

By: Hinojosa
(Geren, Herrero)

S.B. No. 1287

Substitute the following for S.B. No. 1287:

By: Smith

C.S.S.B. No. 1287

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Forensic Science Commission, the accreditation of crime laboratories, and the licensing and regulation of forensic analysts; authorizing fees; requiring an occupational license.

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

SECTION 1. Section 2, Article 38.01, Code of Criminal Procedure, is amended by amending Subdivision (1) and adding Subdivision (5) to read as follows:

(1) "Accredited field of forensic science" means a specific forensic method or methodology validated or approved by the commission under this article ~~[public safety director of the Department of Public Safety under Section 411.0205(b-1)(2), Government Code, as part of the accreditation process for crime laboratories established by rule under Section 411.0205(b) of that code]~~.

(5) "Physical evidence" has the meaning assigned by Article 38.35.

SECTION 2. Section 3(a), Article 38.01, Code of Criminal Procedure, is amended to read as follows:

(a) The commission is composed of nine members appointed by the governor as follows:

(1) two members who must have expertise in the field of forensic science;

1 (2) one member who must be a prosecuting attorney that
2 the governor selects from a list of 10 names submitted by the Texas
3 District and County Attorneys Association;

4 (3) one member who must be a defense attorney that the
5 governor selects from a list of 10 names submitted by the Texas
6 Criminal Defense Lawyers Association;

7 (4) one member who must be a faculty member or staff
8 member of The University of Texas who specializes in clinical
9 laboratory medicine that the governor selects from a list of five
10 [~~10~~] names submitted by the chancellor of The University of Texas
11 System;

12 (5) one member who must be a faculty member or staff
13 member of Texas A&M University who specializes in clinical
14 laboratory medicine that the governor selects from a list of five
15 [~~10~~] names submitted by the chancellor of The Texas A&M University
16 System;

17 (6) one member who must be a faculty member or staff
18 member of Texas Southern University that the governor selects from
19 a list of five [~~10~~] names submitted by the chancellor of Texas
20 Southern University;

21 (7) one member who must be a director or division head
22 of the University of North Texas Health Science Center at Fort Worth
23 Missing Persons DNA Database; and

24 (8) one member who must be a faculty or staff member of
25 the Sam Houston State University College of Criminal Justice and
26 have expertise in the field of forensic science or statistical
27 analyses that the governor selects from a list of five [~~10~~] names

submitted by the chancellor of the Texas State University System.

SECTION 3. Sections 4(b) and (b-1), Article 38.01, Code of Criminal Procedure, are amended to read as follows:

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

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

- (A) the alleged negligence or misconduct;
- (B) whether negligence or misconduct occurred;
- (C) any corrective action required of the laboratory, facility, or entity;
- (D) observations of the commission regarding the integrity and reliability of the forensic analysis conducted;
- (E) best practices identified by the commission during the course of the investigation; and
- (F) other recommendations that are relevant, as determined by the commission; and

(2) may include one or more:

- (A) retrospective reexaminations of other forensic analyses conducted by the laboratory, facility, or entity that may involve the same kind of negligence or misconduct; and
- (B) follow-up evaluations of the laboratory,

1 facility, or entity to review:

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

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

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

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

16 (2) best practices identified by the commission during
17 the course of the investigation; or

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

20 SECTION 4. Article 38.01, Code of Criminal Procedure, is
21 amended by adding Sections 3-a, 4-a, 4-b, and 4-c to read as
22 follows:

23 Sec. 3-a. RULES. The commission shall adopt rules
24 necessary to implement this article.

25 Sec. 4-a. FORENSIC ANALYST LICENSING. (a) Notwithstanding
26 Section 2, in this section:

27 (1) "Forensic analysis" has the meaning assigned by

1 Article 38.35.

2 (2) "Forensic analyst" means a person who on behalf of
3 a crime laboratory accredited under this article technically
4 reviews or performs a forensic analysis or draws conclusions from
5 or interprets a forensic analysis for a court or crime laboratory.
6 The term does not include a medical examiner or other forensic
7 pathologist who is a licensed physician.

8 (b) A person may not act or offer to act as a forensic
9 analyst unless the person holds a forensic analyst license. The
10 commission by rule may establish classifications of forensic
11 analyst licenses if the commission determines that it is necessary
12 to ensure the availability of properly trained and qualified
13 forensic analysts to perform activities regulated by the
14 commission.

15 (c) The commission by rule may establish voluntary
16 licensing programs for forensic disciplines that are not subject to
17 accreditation under this article.

18 (d) The commission by rule shall:

19 (1) establish the qualifications for a license that
20 include:

21 (A) successful completion of the education
22 requirements established by the commission;

23 (B) specific course work and experience,
24 including instruction in courtroom testimony and ethics in a crime
25 laboratory;

26 (C) successful completion of an examination
27 required or recognized by the commission; and

1 (D) successful completion of proficiency testing
2 to the extent required for crime laboratory accreditation;

3 (2) set fees for the issuance and renewal of a license;
4 and

5 (3) establish the term of a forensic analyst license.

6 (e) The commission by rule may recognize a certification
7 issued by a national organization in an accredited field of
8 forensic science as satisfying the requirements established under
9 Subsection (d)(1)(C) to the extent the commission determines the
10 content required to receive the certification is substantially
11 equivalent to the content of the requirements under that
12 subsection.

13 (f) The commission shall issue a license to an applicant
14 who:

15 (1) submits an application on a form prescribed by the
16 commission;

17 (2) meets the qualifications established by
18 commission rule; and

19 (3) pays the required fee.

20 Sec. 4-b. ADVISORY COMMITTEE. (a) The commission shall
21 establish an advisory committee to advise the commission and make
22 recommendations on matters related to the licensing of forensic
23 analysts under Section 4-a.

24 (b) The advisory committee consists of nine members as
25 follows:

26 (1) one prosecuting attorney recommended by the Texas
27 District and County Attorneys Association;

1 (2) one defense attorney recommended by the Texas
2 Criminal Defense Lawyers Association; and

3 (3) seven members who are forensic scientists, crime
4 laboratory directors, or crime laboratory quality managers,
5 selected by the commission from a list of 20 names submitted by the
6 Texas Association of Crime Laboratory Directors.

7 (c) The commission shall ensure that appointments under
8 Subsection (b)(3) include representation from municipal, county,
9 state, and private crime laboratories that are accredited under
10 this article.

11 (d) The advisory committee members serve staggered two-year
12 terms, with the terms of four or five members, as appropriate,
13 expiring on August 31 of each year. An advisory committee member may
14 not serve more than two consecutive terms. A vacancy on the
15 advisory committee is filled by appointing a member in the same
16 manner as the original appointment to serve for the unexpired
17 portion of the term.

18 (e) The advisory committee shall elect a presiding officer
19 from among its members to serve a one-year term. A member may serve
20 more than one term as presiding officer.

21 (f) The advisory committee shall meet annually and at the
22 call of the presiding officer or the commission.

23 (g) An advisory committee member is not entitled to
24 compensation. A member is entitled to reimbursement for actual and
25 necessary expenses incurred in performing duties as a member of the
26 advisory committee subject to the General Appropriations Act.

27 (h) Chapter 2110, Government Code, does not apply to the

1 advisory committee.

2 Sec. 4-c. DISCIPLINARY ACTION. (a) On a determination by
3 the commission that a license holder has committed professional
4 misconduct under this article or violated this article or a rule or
5 order of the commission under this article, the commission may:

6 (1) revoke or suspend the person's license;

7 (2) refuse to renew the person's license; or

8 (3) reprimand the license holder.

9 (b) The commission may place on probation a person whose
10 license is suspended. If a license suspension is probated, the
11 commission may require the license holder to:

12 (1) report regularly to the commission on matters that
13 are the basis of the probation; or

14 (2) continue or review continuing professional
15 education until the license holder attains a degree of skill
16 satisfactory to the commission in those areas that are the basis of
17 the probation.

18 (c) Disciplinary proceedings of the commission are governed
19 by Chapter 2001, Government Code. A hearing under this section
20 shall be conducted by an administrative law judge of the State
21 Office of Administrative Hearings.

22 SECTION 5. Section 411.0205, Government Code, is
23 transferred to Chapter 38, Code of Criminal Procedure, redesignated
24 as Section 4-d, Article 38.01, Code of Criminal Procedure, and
25 amended to read as follows:

26 Sec. 4-d [411.0205]. CRIME LABORATORY ACCREDITATION
27 PROCESS. (a) Notwithstanding Section 2, in this section [In this

1 ~~section, "crime laboratory,"~~ "forensic analysis" has the meaning
2 ~~[analysis," and "physical evidence" have the meanings]~~ assigned by
3 Article 38.35 ~~[, Code of Criminal Procedure]~~.

4 (b) The commission ~~[director]~~ by rule:

5 (1) shall establish an accreditation process for crime
6 laboratories and other entities conducting forensic analyses of
7 physical evidence for use in criminal proceedings; and

8 (2) may modify or remove a crime laboratory exemption
9 under this section if the commission ~~[director]~~ determines that the
10 underlying reason for the exemption no longer applies.

