

BILL ANALYSIS

Senate Research Center
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S.B. 1658
By: Hinojosa
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2005, the Texas Forensic Science Commission (FSC) was created under Chapter 38 (Evidence in Criminal Actions), Code of Criminal Procedure.

In 2007, FSC was put under Sam Houston State University (SHSU) and was included as a line item in SHSU's budget. Accordingly, SHSU provides administrative support to FSC and houses FSC's office in Huntsville, Texas.

FSC investigates complaints that allege professional negligence or misconduct by a laboratory, facility, or entity that has been accredited by the public safety director of the Department of Public Safety of the State of Texas that would substantially affect the integrity of the results of a forensic analysis.

As proposed, S.B. 1658 amends current law relating to the membership and duties of, and the investigations conducted by, the Texas Forensic Science Commission, the administrative attachment of the Texas Forensic Science Commission to the Texas Department of Public Safety, and the accreditation of criminal laboratories by the Texas Department of Public Safety.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2, Article 38.01, Code of Criminal Procedure, as follows:

Sec. 2. New heading: DEFINITIONS. Defines, in this article, "accredited field of forensic science," "commission," "department," "director," and "potential accreditation field of forensic science." Redefines "forensic analysis."

SECTION 2. Amends Sections 3(a) and (c), Article 38.01, Code of Criminal Procedure, as follows:

(a) Provides that the Texas Forensic Science Commission (FSC) is composed of the following seven members:

(1) three members appointed by the governor:

(A) one of whom is required to be an expert in a potential accreditation field of forensic science, except that if FSC did not identify a potential accreditation field of forensic science in the annual report required under Section 8 for the year preceding the year in which the appointment is made under this subdivision, the member must be an expert in an accredited field of forensic science;

(B) one of whom is required to be a prosecuting attorney that the governor selects from a list of 10 names submitted by the Texas District and County Attorneys Association; and

(C) one of whom is required to be a defense attorney that the governor selects from a list of 10 names submitted by the Texas Criminal Defense Lawyers Association;

(2) two members appointed by the lieutenant governor, each of whom is required to be an expert in an accredited field of forensic science; and

(3) two members appointed by the attorney general, each of whom is required to be an expert in an accredited field of forensic science.

Deletes existing text providing that FSC is composed of the nine certain members. Makes nonsubstantive changes.

(c) Authorizes the presiding officer of FSC to appoint three nonvoting members of FSC who are experts in an accredited field of forensic science. Requires the presiding officer, if the presiding officer appoints any nonvoting members, to appoint as a nonvoting member the presiding officer of the Texas Association of Crime Lab Directors.

SECTION 3. Amends Section 4, Article 38.01, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsections (a-1) and (f), as follows:

(a) Requires FSC to:

(1) develop and implement a reporting system through which accredited laboratories, facilities, or entities that are not operated by the Department of Public Safety of the State of Texas (DPS) report professional misconduct or professional negligence, rather than negligence or misconduct;

(2) require all laboratories, facilities, or entities that conduct forensic analyses and that are not operated by DPS to report professional misconduct or professional negligence, rather than negligence or misconduct, to FSC; and

(3) investigate, in a timely manner, any allegation of professional misconduct or professional negligence, rather than negligence or misconduct, that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility, or entity.

(a-1) Requires FSC, on conclusion of an investigation by FSC under Subsection (a)(3), to make a finding that:

(1) professional misconduct occurred, if a person employed by the laboratory, facility, or entity investigated under Subsection (a)(3), through act or omission, deliberately failed to follow a generally accepted standard of practice that an ordinary forensic professional or entity would have exercised at the time of the forensic analysis; and that act or omission substantially affected the integrity of the results of a forensic analysis;

(2) professional negligence occurred, if a person employed by the laboratory, facility, or entity investigated under Subsection (a)(3), through act or omission, negligently failed to follow a generally accepted standard of practice that an ordinary forensic professional or entity would have exercised at the time of the forensic analysis; and that act or omission substantially affected the integrity of the results of a forensic analysis; or

(3) based on the facts obtained during the investigation, neither professional misconduct nor professional negligence occurred.

