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S.B. No. 1238

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

1 purpose of determining the connection of the evidence to a criminal
2 action, except that the term does not include the portion of an
3 autopsy conducted by a medical examiner or other forensic
4 pathologist who is a licensed physician~~[, "forensic analysis" has~~
5 ~~the meaning assigned by Article 38.35(a)].~~

6 SECTION 2. Subsections (a) and (b), Section 3, Article
7 38.01, Code of Criminal Procedure, are amended to read as follows:

8 (a) The commission is composed of ~~[the following]~~ nine
9 members~~[-~~

10 ~~[(1) four members]~~ appointed by the governor as
11 follows:

12 (1) two members who ~~[(A) two of whom]~~ must have
13 expertise in the field of forensic science;

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

18 (3) [and
19 [(C)] one member who ~~[of whom]~~ must be a defense
20 attorney that the governor selects from a list of 10 names submitted
21 by the Texas Criminal Defense Lawyers Association;

22 (4) one member who ~~[(2) three members appointed by the~~
23 ~~lieutenant governor.~~

24 ~~[(A) one of whom]~~ must be a faculty member or
25 staff member of The University of Texas who specializes in clinical
26 laboratory medicine that the governor selects ~~[selected]~~ from a
27 list of 10 names submitted ~~[to the lieutenant governor]~~ by the

1 chancellor of The University of Texas System;

2 (5) one member who [~~(B) one of whom~~] must be a faculty
3 member or staff member of Texas A&M University who specializes in
4 clinical laboratory medicine that the governor selects [~~selected~~]
5 from a list of 10 names submitted [~~to the lieutenant governor~~] by
6 the chancellor of The Texas A&M University System;

7 (6) one member who [~~(C) one of whom~~] must be a faculty
8 member or staff member of Texas Southern University that the
9 governor selects [~~who has expertise in pharmaceutical laboratory~~
10 ~~research selected~~] from a list of 10 names submitted [~~to the~~
11 ~~lieutenant governor~~] by the chancellor of Texas Southern
12 University;

13 (7) one member who [~~and~~

14 [~~(3) two members appointed by the attorney general:~~

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

18 (8) one member who [~~(B) one of whom~~] must be a faculty
19 or staff member of the Sam Houston State University College of
20 Criminal Justice and have expertise in the field of forensic
21 science or statistical analyses that the governor selects
22 [~~selected~~] from a list of 10 names submitted [~~to the lieutenant~~
23 ~~governor~~] by the chancellor of the Texas State University System.

24 (b) Each member of the commission serves a two-year term.
25 The terms expire [~~term of the members appointed under Subsections~~
26 ~~(a)(1) and (2) expires~~] on September 1 of:

27 (1) each odd-numbered year, for a member appointed

1 under Subsection (a)(1), (2), (3), or (4); and

2 (2) [~~. The term of the members appointed under~~
3 ~~Subsection (a)(3) expires on September 1 of]~~ each even-numbered
4 year, for a member appointed under Subsection (a)(5), (6), (7), or
5 (8).

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

10 (a) The commission shall:

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

15 (2) require a crime laboratory [~~all laboratories,~~
16 ~~facilities, or entities]~~ that conducts [~~conduct~~] forensic analyses
17 to report professional negligence or professional misconduct to the
18 commission; and

19 (3) investigate, in a timely manner, any allegation of
20 professional negligence or professional misconduct that would
21 substantially affect the integrity of the results of a forensic
22 analysis conducted by a crime laboratory [~~an accredited laboratory,~~
23 ~~facility, or entity]~~.

24 (a-1) The commission may initiate for educational purposes
25 an investigation of a forensic analysis without receiving a
26 complaint, submitted through the reporting system implemented
27 under Subsection (a)(1), that contains an allegation of

1 professional negligence or professional misconduct involving the
2 forensic analysis conducted if the commission determines by a
3 majority vote of a quorum of the members of the commission that an
4 investigation of the forensic analysis would advance the integrity
5 and reliability of forensic science in this state.

