

By: Driver

H.B. No. 2832

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Texas Forensic Science Commission.

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

SECTION 1. Article 38.01, Code of Criminal Procedure, is amended by amending Sections 2, 4, 5, 6, and 7 and adding Section 8 to read as follows:

Sec. 2. DEFINITIONS [~~DEFINITION~~]. In this article:

(1) "Department" means the Department of Public Safety.

(2) "Director" and [7] "forensic analysis" have [has] the meanings [meaning] assigned by Article 38.35(a).

(3) "Forensic laboratory" means a crime laboratory under Article 38.35(a) that:

(A) is accredited by the department under Section 411.0205, Government Code; or

(B) is operated by the department.

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

(1) develop and implement a [~~reporting~~] system through which a person may [accredited laboratories, facilities, or entities] report and provide any available evidence of professional negligence or misconduct with respect to the conducting of forensic analysis by a forensic laboratory;

(2) determine whether an [require all laboratories,

1 ~~facilities, or entities that conduct forensic analyses to report~~
2 ~~professional negligence or misconduct to the commission; and~~

3 ~~[(3) investigate, in a timely manner, any]~~ allegation
4 of professional negligence or misconduct:

5 (A) is credible; and

6 (B) [~~that~~] would substantially affect the
7 integrity of the results of a forensic analysis conducted by a
8 forensic [~~an accredited~~] laboratory; and

9 (3) if an allegation is credible and substantive,
10 refer the allegation and all evidence submitted in support of the
11 allegation to the director [~~, facility, or entity~~].

12 (b) If the commission refers an allegation to the director,
13 the department shall immediately conduct, or contract with a person
14 or entity accredited by the American Society of Crime Laboratory
15 Directors to conduct, an investigation. If the allegation concerns
16 a forensic laboratory operated by the department, the department
17 shall immediately contract with a person or entity accredited by
18 the American Society of Crime Laboratory Directors to conduct the
19 investigation.

20 (c) An investigation under Subsection (b) [~~(a) (3)~~]:

21 (1) must include the preparation by the investigating
22 person or entity of a written report that identifies and also
23 describes the methods and procedures used to identify:

24 (A) the alleged professional negligence or
25 misconduct;

26 (B) whether the alleged professional negligence
27 or misconduct occurred; and

1 (C) whether the alleged professional negligence
2 or misconduct would substantially affect the integrity of the
3 results of a forensic analysis conducted by a forensic laboratory
4 ~~[any corrective action required of the laboratory, facility, or~~
5 ~~entity]; and~~

6 (2) may include ~~[one or more]:~~

7 (A) ~~[retrospective]~~ reexaminations of the
8 ~~[other]~~ forensic analyses conducted by the forensic laboratory ~~[,~~
9 ~~facility, or entity]~~ that are the subject of the allegation ~~[may~~
10 ~~involve the same kind of negligence or misconduct]; and~~

11 (B) recommendations for corrective action
12 ~~[follow-up evaluations of the laboratory, facility, or entity to~~
13 ~~review:~~

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

16 ~~[(ii) the conclusion of any retrospective~~
17 ~~reexamination under Paragraph (A)].~~

18 (d) ~~[(c)]~~ The commission ~~[by contract]~~ may not administer
19 oaths or issue subpoenas ~~[delegate the duties described by~~
20 ~~Subsections (a)(1) and (3) to any person the commission determines~~
21 ~~to be qualified to assume those duties].~~

22 ~~[(d) The commission may require that a laboratory,~~
23 ~~facility, or entity investigated under this section pay any costs~~
24 ~~incurred to ensure compliance with Subsection (b)(1).]~~

25 (e) The department ~~[commission]~~ shall make all
26 ~~[investigation]~~ reports completed under Subsection (c) ~~[(b)(1)]~~
27 available to the public. A report completed under Subsection (c)

1 ~~[(b)(1)]~~, in a subsequent civil or criminal proceeding, is not
2 prima facie evidence of the information or findings contained in
3 the report.

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

8 Sec. 6. ASSISTANCE. The department [~~Texas Legislative~~
9 ~~Council, the Legislative Budget Board, and The University of Texas~~
10 ~~at Austin~~] shall assist the commission in performing the
11 commission's duties by providing office space and other necessary
12 support.

13 Sec. 7. SUBMISSION. The department [~~commission~~] shall
14 submit any report received under Section 4(c) [~~4(a)(2) and any~~
15 ~~report prepared under Section 4(b)(1)] to the governor, the~~
16 lieutenant governor, and the speaker of the house of
17 representatives not later than December 1 of each even-numbered
18 year.

19 Sec. 8. RULES. The department may adopt rules to administer
20 its powers and duties under this article.

21 SECTION 2. Section 411.0205, Government Code, is amended by
22 adding Subsection (h) to read as follows:

23 (h) The director may suspend the accreditation of a forensic
24 laboratory for:

25 (1) failing to fully cooperate with an investigation
26 under Article 38.01, Code of Criminal Procedure;

27 (2) failing to fully implement the recommendations for

1 corrective action provided under Article 38.01, Code of Criminal
2 Procedure; or

3 (3) any reason the director considers appropriate.

4 SECTION 3. Subchapter C, Chapter 552, Government Code, is
5 amended by adding Section 552.148 to read as follows:

6 Sec. 552.148. EXCEPTION: INFORMATION RELATING TO
7 INVESTIGATION BY TEXAS FORENSIC SCIENCE COMMISSION. (a)
8 Information held by the Texas Forensic Science Commission or a
9 person performing an investigative function of the commission that
10 deals with an allegation or investigation of professional
11 negligence or misconduct is excepted from the requirements of
12 Section 552.021 if release of the information would interfere with
13 an investigation of the alleged professional negligence or
14 misconduct.

15 (b) An internal record or notation of the Texas Forensic
16 Science Commission or a person performing an investigation at the
17 direction of the commission that is maintained for internal use in
18 matters relating to an investigation described by Subsection (a) is
19 excepted from the requirements of Section 552.021 if release of the
20 internal record or notation would interfere with the investigation.

21 SECTION 4. This Act takes effect September 1, 2007.