

By: Phillips

H.B. No. 3748

A BILL TO BE ENTITLED

AN ACT

1
2 relating to creating the division of forensic services; abolishing
3 the Texas Forensic Science Commission and transferring certain
4 duties of the commission and the Department of Public Safety to the
5 division of forensic services.

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

7 SECTION 1. Chapter 1001, Health and Safety Code, is amended
8 by adding Subchapter E to read as follows:

9 SUBCHAPTER E. Division of Forensic Services

10 Sec. 1001.101. OFFICE ESTABLISHED. The division of
11 forensic services is a division within the department.

12 Sec. 1001.102. APPOINTMENT OF THE DIRECTOR OF THE DIVISION
13 OF FORENSIC SERVICES; DUTIES.

14 (a) The executive commissioner shall appoint a director for
15 the division of forensic services.

16 (b) The division director shall implement this subchapter
17 and the duties imposed on the director by rule adopted by the
18 executive commissioner.

19 Sec. 1001.103. GUIDELINES. The division director shall
20 recommend, and the executive commissioner shall adopt, guidelines
21 for medical examiners and coroners in this state.

22 Sec. 1001.104. QUALIFICATIONS; MINIMUM STANDARDS. The
23 division director shall recommend, and the executive commissioner
24 shall adopt, qualifications for persons to act as a medical

1 examiner or coroner in this state and minimum standards for the
2 performance of the duties of a medical examiner or coroner.

3 Sec. 1001.105. CERTIFICATION REQUIRED. (a) A person must
4 be certified by the office of forensic services as meeting the
5 qualifications and minimum standards imposed under Section
6 1001.104 to act as a medical examiner or coroner in this state.

7 (b) The executive commissioner shall prescribe a form to be
8 used by an applicant for certification under this section.

9 (c) The executive commissioner may prescribe and the
10 division director may collect a fee for the certification of a
11 medical examiner or coroner under this section.

12 Sec. 1001.106. AUTOPSY FEE. The executive commissioner by
13 rule may establish a reasonable fee to be assessed against a person
14 who requests the performance of an autopsy in this state, other than
15 a person required to request the performance of an autopsy under
16 state or federal law.

17 Sec. 1001.107. FORENSIC SCIENCE INTEGRITY. (a) In this
18 section, "law enforcement agency" has the meaning assigned by
19 Article 2.132(a)(1), Code of Criminal Procedure.

20 (b) The division director shall recommend, and the
21 executive commissioner shall adopt, guidelines for collecting
22 forensic evidence and for preserving the integrity of forensic
23 evidence at all stages of a criminal investigation and for the
24 storage of forensic evidence.

25 (c) Each law enforcement agency must comply with guidelines
26 adopted under Subsection (b) relating to the collection and
27 preservation of forensic evidence in a criminal investigation.

1 Sec. 1001.108. FORENSIC SCIENCE DUTIES. (a) The director
2 of the division of forensic services shall:

3 (1) develop and implement a reporting system through
4 which accredited laboratories, facilities, or entities report
5 professional negligence or misconduct;

6 (2) require all laboratories, facilities, or entities
7 that conduct forensic analyses to report professional negligence or
8 misconduct to the division director; and

9 (3) investigate, in a timely manner, any allegation of
10 professional negligence or misconduct that would substantially
11 affect the integrity of the results of a forensic analysis
12 conducted by an accredited laboratory, facility, or entity.

13 (b) An investigation under Subsection (a)(3):

14 (1) must include the preparation of a written report
15 that identifies and describes the methods and procedures used to
16 identify:

17 (A) the alleged negligence or misconduct;

18 (B) whether negligence or misconduct occurred;

19 and

20 (C) any corrective action required of the
21 laboratory, facility, or entity; and

22 (2) may include one or more:

23 (A) retrospective reexaminations of other
24 forensic analyses conducted by the laboratory, facility, or entity
25 that may involve the same kind of negligence or misconduct; and

26 (B) follow-up evaluations of the laboratory,
27 facility, or entity to review:

1 (i) the implementation of any corrective
2 action required under Subdivision (1)(C); or

3 (ii) the conclusion of any retrospective
4 reexamination under Paragraph (A).

5 (c) The division director by contract may delegate the
6 duties described by Subsections (a)(1) and (3) to any person the
7 division director determines to be qualified to assume those
8 duties.

9 (d) The division director may require that a laboratory,
10 facility, or entity investigated under this section pay any costs
11 incurred to ensure compliance with Subsection (b)(1).

12 (e) The division director shall make all investigation
13 reports completed under Subsection (b)(1) available to the public.
14 A report completed under Subsection (b)(1), in a subsequent civil
15 or criminal proceeding, is not prima facie evidence of the
16 information or findings contained in the report.

17 Sec. 1001.109. SUBMISSION OF REPORT. The division director
18 shall submit any report received under Section 1001.108(a)(2) and
19 any report prepared under Section 1001.108(b)(1) to the governor,
20 the lieutenant governor, and the speaker of the house of
21 representatives not later than December 1 of each even-numbered
22 year.