6 (b) If the commission conducts an [An] investigation under
7 Subsection (a)(3) of a crime laboratory that is accredited by the
8 Department of Public Safety under Section 411.0205, Government
9 Code, pursuant to an allegation of professional negligence or
10 professional misconduct involving an accredited field of forensic
11 science, the investigation:

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

- 15 (A) the alleged negligence or misconduct;
- 16 (B) whether negligence or misconduct occurred;

17 [~~and~~]

18 (C) any corrective action required of the
19 laboratory, facility, or entity;

20 (D) observations of the commission regarding the
21 integrity and reliability of the forensic analysis conducted;

22 (E) best practices identified by the commission
23 during the course of the investigation; and

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

26 (2) may include one or more:

- 27 (A) retrospective reexaminations of other

1 forensic analyses conducted by the laboratory, facility, or entity
2 that may involve the same kind of negligence or misconduct; and

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

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

7 (ii) the conclusion of any retrospective
8 reexamination under Paragraph (A).

9 (b-1) If the commission conducts an investigation under
10 Subsection (a)(3) of a crime laboratory that is not accredited by
11 the Department of Public Safety under Section 411.0205, Government
12 Code, or the investigation is conducted pursuant to an allegation
13 involving a forensic method or methodology that is not an
14 accredited field of forensic science, the investigation may include
15 the preparation of a written report that contains:

16 (1) observations of the commission regarding the
17 integrity and reliability of the forensic analysis conducted;

18 (2) best practices identified by the commission during
19 the course of the investigation; or

20 (3) other recommendations that are relevant, as
21 determined by the commission.

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

25 (1) observations of the commission regarding the
26 integrity and reliability of the forensic analysis conducted;

27 (2) best practices identified by the commission during

1 the course of the investigation; and

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

4 (d) The commission may require that a crime laboratory[~~7~~
5 ~~facility, or entity~~] investigated under this section pay any costs
6 incurred to ensure compliance with Subsection (b), (b-1), or (b-2)
7 ~~[(b)(1)]~~.

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

14 (f) The commission may not make a determination of whether
15 professional negligence or professional misconduct occurred or
16 issue a finding on that question in an investigation initiated
17 under Subsection (a-1) or for which an investigation report may be
18 prepared under Subsection (b-1).

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

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

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

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

5 (2) a description of any specific forensic method or
6 methodology the commission recommends to the public safety director
7 of the Department of Public Safety for validation or approval under
8 Section 411.0205(b-1)(2), Government Code, as part of the
9 accreditation process for crime laboratories established by rule
10 under Section 411.0205(b) of that code;

11 (3) recommendations for best practices concerning the
12 definition of "forensic analysis" provided by statute or by rule of
13 the Department of Public Safety;

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

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

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

23 (b) The Board of Regents of the Texas State University
24 System shall provide administrative support to the commission as
25 necessary to carry out the purposes of this article.

26 (c) Only the commission may exercise the duties of the
27 commission under this article. Except as provided by Subsection

1 (b), neither the Board of Regents of the Texas State University
2 System nor Sam Houston State University has any authority or
3 responsibility with respect to the duties of the commission under
4 this article.

5 Sec. 10. OPEN RECORDS LIMITATION. Information that is
6 filed as part of an allegation of professional misconduct or
7 professional negligence or that is obtained during an investigation
8 of an allegation of professional misconduct or professional
9 negligence is not subject to release under Chapter 552, Government
10 Code, until the conclusion of an investigation by the commission
11 under Section 4.

12 Sec. 11. REPORT INADMISSIBLE AS EVIDENCE. A written report
13 prepared by the commission under this article is not admissible in a
14 civil or criminal action.

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

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

23 SECTION 6. The term of a person appointed under former
24 Subdivision (3), Subsection (a), Section 3, Article 38.01, Code of
25 Criminal Procedure, as that law existed immediately before the
26 effective date of this Act, expires September 1, 2014, and the
27 governor shall appoint a person to fill each vacancy on that date in

1 accordance with Subdivisions (7) and (8), Subsection (a), Section
2 3, Article 38.01, Code of Criminal Procedure, as amended by this
3 Act. On the expiration of a term under former Subdivision (1) or
4 (2), Subsection (a), Section 3, Article 38.01, Code of Criminal
5 Procedure, as that law existed immediately before the effective
6 date of this Act, the governor shall appoint a person to fill each
7 vacancy in accordance with Subdivision (1), (2), (3), (4), (5), or
8 (6), Subsection (a), Section 3, Article 38.01, Code of Criminal
9 Procedure, as amended by this Act, as applicable.

10 SECTION 7. Not later than December 1, 2014, the Texas
11 Forensic Science Commission shall submit the first annual report
12 required by Section 8, Article 38.01, Code of Criminal Procedure,
13 as added by this Act.

14 SECTION 8. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2013.