

By: Hinojosa
(Hunter)

S.B. No. 1658

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the duties of and investigations conducted by the Texas
3 Forensic Science Commission, the administrative attachment of the
4 Texas Forensic Science Commission to Sam Houston State University,
5 and the accreditation of criminal laboratories by the Department of
6 Public Safety of the State of Texas.

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

8 SECTION 1. Section 2, Article 38.01, Code of Criminal
9 Procedure, is amended to read as follows:

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

11 (1) "Accredited field of forensic science" means a
12 specific forensic method or methodology validated or approved by
13 the public safety director of the Department of Public Safety under
14 Section 411.0205(b-1)(2), Government Code, as part of the
15 accreditation process for crime laboratories established by rule
16 under Section 411.0205(b) of that code.

17 (2) "Commission" means the Texas Forensic Science
18 Commission.

19 (3) "Crime laboratory" has the meaning assigned by
20 Article 38.35.

21 (4) "Forensic analysis" means a medical, chemical,
22 toxicologic, ballistic, or other expert examination or test
23 performed on physical evidence, including DNA evidence, for the
24 purpose of determining the connection of the evidence to a criminal

1 action [~~,"forensic analysis" has the meaning assigned by Article~~
2 ~~38.35(a)~~].

3 SECTION 2. Subsections (a) and (b), Section 3, Article
4 38.01, Code of Criminal Procedure, are amended to read as follows:

5 (a) The commission is composed of the following seven [~~nine~~]
6 members [~~+~~

7 [~~(1) four members~~] appointed by the governor:

8 (1) five who [~~(A) two of whom~~] must have expertise in
9 the field of forensic science;

10 (2) [~~(B)~~] one who [~~of whom~~] must be a prosecuting
11 attorney that the governor selects from a list of 10 names submitted
12 by the Texas District and County Attorneys Association; and

13 (3) [~~(C)~~] one who [~~of whom~~] must be a defense attorney
14 that the governor selects from a list of 10 names submitted by the
15 Texas Criminal Defense Lawyers Association [~~+~~

16 [~~(2) three members appointed by the lieutenant~~
17 ~~governor:~~

18 [~~(A) one of whom must be a faculty member or staff~~
19 ~~member of The University of Texas who specializes in clinical~~
20 ~~laboratory medicine selected from a list of 10 names submitted to~~
21 ~~the lieutenant governor by the chancellor of The University of~~
22 ~~Texas System;~~

23 [~~(B) one of whom must be a faculty member or staff~~
24 ~~member of Texas A&M University who specializes in clinical~~
25 ~~laboratory medicine selected from a list of 10 names submitted to~~
26 ~~the lieutenant governor by the chancellor of The Texas A&M~~
27 ~~University System;~~

1 [~~(C) one of whom must be a faculty member or staff~~
2 ~~member of Texas Southern University who has expertise in~~
3 ~~pharmaceutical laboratory research selected from a list of 10 names~~
4 ~~submitted to the lieutenant governor by the chancellor of Texas~~
5 ~~Southern University; and~~

6 [~~(3) two members appointed by the attorney general;~~

7 [~~(A) one of whom must be a director or division~~
8 ~~head of the University of North Texas Health Science Center at Fort~~
9 ~~Worth Missing Persons DNA Database; and~~

10 [~~(B) one of whom must be a faculty or staff member~~
11 ~~of the Sam Houston State University College of Criminal Justice and~~
12 ~~have expertise in the field of forensic science or statistical~~
13 ~~analyses selected from a list of 10 names submitted to the~~
14 ~~lieutenant governor by the chancellor of Texas State University~~
15 ~~System].~~

16 (b) Each member of the commission serves a two-year term.
17 The terms [~~term~~] of the members appointed under Subsection
18 [~~Subsections~~] (a)(1) expire [~~and (2) expires~~] on September 1 of
19 each even-numbered [~~odd-numbered~~] year. The terms [~~term~~] of the
20 members appointed under Subsections (a)(2) and [~~Subsection~~] (a)(3)
21 expire [~~expires~~] on September 1 of each odd-numbered
22 [~~even-numbered~~] year.

23 SECTION 3. Section 4, Article 38.01, Code of Criminal
24 Procedure, is amended by amending Subsections (a), (b), (d), and
25 (e) and adding Subsections (a-1), (b-1), (b-2), (f), and (g) to read
26 as follows:

27 (a) The commission shall:

1 (1) develop and implement a reporting system through
2 which a crime laboratory may [~~accredited laboratories, facilities,~~
3 ~~or entities~~] report professional negligence or misconduct;

4 (2) require a crime laboratory [~~all laboratories,~~
5 ~~facilities, or entities~~] that conducts [~~conduct~~] forensic analyses
6 to report professional negligence or misconduct to the commission;
7 and

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

13 (a-1) The commission may initiate for educational purposes
14 an investigation of a forensic analysis without a report containing
15 an allegation of professional negligence or professional
16 misconduct involving the forensic analysis conducted if the
17 commission determines by a majority vote of the members of the
18 commission that an investigation of the forensic analysis would
19 advance the integrity and reliability of forensic science in this
20 state.

21 (b) If the commission conducts an [~~An~~] investigation under
22 Subsection (a)(3) of a crime laboratory that is accredited by the
23 Department of Public Safety under Section 411.0205, Government
24 Code, pursuant to an allegation of professional negligence or
25 professional misconduct involving an accredited field of forensic
26 science, the investigation:

27 (1) must include the preparation of a written report

1 that identifies and also describes the methods and procedures used
2 to identify:

3 (A) the alleged negligence or misconduct;

4 (B) whether negligence or misconduct occurred;

5 [~~and~~]

6 (C) any corrective action required of the
7 laboratory, facility, or entity;

8 (D) observations of the commission regarding the
9 integrity and reliability of the forensic analysis conducted;

10 (E) best practices identified by the commission
11 during the course of the investigation; and

12 (F) other recommendations that are relevant, as
13 determined by the commission; and

14 (2) may include one or more:

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

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

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

22 (ii) the conclusion of any retrospective
23 reexamination under Paragraph (A).

24 (b-1) If the commission conducts an investigation under
25 Subsection (a)(3) of a crime laboratory that is not accredited by
26 the Department of Public Safety under Section 411.0205, Government
27 Code, or the investigation is conducted pursuant to an allegation

1 involving a forensic method or methodology that is not an
2 accredited field of forensic science, the investigation may include
3 the preparation of a written report that contains:

4 (1) observations of the commission regarding the
5 integrity and reliability of the forensic analysis conducted;

6 (2) best practices identified by the commission during
7 the course of the investigation; and

8 (3) other recommendations that are relevant, as
9 determined by the commission.

10 (b-2) If the commission conducts an investigation of a
11 forensic analysis under Subsection (a-1), the investigation must
12 include the preparation of a written report that contains:

13 (1) observations of the commission regarding the
14 integrity and reliability of the forensic analysis conducted;

15 (2) best practices identified by the commission during
16 the course of the investigation; and

17 (3) other recommendations that are relevant, as
18 determined by the commission.

19 (d) The commission may require that a crime laboratory~~facility, or entity~~
20 ~~facility, or entity~~ investigated under this section pay any costs
21 incurred to ensure compliance with Subsection (b), (b-1), or (b-2)
22 ~~[Subsection (b)(1)]~~.

23 (e) The commission shall make all investigation reports
24 completed under Subsection (b), (b-1), or (b-2) ~~[(b)(1)]~~ available
25 to the public. A report completed under Subsection (b), (b-1), or
26 (b-2) ~~[(b)(1)]~~, in a subsequent civil or criminal proceeding, is
27 not prima facie evidence of the information or findings contained

1 in the report.

