to the department
8 in those areas that are the basis of the probation.

9 Sec. 1051.154. HEARING. (a) A person whose application for
10 a certificate of registration is denied, whose certificate of
11 registration is suspended or revoked, or who is reprimanded is
12 entitled to a hearing before the department if the person submits to
13 the department a written request for the hearing.

14 (b) A hearing is governed by department rules for a
15 contested hearing and by Chapter 2001, Government Code.

16 Sec. 1051.155. EMERGENCY SUSPENSION. (a) The department
17 shall temporarily suspend the certificate of registration of a
18 certificate holder if the department determines from the evidence
19 or information presented to it that continued practice by the
20 certificate holder would constitute a continuing and imminent
21 threat to the public welfare.

22 (b) A certificate of registration may be suspended under
23 this section without notice or hearing on the complaint if:

24 (1) action is taken to initiate proceedings for a
25 hearing before the State Office of Administrative Hearings
26 simultaneously with the temporary suspension; and

27 (2) a hearing is held as soon as practicable under this

1 chapter and Chapter 2001, Government Code.

2 (c) The State Office of Administrative Hearings shall hold a
3 preliminary hearing not later than the 14th day after the date of
4 the temporary suspension to determine if there is probable cause to
5 believe that a continuing and imminent threat to the public welfare
6 still exists. A final hearing on the matter shall be held not later
7 than the 61st day after the date of the temporary suspension.

8 [Sections 1051.156-1051.200 reserved for expansion]

9 SUBCHAPTER E. ADMINISTRATIVE PENALTY

10 Sec. 1051.201. IMPOSITION OF PENALTY. The department may
11 assess an administrative penalty against a person who violates this
12 chapter or a rule adopted under this chapter.

13 Sec. 1051.202. AMOUNT OF PENALTY. (a) The amount of the
14 administrative penalty may not exceed \$1,000 for each violation.
15 Each day of a continuing violation is a separate violation.

16 (b) The amount shall be based on:

- 17 (1) the seriousness of the violation;
18 (2) the history of previous violations;
19 (3) the amount necessary to deter a future violation;
20 (4) efforts made to correct the violation; and
21 (5) any other matter that justice requires.

22 Sec. 1051.203. NOTICE OF VIOLATION AND PENALTY. If, after
23 investigation of a possible violation and the facts surrounding the
24 possible violation, the department determines that a violation
25 occurred, the department shall give written notice of the violation
26 to the person alleged to have committed the violation. The notice
27 must:

- 1 (1) include a brief summary of the alleged violation;
2 (2) state the amount of the proposed administrative
3 penalty based on the factors set forth in Section 1051.202(b); and
4 (3) inform the person of the person's right to a
5 hearing on the occurrence of the violation, the amount of the
6 penalty, or both.

7 Sec. 1051.204. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
8 Not later than the 20th day after the date the person receives the
9 notice, the person may:

- 10 (1) accept the department's determination and proposed
11 administrative penalty; or
12 (2) make a written request for a hearing on that
13 determination.

14 (b) If the person accepts the department's determination,
15 the commissioner of public health or the commissioner's designee by
16 order shall approve the determination and assess the proposed
17 penalty.

18 Sec. 1051.205. HEARING. (a) If the person requests a
19 hearing in a timely manner, the department shall:

- 20 (1) set a hearing;
21 (2) give written notice of the hearing to the person;
22 and
23 (3) designate a hearings examiner to conduct the
24 hearing.

25 (b) The hearings examiner shall:

- 26 (1) make findings of fact and conclusions of law; and
27 (2) promptly issue to the commissioner of state health

1 services or the commissioner's designee a proposal for decision as
2 to the occurrence of the violation and the amount of any proposed
3 administrative penalty.

4 Sec. 1051.206. DECISION. (a) Based on the findings of
5 fact, conclusions of law, and proposal for decision, the
6 commissioner of state health services or the commissioner's
7 designee by order may determine that:

8 (1) a violation occurred and assess an administrative
9 penalty; or

10 (2) a violation did not occur.

11 (b) The department shall give notice of the order to the
12 person. The notice must include:

13 (1) separate statements of the findings of fact and
14 conclusions of law;

15 (2) the amount of any penalty assessed; and

16 (3) a statement of the person's right to judicial
17 review of the order.

18 Sec. 1051.207. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

19 (a) Not later than the 30th day after the date the order becomes
20 final, the person shall:

21 (1) pay the administrative penalty;

22 (2) pay the penalty and file a petition for judicial
23 review contesting the fact of the violation, the amount of the
24 penalty, or both; or

25 (3) without paying the penalty, file a petition for
26 judicial review contesting the fact of the violation, the amount of
27 the penalty, or both.