(b) Provides that an investigation under Subsection (a)(3):

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

(A) the alleged professional misconduct or professional negligence, rather than negligence or misconduct;

(B) whether FSC finds under Subsection (a-1) that professional misconduct or professional negligence, rather than negligence or misconduct, occurred; and

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

(2) is authorized to 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 professional misconduct or professional negligence, rather than negligence or misconduct;

(B) follow-up evaluations of the laboratory, facility, or entity to review the implementation of any corrective action required under Subdivision (1)(C), or the conclusion of any retrospective reexamination under Paragraph (A); and

(C) recommendations of FSC for improving the use of evidence arising from the particular accredited field of forensic science investigated, including recommendations on enhancing the reliability and integrity of that accredited field of forensic science.

Makes nonsubstantive changes.

(f) Authorizes FSC to delegate the duty to direct FSC's investigative duties under this article to the general counsel or another staff member of FSC.

SECTION 4. Amends Article 38.01, Code of Criminal Procedure, by adding Sections 4A, 4B, 4C, 8, 9, 10, and 11, as follows:

Sec. 4A. MEMORANDUM OF UNDERSTANDING CONCERNING INVESTIGATION OF NON-DEPARTMENT LABORATORY. (a) Requires FSC to enter into a memorandum of understanding with the public safety director of DPS (director) specifying that:

(1) FSC is required to direct the conduct of an investigation under Section 4(a)(3) of a laboratory, facility, or entity that is accredited under Section 411.0205 (Crime Laboratory Accreditation Process), Government Code, and was not operated by DPS at the time the professional misconduct or professional negligence is alleged to have occurred;

(2) at the request of FSC, the director is required to provide appropriate investigative support to FSC in carrying out the investigative duties of FSC under Section 4(a)(3); and

(3) on the conclusion of investigative activities undertaken by DPS at the request of FSC, the director is required to report all information obtained from those investigative activities to FSC.

(b) Provides that this section and any memorandum of understanding entered into under this section expire on September 1, 2017.

Sec. 4B. MEMORANDUM OF UNDERSTANDING CONCERNING INVESTIGATION OF DEPARTMENT LABORATORY. (a) Authorizes FSC to enter into a memorandum of understanding with the governing board of a state agency specifying that:

(1) FSC is required to direct the conduct of an investigation under Section 4(a)(3) of a laboratory, facility, or entity that is accredited under Section 411.0205, Government Code, and was operated by DPS at the time the professional misconduct or professional negligence is alleged to have occurred;

(2) at the request of FSC, the governing board of the state agency is required to provide appropriate investigative support to FSC in performing an investigation of an accredited laboratory, facility, or entity that was operated by DPS at the time the professional misconduct or professional negligence is alleged to have occurred; and

(3) on the conclusion of investigative activities undertaken by DPS at the request of FSC, the governing board of the state agency is required to report all information obtained from those investigative activities to FSC.

(b) Provides that this section and any memorandum of understanding entered into under this section expire on September 1, 2017.

Sec. 4C. OTHER INVESTIGATIONS. (a) Authorizes FSC to investigate an allegation of professional misconduct or professional negligence reported by a laboratory, facility, or entity that is not accredited by DPS if the laboratory, facility, or entity was accredited by DPS under Section 411.0205, Government Code, at the time the professional misconduct or professional negligence is alleged to have occurred.

(b) Authorizes FSC to investigate an allegation of professional misconduct or professional negligence at a laboratory, facility, or entity that is accredited under Section 411.0205, Government Code, if the allegation arises out of the performance of a method or methodology of forensic science that is not part of an accredited field of forensic science, provided that the method or methodology is part of a potential accreditation field of forensic science.

(c) Prohibits FSC from issuing a finding of professional misconduct or professional negligence in an investigation conducted under this section.

(d) Authorizes FSC, on conclusion of an investigation conducted under this section, based on determinations made by FSC during the investigation, to issue a written report about the investigation that contains:

(1) recommendations related to developing best practices and improving the use of forensic science evidence in civil and criminal proceedings; and

(2) an assessment of whether the practice in this state of a particular accredited field of forensic science or potential accreditation field of forensic science meets national standards and practices.