11 (b-1) As part of the accreditation process established and
12 implemented under Subsection (b), the commission ~~[director]~~ may:

13 (1) establish minimum standards that relate to the
14 timely production of a forensic analysis to the agency requesting
15 the analysis and that are consistent with this article and
16 applicable laws ~~[code]~~;

17 (2) validate or approve specific forensic methods or
18 methodologies; and

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

21 (b-2) The commission ~~[director]~~ may require that a
22 laboratory, facility, or entity required to be accredited under
23 this section pay any costs incurred to ensure compliance with the
24 accreditation process.

25 (b-3) A ~~[The director shall require that a]~~ laboratory,
26 facility, or entity that must be accredited under this section
27 shall, as part of the accreditation process, agree to consent to any

1 request for cooperation by the commission [~~Texas Forensic Science~~
2 ~~Commission~~] that is made as part of the exercise of the commission's
3 duties under this article [~~Article 38.01, Code of Criminal~~
4 ~~Procedure~~].

5 (c) The commission [~~director~~] by rule may exempt from the
6 accreditation process established under Subsection (b) a crime
7 laboratory conducting a forensic analysis or a type of analysis,
8 examination, or test if the commission [~~director~~] determines that:

9 (1) independent accreditation is unavailable or
10 inappropriate for the laboratory or the type of analysis,
11 examination, or test performed by the laboratory;

12 (2) the type of analysis, examination, or test
13 performed by the laboratory is admissible under a well-established
14 rule of evidence or a statute other than Article 38.35 [~~, Code of~~
15 ~~Criminal Procedure~~];

16 (3) the type of analysis, examination, or test
17 performed by the laboratory is routinely conducted outside of a
18 crime laboratory by a person other than an employee of the crime
19 laboratory; or

20 (4) the laboratory:

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

24 (B) was accredited at the time of the analysis
25 under an accreditation process with standards that meet or exceed
26 the relevant standards of the process established [~~by the director~~]
27 under Subsection (b).

1 (d) The commission [~~director~~] may at any reasonable time
2 enter and inspect the premises or audit the records, reports,
3 procedures, or other quality assurance matters of a crime
4 laboratory that is accredited or seeking accreditation under this
5 section.

6 (e) The commission [~~director~~] may collect costs incurred
7 under this section for accrediting, inspecting, or auditing a crime
8 laboratory.

9 (f) If the commission [~~director~~] provides a copy of an audit
10 or other report made under this section, the commission [~~director~~]
11 may charge \$6 for the copy, in addition to any other cost permitted
12 under Chapter 552, Government Code, or a rule adopted under that
13 chapter.

14 [~~(g) Funds collected under this section shall be deposited~~
15 ~~in the state treasury to the credit of the state highway fund, and~~
16 ~~money deposited to the state highway fund under this section may be~~
17 ~~used only to defray the cost of administering this section or~~
18 ~~Subchapter G.~~]

19 SECTION 6. Section 8, Article 38.01, Code of Criminal
20 Procedure, is amended to read as follows:

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

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

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

8 (3) recommendations for best practices concerning the
9 definition of "forensic analysis" provided by statute or by rule
10 [~~of the Department of Public Safety~~];

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

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

17 SECTION 7. Articles 38.35(a)(3) and (4), Code of Criminal
18 Procedure, are amended to read as follows:

19 (3) "Commission" [~~"Director"~~] means the Texas
20 Forensic Science Commission established under Article 38.01
21 [~~public safety director of the Department of Public Safety~~].

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
25 purpose of determining the connection of the evidence to a criminal
26 action. The term includes an examination or test requested by a
27 law enforcement agency, prosecutor, criminal suspect or defendant,

or court. The term does not include:

- (A) latent print examination;
- (B) a test of a specimen of breath under Chapter 724, Transportation Code;
- (C) digital evidence;
- (D) an examination or test excluded by rule under Article 38.01 [~~Section 411.0205(c), Government Code~~];
- (E) a presumptive test performed for the purpose of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or
- (F) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action.

SECTION 8. Articles 38.35(d) and (e), Code of Criminal Procedure, are amended to read as follows:

(d)(1) Except as provided by Subsection (e), a forensic analysis of physical evidence under this article and expert testimony relating to the evidence are not admissible in a criminal action if, at the time of the analysis, the crime laboratory conducting the analysis was not accredited by the commission [~~director~~] under Article 38.01 [~~Section 411.0205, Government Code~~].

1 (2) If before the date of the analysis the commission
2 ~~[director]~~ issues a certificate of accreditation under Article
3 38.01 ~~[Section 411.0205, Government Code,]~~ to a crime laboratory
4 conducting the analysis, the certificate is prima facie evidence
5 that the laboratory was accredited by the commission ~~[director]~~ at
6 the time of the analysis.