23 Sec. 1001.110. CRIME LABORATORY ACCREDITATION PROCESS. (a)
24 In this section, "crime laboratory," "forensic analysis," and
25 "physical evidence" have the meanings assigned by Article 38.35,
26 Code of Criminal Procedure.

27 (b) The executive commissioner by rule:

1 (1) shall establish an accreditation process for crime
2 laboratories and other entities conducting forensic analyses of
3 physical evidence for use in criminal proceedings to be implemented
4 by the division director; and

5 (2) may modify or remove a crime laboratory exemption
6 under this section if the division director determines that the
7 underlying reason for exemption no longer applies.

8 (c) As part of the accreditation process established and
9 implemented under Subsection (b), the division director may:

10 (1) establish minimum standards that relate to the
11 timely production of a forensic analysis to the agency requesting
12 the analysis and that are consistent with this section and code;

13 (2) validate or approve specific forensic methods or
14 methodologies; and

15 (3) establish procedures, policies, and practices to
16 improve the quality of forensic analyses conducted in this state.

17 (d) The division director may require that a laboratory,
18 facility, or entity required to be accredited under this section
19 pay any costs incurred to ensure compliance with the accreditation
20 process.

21 (e) The executive commissioner by rule may exempt from the
22 accreditation process established and implemented under Subsection
23 (b) a crime laboratory conducting a forensic analysis or a type of
24 analysis, examination, or test if the executive commissioner
25 determines that:

26 (1) independent accreditation is unavailable or
27 inappropriate for the laboratory or the type of analysis,

1 examination, or test performed by the laboratory;

2 (2) the type of analysis, examination, or test
3 performed by the laboratory is admissible under a well-established
4 rule of evidence or a statute other than Article 38.35, Code of
5 Criminal Procedure;

6 (3) the type of analysis, examination, or test
7 performed by the laboratory is routinely conducted outside of a
8 crime laboratory by a person other than an employee of the crime
9 laboratory; or

10 (4) the laboratory:

11 (A) is located outside this state or, if located
12 in this state, is operated by a governmental entity other than the
13 state or a political subdivision of the state; and

14 (B) was accredited at the time of the analysis
15 under an accreditation process with standards that meet or exceed
16 the relevant standards of the process established by the division
17 director under Subsection (c).

18 (f) The division director may at any reasonable time enter
19 and inspect the premises or audit the records, reports, procedures,
20 or other quality assurance matters of a crime laboratory that is
21 accredited or seeking accreditation under this section.

22 (g) The division director may collect costs incurred under
23 this section for accrediting, inspecting, or auditing a crime
24 laboratory.

25 (h) If the division director provides a copy of an audit or
26 other report made under this section, the division director may
27 charge \$6 for the copy, in addition to any other cost permitted

1 under Chapter 552, Government Code, or a rule adopted under that
2 chapter.

3 (i) Funds collected under this section shall be deposited in
4 the state treasury to the credit of the forensic services fund, and
5 money deposited to the forensic services fund under this subsection
6 may be used only to defray the cost of administering this
7 subchapter.

8 SECTION 2. The following are repealed:

9 (1) Article 38.01, Code of Criminal Procedure; and

10 (2) Section 411.0205, Government Code.

11 SECTION 3. Not later than January 1, 2012, the executive
12 commissioner of the Health and Human Services Commission shall:

13 (1) appoint a division director, as required by
14 Section 1001.102, Health and Safety Code, as added by this Act; and

15 (2) adopt all necessary rules to:

16 (A) implement Subchapter E, Chapter 1001, Health
17 and Safety Code, as added by this Act;

18 (B) impose duties on the division director, as
19 required by Section 1001.102(b), Health and Safety Code, as added
20 by this Act;

21 (C) prescribe a form for certification, as
22 required by Section 1001.105, Health and Safety Code, as added by
23 this Act; and

24 (D) impose a fee to be assessed on the
25 performance of autopsies in this state, as required by Section
26 1001.106, Health and Safety Code, as added by this Act.

27 SECTION 4. On the effective date of this Act:

1 (1) all powers, duties, and activities related to the
2 investigation of professional negligence or misconduct at an
3 accredited crime laboratory under Article 38.01, Code of Criminal
4 Procedure, as repealed by this Act, are transferred from the Texas
5 Forensic Science Commission to the division of forensic services;

6 (2) all property and records in the custody of the
7 Texas Forensic Science Commission that relate to a transferred
8 power, duty, or activity and all funds appropriated by the
9 legislature for the power, duty, or activity, are transferred to
10 the division of forensic services; and

11 (3) a rule or form adopted by the director of the
12 Public Safety Commission or the public safety director of the
13 Department of Public Safety that relates to the crime laboratory
14 accreditation process under former Section 411.0205, Government
15 Code, as repealed by this Act, is a rule or form applicable to the
16 division of forensic services and remains in effect until modified
17 by the executive commissioner of the Health and Human Services
18 Commission.

19 SECTION 5. This Act takes effect September 1, 2011.