

By: Miller of Comal

H.B. No. 2858

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the admissibility of a certificate of analysis or a
3 chain of custody affidavit in a criminal proceeding.

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

5 SECTION 1. Article 38.41, Code of Criminal Procedure, is
6 amended by amending Sections 1, 3, 4, and 5 and adding Section 6 to
7 read as follows:

8 Sec. 1. A certificate of analysis that complies with this
9 article is admissible in evidence on behalf of the state or the
10 defendant to establish the results of a laboratory analysis of
11 physical evidence [~~conducted by or for a law enforcement agency~~]
12 without the necessity of the analyst personally appearing in court.

13 Sec. 3. A certificate of analysis under this article must
14 contain the following information certified under oath:

15 (1) the name, address, and phone number [~~names~~] of:

16 (A) the analyst who performed the test or
17 procedure;

18 (B) [~~and~~] the laboratory employing the analyst;
19 and

20 (C) the name of an analyst who supervised or
21 witnessed the test or procedure and who verified or approved the
22 results of the analysis and the interpretation of the data obtained
23 from the test or procedure;

24 (2) a statement that the laboratory employing the

1 analyst is accredited by a nationally recognized board or
2 association that accredits scientific [~~crime~~] laboratories;

3 (3) a description of the analyst's educational
4 background, training, and experience;

5 (4) a statement that the analyst's duties of
6 employment included the analysis of physical evidence [~~for one or~~
7 ~~more law enforcement agencies~~];

8 (5) a general description of the tests or procedures
9 conducted by the analyst;

10 (6) a specific explanation of how the tests or
11 procedures were applied to the physical evidence;

12 (7) a statement that the tests or procedures used were
13 reliable and approved by the laboratory employing the analyst;

14 (8) a statement that the results of the analysis and
15 the interpretation of the data obtained from the test or procedure
16 were verified or approved by a supervising or witnessing analyst;

17 and

18 (9) [~~(7)~~] the results of the analysis.

19 Sec. 4. Not later than the 30th [~~20th~~] day before the trial
20 begins in a proceeding in which a certificate of analysis under this
21 article is to be introduced, the certificate must be filed with the
22 clerk of the court and a copy must be provided by fax, hand
23 delivery, or certified mail, return receipt requested, to the
24 opposing party. The certificate is not admissible under Section 1
25 if, not later than the 15th [~~10th~~] day after the date the opposing
26 party receives the copy of the certificate [~~before the trial~~
27 ~~begins~~], the opposing party files a written objection to the use of

1 the certificate with the clerk of the court and provides a copy of
2 the objection by fax, hand delivery, or certified mail, return
3 receipt requested, to the offering party.

4 Sec. 5. A certificate of analysis is sufficient for
5 purposes of this article if it uses the following form or if it
6 otherwise substantially complies with this article:

7 CERTIFICATE OF ANALYSIS

8 BEFORE ME, the undersigned authority, personally appeared
9 _____, who being duly sworn, stated as
10 follows:

11 My name is _____. I am of sound mind, over the age of 18
12 years, capable of making this affidavit, and personally acquainted
13 with the facts stated in this affidavit.

14 I am employed by the _____, which was authorized to
15 conduct the analysis referenced in this affidavit. Part of my
16 duties for this laboratory involved the analysis of physical
17 evidence [~~for one or more law enforcement agencies~~]. This
18 laboratory is accredited by _____.

19 My educational background is as follows: (description of
20 educational background)

21 My training and experience that qualify me to perform the
22 tests or procedures referred to in this affidavit and determine the
23 results of those tests or procedures are as follows: (description
24 of training and experience)

25 I received the physical evidence listed on laboratory report
26 no. _____ (attached) on the ___ day of _____, 20___. On
27 the date indicated in the laboratory report, I conducted the

1 following tests or procedures on the physical evidence: (general
2 description of tests and procedures and specific explanation of the
3 application of a test or procedure to the physical evidence)

4 The tests and procedures used were reliable and approved by
5 the laboratory. The results are as indicated on the lab report. The
6 results of the analysis and the interpretation of the data I
7 obtained have been verified or approved by _____, a
8 supervising or witnessing analyst.

9 _____
10 Affiant

11 SWORN TO AND SUBSCRIBED before me on the ____ day of
12 _____, 20____.

13 _____
14 Notary Public, State of Texas

15 Sec. 6. In this article, "physical evidence" has the
16 meaning assigned by Article 38.35.

17 SECTION 2. Article 38.42, Code of Criminal Procedure, is
18 amended by amending Section 4 and adding Section 6 to read as
19 follows:

20 Sec. 4. Not later than the 30th [~~20th~~] day before the trial
21 begins in a proceeding in which a chain of custody affidavit under
22 this article is to be introduced, the affidavit must be filed with
23 the clerk of the court and a copy must be provided by fax, hand
24 delivery, or certified mail, return receipt requested, to the
25 opposing party. The affidavit is not admissible under Section 1 if,
26 not later than the 15th [~~10th~~] day after the date the opposing party
27 receives the copy of the affidavit [~~before the trial begins~~], the

1 opposing party files a written objection to the use of the affidavit
2 with the clerk of the court and provides a copy of the objection by
3 fax, hand delivery, or certified mail, return receipt requested, to
4 the offering party.

5 Sec. 6. In this article, "physical evidence" has the
6 meaning assigned by Article 38.35.

7 SECTION 3. The change in law made by this Act applies only
8 to the admissibility of a certificate of analysis or chain of
9 custody affidavit in a criminal proceeding that commences on or
10 after the effective date of this Act. The admissibility of a
11 certificate of analysis or chain of custody affidavit in a criminal
12 proceeding that commenced before the effective date of this Act is
13 governed by the law in effect when the proceeding commenced, and the
14 former law is continued in effect for that purpose.

15 SECTION 4. This Act takes effect September 1, 2009.