1 (b) Not later than the 30th day after the date the order is
2 final, a person who acts under Subsection (a)(3) may:

3 (1) stay enforcement of the penalty by:

4 (A) paying the penalty to the court for placement
5 in an escrow account; or

6 (B) giving to the court a supersedeas bond
7 approved by the court that:

8 (i) is for the amount of the penalty; and

9 (ii) is effective until judicial review of
10 the order is final; or

11 (2) request the court to stay enforcement of the
12 penalty by:

13 (A) filing with the court a sworn affidavit of
14 the person stating that the person is financially unable to pay the
15 penalty and is financially unable to give the supersedeas bond; and

16 (B) giving a copy of the affidavit to the
17 department by certified mail.

18 (c) If the department receives a copy of an affidavit under
19 Subsection (b)(2), the department may file with the court, not
20 later than the fifth day after the date the department receives the
21 copy, a contest to the affidavit.

22 (d) The court shall hold a hearing on the facts alleged in
23 the affidavit as soon as practicable and shall stay enforcement of
24 the penalty on finding that the alleged facts are true. The person
25 who files an affidavit has the burden of proving that the person is
26 financially unable to pay the amount of the penalty and to give a
27 supersedeas bond.

1 Sec. 1051.208. DETERMINATION BY COURT. (a) If the court
2 sustains the occurrence of the violation, the court may uphold or
3 reduce the amount of the administrative penalty and order the
4 person to pay the full or reduced penalty.

5 (b) If the court does not sustain the occurrence of the
6 violation, the court shall order that a penalty is not owed.

7 Sec. 1051.209. REMITTANCE OF PENALTY AND INTEREST. (a) If
8 after judicial review, the administrative penalty is reduced or not
9 imposed by the court, the court shall, after the judgment becomes
10 final:

11 (1) order that the appropriate amount, plus accrued
12 interest, be remitted to the person if the person paid the amount of
13 the penalty; or

14 (2) order the release of the bond in full if the
15 penalty is not imposed or order the release of the bond after the
16 person pays the penalty imposed if the person posted a supersedeas
17 bond.

18 (b) The interest paid under Subsection (a)(1) is the rate
19 charged on loans to depository institutions by the New York Federal
20 Reserve Bank. The interest shall be paid for the period beginning
21 on the date the penalty is paid and ending on the date the penalty is
22 remitted.

23 Sec. 1051.210. COLLECTION OF PENALTY. (a) In this section,
24 "reasonable expenses and costs" includes expenses incurred by the
25 department and the attorney general in the investigation,
26 initiation, or prosecution of an action, including reasonable
27 investigative costs, court costs, attorney's fees, witness fees,

1 and deposition expenses.

2 (b) If the person does not pay the amount of the
3 administrative penalty and the enforcement of the penalty is not
4 stayed, the department may refer the matter to the attorney general
5 for collection of the amount of the penalty.

6 (c) The department may assess reasonable expenses and costs
7 against a person in an administrative hearing if, as a result of the
8 hearing, an administrative penalty is assessed against the person.
9 The person shall pay expenses and costs assessed under this
10 subsection not later than the 30th day after the date the order of
11 the commissioner of state health services or the commissioner's
12 designee requiring the payment of expenses and costs is final. The
13 department may refer the matter to the attorney general for
14 collection of expenses and costs.

15 (d) If the attorney general brings an action against a
16 person to enforce an administrative penalty assessed under this
17 chapter and the person is found liable for an administrative
18 penalty, the attorney general may recover, on behalf of the
19 attorney general and the department, reasonable expenses and costs.

20 Sec. 1051.211. ADMINISTRATIVE PROCEDURE. A proceeding for
21 the assessment of an administrative penalty under this subchapter
22 is subject to Chapter 2001, Government Code.

23 [Sections 1051.212-1051.250 reserved for expansion]

24 SUBCHAPTER F. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

25 Sec. 1051.251. ENFORCEMENT PROCEEDINGS; INJUNCTION. (a)
26 The department, the attorney general, or the district or county
27 attorney for the county in which an alleged violation of this

1 chapter occurs shall, on receipt of a verified complaint, bring an
2 appropriate administrative or judicial proceeding to enforce this
3 chapter or a rule adopted under this chapter.

4 (b) The attorney general or an attorney representing the
5 state may initiate an action for an injunction to prohibit a person
6 from violating this chapter or a rule adopted under this chapter.

7 Sec. 1051.252. CIVIL PENALTY. In addition to any other
8 remedy provided by law, including injunctive relief, a court may
9 impose a civil penalty for a violation of this chapter or a rule
10 adopted under this chapter.

11 SECTION 3. Not later than January 1, 2008:

12 (1) the executive commissioner of the Health and Human
13 Services Commission shall adopt the rules necessary to implement
14 Chapter 1051, Health and Safety Code, as added by this Act; and

15 (2) the Department of State Health Services shall
16 develop the application and establish the procedures necessary to
17 implement Chapter 1051, Health and Safety Code, as added by this
18 Act.

19 SECTION 4. (a) Except as provided by Subsection (b), this
20 Act takes effect September 1, 2007.

21 (b) Section 1051.101 and Subchapters D, E, and F, Health and
22 Safety Code, as added by this Act, take effect January 1, 2008.