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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~~[, "forensic analysis" has the meaning assigned by Article~~  
3 ~~38.35(a)].~~

4 SECTION 2. Subsections (a) and (b), Section 3, Article  
5 38.01, Code of Criminal Procedure, are amended to read as follows:

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

8 ~~[(1) four members]~~ appointed by the governor as  
9 follows:

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

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

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

19 (4) ~~[(2) three members appointed by the lieutenant~~  
20 ~~governor+]~~

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

26 (5) ~~[(B)]~~ one who ~~[of whom]~~ must be a faculty member or  
27 staff member of Texas A&M University who specializes in clinical

1 laboratory medicine that the governor selects ~~[selected]~~ from a  
2 list of 10 names submitted ~~[to the lieutenant governor]~~ by the  
3 chancellor of The Texas A&M University System;

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

9 (7) ~~[and~~  
10 ~~[(3) two members appointed by the attorney general:~~  
11 ~~[(A)]~~ one who ~~[of whom]~~ must be a director or  
12 division head of the University of North Texas Health Science  
13 Center at Fort Worth Missing Persons DNA Database; and

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

20 (b) Each member of the commission serves a two-year term.  
21 The terms ~~[term]~~ of the members appointed under Subsections (a)(1),  
22 (2), (3), and (4) expire ~~[and (2) expires]~~ on September 1 of each  
23 even-numbered ~~[odd-numbered]~~ year. The terms ~~[term]~~ of the members  
24 appointed under Subsections (a)(5), (6), (7), and (8) expire  
25 ~~[Subsection (a)(3) expires]~~ on September 1 of each odd-numbered  
26 ~~[even-numbered]~~ year.

27 SECTION 3. Section 4, Article 38.01, Code of Criminal

1 Procedure, is amended by amending Subsections (a), (b), (d), and  
2 (e) and adding Subsections (a-1), (b-1), (b-2), (f), and (g) to read  
3 as follows:

4 (a) The commission shall:

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

9 (2) require a crime laboratory [~~all laboratories,~~  
10 ~~facilities, or entities~~] that conducts [~~conduct~~] forensic analyses  
11 to report professional negligence or professional misconduct to the  
12 commission; and

13 (3) investigate, in a timely manner, any allegation of  
14 professional negligence or professional misconduct that would  
15 substantially affect the integrity of the results of a forensic  
16 analysis conducted by a crime laboratory [~~an accredited laboratory,~~  
17 ~~facility, or entity~~].

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

26 (b) If the commission conducts an [~~An~~] investigation under  
27 Subsection (a)(3) of a crime laboratory that is accredited by the

1 Department of Public Safety under Section 411.0205, Government  
2 Code, pursuant to an allegation of professional negligence or  
3 professional misconduct involving an accredited field of forensic  
4 science, the investigation:

5 (1) must include the preparation of a written report  
6 that identifies and also describes the methods and procedures used  
7 to identify:

8 (A) the alleged negligence or misconduct;

9 (B) whether negligence or misconduct occurred;

10 [~~and~~]

11 (C) any corrective action required of the  
12 laboratory, facility, or entity;

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

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

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

19 (2) may include one or more:

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

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

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

27 (ii) the conclusion of any retrospective

1 reexamination under Paragraph (A).

2 (b-1) If the commission conducts an investigation under  
3 Subsection (a)(3) of a crime laboratory that is not accredited by  
4 the Department of Public Safety under Section 411.0205, Government  
5 Code, or the investigation is conducted pursuant to an allegation  
6 involving a forensic method or methodology that is not an  
7 accredited field of forensic science, the investigation may include  
8 the preparation of a written report that contains:

9 (1) observations of the commission regarding the  
10 integrity and reliability of the forensic analysis conducted;

11 (2) best practices identified by the commission during  
12 the course of the investigation; and

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

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

18 (1) observations of the commission regarding the  
19 integrity and reliability of the forensic analysis conducted;

20 (2) best practices identified by the commission during  
21 the course of the investigation; and

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

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

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

7 (f) The commission may not make a determination of whether  
8 professional negligence or professional misconduct occurred or  
9 issue a finding on that question in an investigation initiated  
10 under Subsection (a-1) or for which an investigation report may be  
11 prepared under Subsection (b-1).

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

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

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

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

25 (2) a description of any specific forensic method or  
26 methodology the commission recommends to the public safety director  
27 of the Department of Public Safety for validation or approval under

1 Section 411.0205(b-1)(2), Government Code, as part of the  
2 accreditation process for crime laboratories established by rule  
3 under Section 411.0205(b) of that code;

4 (3) recommendations for best practices concerning the  
5 definition of "forensic analysis" provided by statute or by rule of  
6 the Department of Public Safety;

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

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

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

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

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

25 Sec. 10. OPEN RECORDS LIMITATION. Information that is  
26 filed as part of an allegation of professional misconduct or  
27 professional negligence or that is obtained during an investigation



1 of an allegation of professional misconduct or professional  
2 negligence is not subject to release under Chapter 552, Government  
3 Code, until the conclusion of an investigation by the commission  
4 under Section 4.

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

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

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

16 SECTION 6. (a) Notwithstanding any other law, the terms of  
17 the members of the Texas Forensic Science Commission appointed  
18 under Subdivisions (2) and (3), Subsection (a), Section 3, Article  
19 38.01, Code of Criminal Procedure, and serving on the effective  
20 date of this Act expire on the date the last appointment to the  
21 commission is made under Subsection (b) of this section.

22 (b) Not later than January 1, 2014, the governor shall  
23 appoint five members of the Texas Forensic Science Commission, as  
24 required by Subdivisions (1), (2), (3), and (4), Subsection (a),  
25 Section 3, Article 38.01, Code of Criminal Procedure, as amended by  
26 this Act.

27 SECTION 7. Not later than December 1, 2014, the Texas

1 Forensic Science Commission shall submit the first annual report  
2 required by Section 8, Article 38.01, Code of Criminal Procedure,  
3 as added by this Act.

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