By:  Hinojosa, et al. S.B. No. 991

(Leach)

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a crime laboratory portal by the Department of Public Safety of the State of Texas and to disciplinary proceedings applicable to a crime laboratory or license holder investigated by the Texas Forensic Science Commission.

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

SECTION 1.  Sections 4-c(a), (c), (d), and (e), Article 38.01, Code of Criminal Procedure, are amended to read as follows:

(a)  On a determination by the commission that a license holder or crime laboratory has committed professional negligence or professional misconduct under this article, violated the code of professional responsibility under this article, or otherwise violated this article or a rule or order of the commission under this article, the commission may, as applicable:

(1)  revoke or suspend the person's license or crime laboratory's accreditation;

(2)  refuse to renew the person's license or crime laboratory's accreditation; or

(3)  reprimand the license holder or crime laboratory.

(c)  The commission shall give written notice by certified mail of a determination described by Subsection (a) to the applicable [~~a~~] license holder or crime laboratory [~~who is the subject of the determination~~].  The notice must:

(1)  include a brief summary of the alleged negligence, misconduct, or violation;

(2)  state the disciplinary action taken by the commission; and

(3)  inform the license holder or crime laboratory of the license holder's or crime laboratory's right to a hearing before the Judicial Branch Certification Commission on the occurrence of the negligence, misconduct, or violation, the imposition of a disciplinary action, or both.

(d)  Not later than the 20th day after the date the license holder or crime laboratory receives the notice under Subsection (c), the license holder or crime laboratory may accept the disciplinary action or request a hearing by submitting a written request to the Judicial Branch Certification Commission to contest the findings of fact or conclusions of law, the occurrence of the negligence, misconduct, or violation, or the imposition of a disciplinary action, as applicable.  If the license holder or crime laboratory fails to timely submit a request, the commission's disciplinary action becomes final and is not subject to review by the Judicial Branch Certification Commission.

(e)  If the license holder or crime laboratory requests a hearing, the Judicial Branch Certification Commission shall conduct a hearing to determine whether there is substantial evidence to support the determination under Subsection (a) that the negligence, misconduct, or violation occurred [~~license holder committed professional misconduct or violated this article or a commission rule or order under this article~~].  If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken.  The Judicial Branch Certification Commission shall conduct the hearing, and any appeal of that commission's decision, in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.

SECTION 2.  Chapter 411, Government Code, is amended by adding Subchapter G-1 to read as follows:

SUBCHAPTER G-1. CRIME LABORATORY PORTAL

Sec. 411.161.  DEFINITIONS. In this subchapter, "crime laboratory," "criminal action," and "forensic analysis" have the meanings assigned by Article 38.35, Code of Criminal Procedure.

Sec. 411.162.  CRIME LABORATORY PORTAL. The department by rule shall establish and maintain a central computerized portal that facilitates the process for requesting crime laboratory records and for transferring those records among crime laboratories, attorneys representing the state, and parties authorized to access the records as a part of discovery under Article 39.14, Code of Criminal Procedure. The portal may not be used as a central repository for crime laboratory records.

Sec. 411.163.  MANDATORY CRIME LABORATORY PARTICIPATION; DISCIPLINARY ACTION. (a) A crime laboratory that performs a forensic analysis for use in a criminal action shall participate, in accordance with department rule, in the transfer of crime laboratory records using the crime laboratory portal established under Section 411.162. The department by rule may exempt a crime laboratory from the requirements of this subsection if the department determines that the crime laboratory:

(1)  is located outside of this state; and

(2)  performs an insufficient number of forensic analyses in criminal actions in this state to warrant participation in the crime laboratory portal.

(b)  A crime laboratory that violates Subsection (a) is subject to disciplinary action by the Texas Forensic Science Commission in the same manner as if the laboratory had otherwise violated accreditation standards under Article 38.01, Code of Criminal Procedure.

Sec. 411.164.  DEFENSE COUNSEL ACCESS TO CRIME LABORATORY PORTAL. The attorney representing the state in a criminal action shall ensure that the defendant or the defendant's attorney, as appropriate, is able to access and use the crime laboratory portal under Section 411.162 to request any crime laboratory records that are subject to discovery under Article 39.14, Code of Criminal Procedure.

SECTION 3.  This Act takes effect September 1, 2023.