

By: Farabee

H.B. No. 814

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the registration and regulation of certain collection  
3 facilities and certified collectors that provide collection  
4 services in this state; providing penalties.

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

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

9 SUBTITLE A. GENERAL PROVISIONS

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

12 SUBTITLE B. DEPARTMENT FUNCTIONS

13 CHAPTER 1051. COLLECTION FACILITIES AND CERTIFIED COLLECTORS

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 1051.001. DEFINITIONS. In this chapter:

16 (1) "Certified collector" or "certified trainer"  
17 means an individual registered under this chapter to perform  
18 collection services.

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

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

23 (4) "Executive commissioner" means the executive  
24 commissioner of the Health and Human Services Commission.

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

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

9           (2) testing of the specimen at an instrumented initial  
10 test facility or by the use of a Federal Drug Administration  
11 approved 510(k) cleared point of collection test device and the use  
12 of a secondary testing method for confirming positive results under  
13 Federal Drug Administration regulations; or

14           (3) testing of the specimen for the presence of  
15 alcohol in breath, oral fluid, or urine.

16       (b) The term does not include services that involve invasive  
17 procedures.

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 organization recognized by the department or is  
6 certified by a collector trainer who is certified by a national  
7 certifying organization recognized by the department or who has  
8 received documented drug collection training in a drug testing  
9 laboratory training program;

10 (3) presents evidence satisfactory to the department  
11 that the applicant's collection facility maintains a collection  
12 site that meets the requirements of 49 C.F.R. Sections 40.41 and  
13 40.43; and

14 (4) maintains professional liability insurance in  
15 coverage amounts that meet at least the minimum limits of coverage  
16 required by executive commissioner rule.

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

19 (b) The department shall adopt a system under which  
20 certificates of registration expire and are renewed on various  
21 dates.

22 (c) Not later than the 60th day before the date a person's  
23 certificate of registration is scheduled to expire, the department  
24 shall send written notice of the impending expiration to the person  
25 at the person's last known address according to the records of the  
26 department.

27 (d) A person whose certificate of registration has expired

1 may not make a representation for which a certificate of  
2 registration is required under Section 1051.101 or perform  
3 collection services until the certificate has been renewed.

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

7 (b) The application must be accompanied by evidence that the  
8 applicant:

9 (1) has successfully completed the continuing  
10 education courses required by executive commissioner rule;

11 (2) has maintained eligibility for registration under  
12 this chapter; and

13 (3) has maintained liability insurance coverage as  
14 required by executive commissioner rule.

15 (c) A person who is otherwise eligible to renew a  
16 certificate of registration may renew an unexpired certificate by  
17 paying the required renewal fee to the department before the  
18 expiration date of the certificate.

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

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

27 (f) A person whose certificate of registration has been

1 expired for one year or more may not renew the certificate. The  
2 person may obtain a new certificate of registration by complying  
3 with the requirements and procedures, including the examination  
4 requirements, for an original certificate.

5 Sec. 1051.105. CONTINUING EDUCATION. (a) The department  
6 shall recognize continuing education programs for registrants  
7 under this chapter. A continuing education program may include a  
8 symposium offered by a trade organization or in-house training  
9 offered by a certified collector trainer.

10 (b) A person registered under this chapter shall:

11 (1) participate in continuing education programs to  
12 the extent required by the department to keep the person's  
13 certificate of registration; and

14 (2) annually complete at least four hours of  
15 continuing education on state and federal regulation of drug and  
16 alcohol testing.

17 [Sections 1051.106-1051.150 reserved for expansion]

18 SUBCHAPTER D. DISCIPLINARY PROCEDURES

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

20 The department shall deny an application for a certificate of  
21 registration, suspend or revoke a certificate of registration, or  
22 reprimand a person who is registered under this chapter if the  
23 person:

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

26 (2) sells, barter, or offers to sell or barter a  
27 certificate of registration;

1           (3) violates a rule adopted by the executive  
2 commissioner; or

3           (4) violates Section 1051.101.