Sec. 8. ANNUAL REPORT. Requires FSC, not later than December 1 of each year, to prepare and publish a report that includes:

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

(2) a description of any specific forensic method or methodology FSC recommends to the director for validation or approval under Section 411.0205(b-1)(2) (relating to authorizing the director to, as part of the accreditation process, validate or approve specific forensic methods or methodologies), Government Code, as part of the accreditation process for crime laboratories established by rule under Section 411.0205(b) (relating to requiring the director by rule to establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in crime proceedings and authorizing the director to modify or remove a crime laboratory exemption under this section if the director determines that the underlying reason for the exemption no longer applies) of that code;

(3) recommendations for best practices concerning the definition of "forensic analysis" provided by statute or department rule, or potential accreditation fields of forensic science;

(4) developments in forensic science made or used in other state or federal investigations and the activities of FSC, 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 FSC.

Sec. 9. REPORTS INADMISSIBLE AS EVIDENCE. Provides that a written report prepared by FSC under this article is not admissible in a civil or criminal action.

Sec. 10. ADMINISTRATIVE ATTACHMENT TO DEPARTMENT. (a) Provides that FSC is administratively attached to DPS.

(b) Requires DPS to provide administrative assistance to FSC. Requires the director and the presiding officer of FSC to coordinate administrative responsibilities in accordance with this section.

(c) Requires DPS, notwithstanding any other law, to:

(1) provide administrative assistance, services, and materials to FSC, including budget planning and purchasing;

(2) accept, deposit, and disburse money made available to FSC from any source;

(3) accept gifts and grants on behalf of FSC from any public or private entity;

(4) pay the salaries and benefits of the staff of FSC;

(5) reimburse expenses of the members of the board incurred in the performance of official duties;

(6) apply for and receive on behalf of FSC any appropriations, gifts, or other money from the state or federal government or any other public or private entity, subject to limitations and conditions prescribed by legislative appropriation;

(7) provide FSC with adequate computer equipment and support; and

(8) provide FSC with adequate office space.

(d) Requires DPS, at the request of FSC, to submit FSC's budget request to the legislature.

(e) Provides that FSC is subject to administrative rules and procedures of DPS to the extent applicable and consistent with the duties of FSC under this article.

(f) Provides that, except as provided by Sections 4A and 4B:

(1) only FSC is authorized to exercise the duties of FSC under this article; and

(2) DPS does not have any authority or responsibility with respect to the duties of FSC under this article.

(g) Provides that this section expires September 1, 2017.

Sec. 11. OPEN RECORDS LIMITATION. Provides that information that is filed as part of an allegation of professional misconduct or professional negligence or that is obtained during an investigation of an allegation of professional misconduct or professional negligence is not subject to release under Chapter 552 (Public Information), Government Code, until the conclusion of an investigation by FSC under Section 4 or 4C.

SECTION 5. Amends Section 411.0205, Government Code, by adding Subsection (b-3) to require the director to require that a laboratory, facility, or entity that is required to be accredited under this section, as part of the accreditation process, agree to consent to any request for cooperation by FSC that is made as part of the exercise of FSC's duties under Article 38.01 (Texas Forensic Science Commission), Code of Criminal Procedure.

SECTION 6. (a) Provides that, notwithstanding any other law, the terms of the current members of FSC expire on the date that the last appointment to FSC is made under Subsection (b).

(b) Provides that not later than October 1, 2011:

(1) the governor is required to appoint three members of FSC, as required by Section 3(a)(1), Article 38.01, Code of Criminal Procedure, as amended by this Act;

(2) the lieutenant governor is required to appoint two members of FSC, as required by Section 3(a)(2), Article 38.01, Code of Criminal Procedure, as amended by this Act; and

(3) the attorney general is required to appoint two members of FSC, as required by Section 3(a)(3), Article 38.01, Code of Criminal Procedure, as amended by this Act.

SECTION 7. Requires FSC, not later than December 1, 2012, to submit the first annual report required by Section 8, Article 38.01, Code of Criminal Procedure, as added by this Act.

SECTION 8. Effective date: upon passage or September 1, 2011.