2 (f) The commission may not make a determination of whether
3 professional negligence or professional misconduct occurred or
4 issue a finding on that question in an investigation initiated
5 under Subsection (a-1) or for which an investigation report may be
6 prepared under Subsection (b-1).

7 (g) The commission may not issue a finding related to the
8 guilt or innocence of a party in an underlying civil or criminal
9 trial involving conduct investigated by the commission under this
10 article.

11 SECTION 4. Article 38.01, Code of Criminal Procedure, is
12 amended by adding Sections 8, 9, 10, and 11 to read as follows:

13 Sec. 8. ANNUAL REPORT. Not later than December 1 of each
14 year, the commission shall prepare and publish a report that
15 includes:

16 (1) a description of each complaint filed with the
17 commission during the preceding 12-month period, the disposition of
18 each complaint, and the status of any complaint still pending on
19 December 31;

20 (2) a description of any specific forensic method or
21 methodology the commission recommends to the public safety director
22 of the Department of Public Safety for validation or approval under
23 Section 411.0205(b-1)(2), Government Code, as part of the
24 accreditation process for crime laboratories established by rule
25 under Section 411.0205(b) of that code;

26 (3) recommendations for best practices concerning the
27 definition of "forensic analysis" provided by statute or by rule of

1 the Department of Public Safety;

2 (4) developments in forensic science made or used in
3 other state or federal investigations and the activities of the
4 commission, if any, with respect to those developments; and

5 (5) other information that is relevant to
6 investigations involving forensic science, as determined by the
7 presiding officer of the commission.

8 Sec. 9. ADMINISTRATIVE ATTACHMENT TO SAM HOUSTON STATE
9 UNIVERSITY. (a) The commission is administratively attached to
10 Sam Houston State University.

11 (b) The Board of Regents, Texas State University System,
12 shall provide administrative support to the commission as necessary
13 to carry out the purposes of this article.

14 (c) Only the commission may exercise the duties of the
15 commission under this article. Except as provided by Subsection
16 (b), neither the Board of Regents, Texas State University System,
17 nor Sam Houston State University has any authority or
18 responsibility with respect to the duties of the commission under
19 this article.

20 Sec. 10. OPEN RECORDS LIMITATION. Information that is
21 filed as part of an allegation of professional misconduct or
22 professional negligence or that is obtained during an investigation
23 of an allegation of professional misconduct or professional
24 negligence is not subject to release under Chapter 552, Government
25 Code, until the conclusion of an investigation by the commission
26 under Section 4.

27 Sec. 11. REPORT INADMISSIBLE AS EVIDENCE. A written report

1 prepared by the commission under this article is not admissible in a
2 civil or criminal action.

3 SECTION 5. Section 411.0205, Government Code, is amended by
4 adding Subsection (b-3) to read as follows:

5 (b-3) The director shall require that a laboratory,
6 facility, or entity that must be accredited under this section, as
7 part of the accreditation process, agree to consent to any request
8 for cooperation by the Texas Forensic Science Commission that is
9 made as part of the exercise of the commission's duties under
10 Article 38.01, Code of Criminal Procedure.

11 SECTION 6. (a) Notwithstanding any other law, the terms of
12 the members of the Texas Forensic Science Commission appointed
13 under Subsections (a)(1)(A), (a)(2), and (a)(3), Section 3, Article
14 38.01, Code of Criminal Procedure, and serving on the effective
15 date of this Act expire on the date the last appointment to the
16 commission is made under Subsection (b) of this section.

17 (b) Not later than January 1, 2012, the governor shall
18 appoint five members of the Texas Forensic Science Commission, as
19 required by Subsection (a)(1), Section 3, Article 38.01, Code of
20 Criminal Procedure, as amended by this Act.

21 SECTION 7. Not later than December 1, 2012, the Texas
22 Forensic Science Commission shall submit the first annual report
23 required by Section 8, Article 38.01, Code of Criminal Procedure,
24 as added by this Act.

25 SECTION 8. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2011.