4           Sec. 1051.152. INVESTIGATION. (a) The department shall  
5 investigate:

6           (1) a person who engages in a practice that violates  
7 this chapter; and

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

10           (b) For a complaint related to collection and testing, the  
11 department in conducting an investigation shall consult with a peer  
12 review committee composed of collection service industry  
13 professionals who are registered with the department under this  
14 chapter and in good standing. To ensure an impartial evaluation by  
15 the peer review committee and to prevent personal gain by a  
16 committee member's participation in a consultation related to a  
17 competitor, the department may not disclose to the peer review  
18 committee the name of the person being investigated.

19           Sec. 1051.153. PROBATION. The department may place on  
20 probation a person whose certificate of registration is suspended.  
21 If the suspension is probated, the department may require the  
22 person to:

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

25           (2) limit practice to the areas prescribed by the  
26 department; or

27           (3) continue or review professional education until



1 the person attains a degree of skill satisfactory to the department  
2 in those areas that are the basis of the probation.

3 Sec. 1051.154. HEARING. (a) A person whose application for  
4 a certificate of registration is denied, whose certificate of  
5 registration is suspended or revoked, or who is reprimanded is  
6 entitled to a hearing before the department if the person submits to  
7 the department a written request for the hearing.

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

10 Sec. 1051.155. EMERGENCY SUSPENSION. (a) The department  
11 shall temporarily suspend the certificate of registration of a  
12 certificate holder if the department determines from the evidence  
13 or information presented to it that continued practice by the  
14 certificate holder would constitute a continuing and imminent  
15 threat to the public welfare.

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

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

21 (2) a hearing is held as soon as practicable under this  
22 chapter and Chapter 2001, Government Code.

23 (c) The State Office of Administrative Hearings shall hold a  
24 preliminary hearing not later than the 14th day after the date of  
25 the temporary suspension to determine if there is probable cause to  
26 believe that a continuing and imminent threat to the public welfare  
27 still exists. A final hearing on the matter shall be held not later

1 than the 61st day after the date of the temporary suspension.

2 [Sections 1051.156-1051.200 reserved for expansion]

3 SUBCHAPTER E. ADMINISTRATIVE PENALTY

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

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

10 (b) The amount shall be based on:

- 11 (1) the seriousness of the violation;  
12 (2) the history of previous violations;  
13 (3) the amount necessary to deter a future violation;  
14 (4) efforts made to correct the violation; and  
15 (5) any other matter that justice requires.

16 Sec. 1051.203. NOTICE OF VIOLATION AND PENALTY. If, after  
17 investigation of a possible violation and the facts surrounding the  
18 possible violation, the department determines that a violation  
19 occurred, the department shall give written notice of the violation  
20 to the person alleged to have committed the violation. The notice  
21 must:

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

1 Sec. 1051.204. PENALTY TO BE PAID OR HEARING REQUESTED. (a)

2 Not later than the 20th day after the date the person receives the  
3 notice, the person may:

4 (1) accept the department's determination and proposed  
5 administrative penalty; or

6 (2) make a written request for a hearing on that  
7 determination.

8 (b) If the person accepts the department's determination,  
9 the commissioner of public health or the commissioner's designee by  
10 order shall approve the determination and assess the proposed  
11 penalty.

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

14 (1) set a hearing;

15 (2) give written notice of the hearing to the person;

16 and

17 (3) designate a hearings examiner to conduct the  
18 hearing.

19 (b) The hearings examiner shall:

20 (1) make findings of fact and conclusions of law; and

21 (2) promptly issue to the commissioner of state health  
22 services or the commissioner's designee a proposal for decision as  
23 to the occurrence of the violation and the amount of any proposed  
24 administrative penalty.

25 Sec. 1051.206. DECISION. (a) Based on the findings of  
26 fact, conclusions of law, and proposal for decision, the  
27 commissioner of state health services or the commissioner's

1 designee by order may determine that:

2 (1) a violation occurred and assess an administrative  
3 penalty; or

4 (2) a violation did not occur.

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

7 (1) separate statements of the findings of fact and  
8 conclusions of law;

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

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

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

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

15 (1) pay the administrative penalty;

16 (2) pay the penalty and file a petition for judicial  
17 review contesting the fact of the violation, the amount of the  
18 penalty, or both; or

19 (3) without paying the penalty, file a petition for  
20 judicial review contesting the fact of the violation, the amount of  
21 the penalty, or both.