7 (e) A forensic analysis of physical evidence under this
8 article and expert testimony relating to the evidence are not
9 inadmissible in a criminal action based solely on the accreditation
10 status of the crime laboratory conducting the analysis if the
11 laboratory:

12 (A) except for making proper application, was
13 eligible for accreditation by the commission ~~[director]~~ at the time
14 of the examination or test; and

15 (B) obtains accreditation from the commission
16 ~~[director]~~ before the time of testimony about the examination or
17 test.

18 SECTION 9. Articles 38.43(i) and (m), Code of Criminal
19 Procedure, are amended to read as follows:

20 (i) Before a defendant is tried for a capital offense in
21 which the state is seeking the death penalty, subject to Subsection
22 (j), the state shall require either the Department of Public Safety
23 through one of its laboratories or a laboratory accredited under
24 Article 38.01 ~~[Section 411.0205, Government Code,]~~ to perform DNA
25 testing, in accordance with the laboratory's capabilities at the
26 time the testing is performed, on any biological evidence that was
27 collected as part of an investigation of the offense and is in the

1 possession of the state. The laboratory that performs the DNA
2 testing shall pay for all DNA testing performed in accordance with
3 this subsection.

4 (m) A defendant may have another laboratory accredited
5 under Article 38.01 [~~Section 411.0205, Government Code,~~] perform
6 additional testing of any biological evidence required to be tested
7 under Subsection (i). On an ex parte showing of good cause to the
8 court, a defendant may have a laboratory accredited under Article
9 38.01 [~~Section 411.0205, Government Code,~~] perform testing of any
10 biological material that is not required to be tested under
11 Subsection (i). The defendant is responsible for the cost of any
12 testing performed under this subsection.

13 SECTION 10. Article 64.03(c), Code of Criminal Procedure,
14 is amended to read as follows:

15 (c) If the convicting court finds in the affirmative the
16 issues listed in Subsection (a)(1) and the convicted person meets
17 the requirements of Subsection (a)(2), the court shall order that
18 the requested forensic DNA testing be conducted. The court may
19 order the test to be conducted by:

- 20 (1) the Department of Public Safety;
- 21 (2) a laboratory operating under a contract with the
22 department; or
- 23 (3) on the request of the convicted person, another
24 laboratory if that laboratory is accredited under Article 38.01
25 [~~Section 411.0205, Government Code~~].

26 SECTION 11. Section 411.145(c), Government Code, is amended
27 to read as follows:

1 (c) A fee collected under this section shall be deposited in
2 the state treasury to the credit of the state highway fund, and
3 money deposited to the state highway fund under this section and
4 under Articles 42.12 and 102.020(h), Code of Criminal Procedure,
5 may be used only to defray the cost of administering this subchapter
6 ~~[and Section 411.0205]~~.

7 SECTION 12. Section 420.003(1), Government Code, is amended
8 to read as follows:

9 (1) "Accredited crime laboratory" means a crime
10 laboratory, as that term is defined by Article 38.35, Code of
11 Criminal Procedure, that has been accredited under Article 38.01 of
12 that code ~~[Section 411.0205]~~.

13 SECTION 13. On the effective date of this Act:

14 (1) a certificate of accreditation issued by the
15 Department of Public Safety under former Section 411.0205,
16 Government Code, is continued in effect as a certificate of
17 accreditation of the Texas Forensic Science Commission; and

18 (2) an application or proceeding before the Department
19 of Public Safety under former Section 411.0205, Government Code,
20 that is pending on the effective date of this Act is transferred
21 without change in status to the Texas Forensic Science Commission.

22 SECTION 14. Not later than January 1, 2016, the Texas
23 Forensic Science Commission shall appoint the members of the
24 advisory committee in accordance with Section 4-b, Article 38.01,
25 Code of Criminal Procedure, as added by this Act. In making the
26 appointments, the commission shall designate:

27 (1) four members to serve terms expiring August 31,

1 2016; and

2 (2) five members to serve terms expiring August 31,
3 2017.

4 SECTION 15. Not later than January 1, 2017, the Texas
5 Forensic Science Commission shall make recommendations to the
6 legislature regarding suggested changes to the licensing of
7 forensic analysts as established by this Act, including
8 recommendations regarding the issuance of licenses to individuals
9 practicing as forensic analysts on the effective date of this Act.

10 SECTION 16. (a) Except as provided by Subsection (b) of
11 this section, this Act takes effect September 1, 2015.

12 (b) Section 4-a(b), Article [38.01](#), Code of Criminal
13 Procedure, as added by this Act, takes effect January 1, 2019.