

By: Madden

H.B. No. 3383

Substitute the following for H.B. No. 3383:

By: Driver

C.S.H.B. No. 3383

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to private DNA laboratories performing forensic analyses  
3 on samples or specimens related to the investigation or prosecution  
4 of certain criminal offenses.

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

6 SECTION 1. The heading to Subchapter G, Chapter 411,  
7 Government Code, is amended to read as follows:

8 SUBCHAPTER G. DNA [~~DATABASE SYSTEM~~]

9 SECTION 2. Subchapter G, Chapter 411, Government Code, is  
10 amended by adding Sections 411.155 and 411.156 to read as follows:

11 Sec. 411.155. FORENSIC ANALYSES PERFORMED BY PRIVATE DNA  
12 LABORATORIES: CERTAIN OFFENSES AGAINST PROPERTY. (a) This  
13 section applies only to a sample or specimen related to the  
14 investigation or prosecution of an offense under Chapter 28, 29,  
15 30, or 31, Penal Code.

16 (b) A law enforcement agency may submit a sample or specimen  
17 described by Subsection (a) to a private DNA laboratory for  
18 forensic analysis if:

19 (1) the private DNA laboratory is accredited by:

20 (A) the department; and

21 (B) the American Society of Crime Laboratory  
22 Directors, Forensic Quality Services International, or any other  
23 nonprofit professional association of persons actively involved in  
24 forensic science that is nationally recognized within the forensic

1 science community; and

2 (2) the law enforcement agency pays all costs of the  
3 analysis.

4 Sec. 411.156. QUALITY ASSURANCE REVIEW FOR FORENSIC  
5 ANALYSES PERFORMED BY PRIVATE DNA LABORATORIES. (a) In this  
6 section, "analyst" means a person employed at a DNA laboratory who  
7 is qualified to perform some or all aspects of a forensic DNA  
8 analysis on a sample or specimen derived from a human body, physical  
9 evidence, or a crime scene.

10 (b) Subject to Subsection (c), with respect to forensic  
11 analyses performed by a private DNA laboratory under Section  
12 411.155, a public DNA laboratory that services the geographic area  
13 where the law enforcement agency is located shall perform the  
14 quality assurance reviews required by the Federal Bureau of  
15 Investigation (FBI).

16 (c) If the public DNA laboratory does not have the personnel  
17 capacity to perform the necessary quality assurance reviews and if  
18 FBI regulations allow contractors to be used for that purpose, the  
19 public DNA laboratory shall use contractors to perform the quality  
20 assurance reviews required by the FBI. The law enforcement agency  
21 requesting the DNA testing shall pay the cost of the quality  
22 assurance reviews.

23 (d) If FBI regulations do not allow contractors to be used  
24 as described by Subsection (c) or if contractors are not available  
25 for that purpose, the public DNA laboratory shall enter into a  
26 barter agreement with the private DNA laboratory to enable  
27 personnel at the public DNA laboratory to perform the necessary

1 quality assurance reviews. Under the barter agreement, the private  
2 DNA laboratory shall perform forensic DNA analyses for the public  
3 DNA laboratory in relation to the investigation or prosecution of a  
4 variety of offenses:

5 (1) at no cost to the public DNA laboratory; and

6 (2) in a volume necessary to enable the public DNA  
7 laboratory to perform all quality assurance reviews made necessary  
8 by this section.

9 (e) The barter agreement required by Subsection (d) must be  
10 calculated based on the following assumptions:

11 (1) unless the analyst has other testing-related  
12 duties, an analyst employed at the public DNA laboratory is able to  
13 perform quality assurance reviews each week on 50 samples or  
14 specimens analyzed by the private DNA laboratory;

15 (2) the public DNA laboratory is not required to  
16 perform a quality assurance review on a sample or specimen that  
17 fails to generate a DNA profile meeting the requirements necessary  
18 for uploading the sample or specimen to the CODIS database;

19 (3) the private DNA laboratory must agree to perform a  
20 set amount of forensic analyses, as calculated under Subsection  
21 (f), for the public DNA laboratory at no charge not later than the  
22 60th day after the date the private DNA laboratory receives the  
23 samples or specimens;

24 (4) subject to Subdivision (2), the public DNA  
25 laboratory must perform a quality assurance review on each of the  
26 forensic analyses performed by the private DNA laboratory under  
27 Subdivision (3); and

1           (5) the public DNA laboratory must send the private  
2 DNA laboratory different types or categories of samples or  
3 specimens, such as a category relating to unscreened sexual assault  
4 evidence collection kits, in a proportion equal to the different  
5 types or categories of samples and specimens received for purposes  
6 of analysis by the public DNA laboratory during the 12-month period  
7 preceding the date of the agreement.

8           (f) The set amount of forensic analyses performed at no  
9 charge by a private DNA laboratory under Subsection (e)(3) as part  
10 of the barter agreement is equal to the total number of samples or  
11 specimens submitted to the public DNA laboratory for quality  
12 assurance review, divided by 50, which then must be multiplied by  
13 the total number of samples or specimens for which the public DNA  
14 laboratory has performed forensic analyses during the 12-month  
15 period preceding the date of the agreement, divided by the number of  
16 analysts employed at the public DNA laboratory during that period,  
17 and further divided by 52. The amount must be rounded to the  
18 nearest whole number.

19           (g) The public DNA laboratory is entitled to retain any  
20 costs saved as a result of the barter agreement and shall use the  
21 savings, if any, to expedite forensic analyses of samples or  
22 specimens related to violent offenses.

23           SECTION 3. This Act takes effect September 1, 2011.