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

24 (1) stay enforcement of the penalty by:

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

27 (B) giving to the court a supersedeas bond

1 approved by the court that:

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

3 (ii) is effective until judicial review of  
4 the order is final; or

5 (2) request the court to stay enforcement of the  
6 penalty by:

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

10 (B) giving a copy of the affidavit to the  
11 department by certified mail.

12 (c) If the department receives a copy of an affidavit under  
13 Subsection (b)(2), the department may file with the court, not  
14 later than the fifth day after the date the department receives the  
15 copy, a contest to the affidavit.

16 (d) The court shall hold a hearing on the facts alleged in  
17 the affidavit as soon as practicable and shall stay enforcement of  
18 the penalty on finding that the alleged facts are true. The person  
19 who files an affidavit has the burden of proving that the person is  
20 financially unable to pay the amount of the penalty and to give a  
21 supersedeas bond.

22 Sec. 1051.208. DETERMINATION BY COURT. (a) If the court  
23 sustains the occurrence of the violation, the court may uphold or  
24 reduce the amount of the administrative penalty and order the  
25 person to pay the full or reduced penalty.

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

1       Sec. 1051.209. REMITTANCE OF PENALTY AND INTEREST. (a) If  
2 after judicial review the administrative penalty is reduced or not  
3 imposed by the court, the court shall, after the judgment becomes  
4 final:

5           (1) order that the appropriate amount, plus accrued  
6 interest, be remitted to the person if the person paid the amount of  
7 the penalty; or

8           (2) order the release of the bond in full if the  
9 penalty is not imposed or order the release of the bond after the  
10 person pays the penalty imposed if the person posted a supersedeas  
11 bond.

12       (b) The interest paid under Subsection (a)(1) is the rate  
13 charged on loans to depository institutions by the New York Federal  
14 Reserve Bank. The interest shall be paid for the period beginning  
15 on the date the penalty is paid and ending on the date the penalty is  
16 remitted.

17       Sec. 1051.210. COLLECTION OF PENALTY. (a) In this section,  
18 "reasonable expenses and costs" includes expenses incurred by the  
19 department and the attorney general in the investigation,  
20 initiation, or prosecution of an action, including reasonable  
21 investigative costs, court costs, attorney's fees, witness fees,  
22 and deposition expenses.

23       (b) If the person does not pay the amount of the  
24 administrative penalty and the enforcement of the penalty is not  
25 stayed, the department may refer the matter to the attorney general  
26 for collection of the amount of the penalty.

27       (c) The department may assess reasonable expenses and costs

1 against a person in an administrative hearing if, as a result of the  
2 hearing, an administrative penalty is assessed against the person.  
3 The person shall pay expenses and costs assessed under this  
4 subsection not later than the 30th day after the date the order of  
5 the commissioner of state health services or the commissioner's  
6 designee requiring the payment of expenses and costs is final. The  
7 department may refer the matter to the attorney general for  
8 collection of expenses and costs.

9 (d) If the attorney general brings an action against a  
10 person to enforce an administrative penalty assessed under this  
11 chapter and the person is found liable for an administrative  
12 penalty, the attorney general may recover, on behalf of the  
13 attorney general and the department, reasonable expenses and costs.

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

17 [Sections 1051.212-1051.250 reserved for expansion]

18 SUBCHAPTER F. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

19 Sec. 1051.251. ENFORCEMENT PROCEEDINGS; INJUNCTION. (a)  
20 The department, the attorney general, or the district or county  
21 attorney for the county in which an alleged violation of this  
22 chapter occurs shall, on receipt of a verified complaint, bring an  
23 appropriate administrative or judicial proceeding to enforce this  
24 chapter or a rule adopted under this chapter.

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

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

5           SECTION 3. Not later than January 1, 2010:

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

9           (2) the Department of State Health Services shall  
10 develop the application and establish the procedures necessary to  
11 implement Chapter 1051, Health and Safety Code, as added by this  
12 Act.

13           SECTION 4. (a) Except as provided by Subsection (b), this  
14 Act takes effect September 1, 2009.

15           (b) Section 1051.101 and Subchapters D, E, and F, Health and  
16 Safety Code, as added by this Act, take effect January 1, 2010.