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

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

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

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

(6) one member who must be a faculty member or staff
member of Texas Southern University that the governor selects from
a list of five names submitted by the chancellor of Texas
Southern University;

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

(8) one member who must be a faculty or staff member of
the Sam Houston State University College of Criminal Justice and
have expertise in the field of forensic science or statistical
analyses that the governor selects from a list of five 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,
facility, or entity to review:

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

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

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

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

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

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

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

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

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

(1) "Forensic analysis" has the meaning assigned by
Article 38.35.

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

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

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

(d) The commission by rule shall:

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

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

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

(C) successful completion of an examination required or recognized by the commission; and
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(D) successful completion of proficiency testing to the extent required for crime laboratory accreditation;

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

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

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

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

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

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

(3) pays the required fee.

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

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

(1) one prosecuting attorney recommended by the Texas District and County Attorneys Association;
(2) one defense attorney recommended by the Texas
Criminal Defense Lawyers Association; and
(3) seven members who are forensic scientists, crime
laboratory directors, or crime laboratory quality managers,
selected by the commission from a list of 20 names submitted by the
Texas Association of Crime Laboratory Directors.
(c) The commission shall ensure that appointments under
Subsection (b)(3) include representation from municipal, county,
state, and private crime laboratories that are accredited under
this article.
(d) The advisory committee members serve staggered two-year
terms, with the terms of four or five members, as appropriate,
expiring on August 31 of each year. An advisory committee member
may not serve more than two consecutive terms. A vacancy on the
advisory committee is filled by appointing a member in the same
manner as the original appointment to serve for the unexpired
portion of the term.
(e) The advisory committee shall elect a presiding officer
from among its members to serve a one-year term. A member may serve
more than one term as presiding officer.
(f) The advisory committee shall meet annually and at the
call of the presiding officer or the commission.
(g) An advisory committee member is not entitled to
compensation. A member is entitled to reimbursement for actual and
necessary expenses incurred in performing duties as a member of the
advisory committee subject to the General Appropriations Act.
(h) Chapter 2110, Government Code, does not apply to the
advisory committee.

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

(1) revoke or suspend the person's license;
(2) refuse to renew the person's license; or
(3) reprimand the license holder.

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

(1) report regularly to the commission on matters that are the basis of the probation; or
(2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

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

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

Sec. 4-d. [411.0205]. CRIME LABORATORY ACCREDITATION PROCESS. (a) Notwithstanding Section 2, in this section [In this...
section, "crime laboratory,"] "forensic analysis" has the meaning [analysis," and "physical evidence" have the meanings] assigned by Article 38.35[. Code of Criminal Procedure].

(b) The commission[director] by rule:

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

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

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

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

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

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

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

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

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

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

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

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

(4) the laboratory:

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

(B) was accredited at the time of the analysis under an accreditation process with standards that meet or exceed the relevant standards of the process established [by the director] under Subsection (b).
The commission [director] may at any reasonable time enter and inspect the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation under this section.

The commission [director] may collect costs incurred under this section for accrediting, inspecting, or auditing a crime laboratory.

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

Funds collected under this section shall be deposited in the state treasury to the credit of the state highway fund, and money deposited to the state highway fund under this section may be used only to defray the cost of administering this section or Subchapter C.

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

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

(1) a description of each complaint filed with the commission during the preceding 12-month period, the disposition of each complaint, and the status of any complaint still pending on December 31;
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(2) a description of any specific forensic method or methodology the commission designates [recommends to the public safety director of the Department of Public Safety for validation or approval under Section 411.0205(b-1)(2), Government Code,] as part of the accreditation process for crime laboratories established by rule under this article [Section 411.0205(b) of that code];

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

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

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

SECTION 7. Article 38.01, Code of Criminal Procedure, is amended by adding Section 12 to read as follows:

Sec. 12. COLLECTION OF CERTAIN FORENSIC EVIDENCE. The commission shall establish a method for collecting DNA and other forensic evidence related to unidentified bodies located less than 120 miles from the Rio Grande River.

SECTION 8. Articles 38.35(a)(3) and (4), Code of Criminal Procedure, are amended to read as follows:

(3) "Commission" ["Director"] means the Texas Forensic Science Commission established under Article 38.01 [public safety director of the Department of Public Safety].
"Forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. The term includes an examination or test requested by a 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 9. 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].

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

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

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

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

SECTION 10. Articles 38.43(i) and (m), Code of Criminal Procedure, are amended to read as follows:

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

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

SECTION 11. Article 64.03(c), Code of Criminal Procedure, is amended to read as follows:

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

(1) the Department of Public Safety;

(2) a laboratory operating under a contract with the
department; or
(3) on the request of the convicted person, another laboratory if that laboratory is accredited under Article 38.01 [Section 411.0205, Government Code].

SECTION 12. Section 411.145(c), Government Code, is amended to read as follows:
(c) A fee collected under this section shall be deposited in the state treasury to the credit of the state highway fund, and money deposited to the state highway fund under this section and under Articles 42.12 and 102.020(h), Code of Criminal Procedure, may be used only to defray the cost of administering this subchapter [and Section 411.0205].

SECTION 13. Section 420.003(1), Government Code, is amended to read as follows:
(1) "Accredited crime laboratory" means a crime laboratory, as that term is defined by Article 38.35, Code of Criminal Procedure, that has been accredited under Article 38.01 of that code [Section 411.0205].

SECTION 14. On the effective date of this Act:
(1) a certificate of accreditation issued by the Department of Public Safety under former Section 411.0205, Government Code, is continued in effect as a certificate of accreditation of the Texas Forensic Science Commission; and
(2) an application or proceeding before the Department of Public Safety under former Section 411.0205, Government Code, that is pending on the effective date of this Act is transferred without change in status to the Texas Forensic Science Commission.
SECTION 15. Not later than January 1, 2016, the Texas Forensic Science Commission shall appoint the members of the advisory committee in accordance with Section 4-b, Article 38.01, Code of Criminal Procedure, as added by this Act. In making the appointments, the commission shall designate:

(1) four members to serve terms expiring August 31, 2016; and

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

SECTION 16. Not later than January 1, 2017, the Texas Forensic Science Commission shall make recommendations to the legislature regarding suggested changes to the licensing of forensic analysts as established by this Act, including recommendations regarding the issuance of licenses to individuals practicing as forensic analysts on the effective date of this Act.

SECTION 17. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2015.

(b) Section 4-a(b), Article 38.01, Code of Criminal Procedure, as added by this Act, takes effect January 1, 2019.
President of the Senate

I hereby certify that S.B. No. 1287 passed the Senate on April 16, 2015, by the following vote: Yeas 30, Nays 1; and that the Senate concurred in House amendments on May 29, 2015, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

I hereby certify that S.B. No. 1287 passed the House, with amendments, on May 26, 2015, by the following vote: Yeas 74, Nays 72, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor