

**SUBSTITUTE FOR
SENATE BILL NO. 276**

A bill to create the forensic science commission; to prescribe its powers and duties; to regulate forensic laboratories, forensic science service providers, and forensic medical service providers; and to prescribe the powers and duties of certain state agencies and offices.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "forensic science commission act".

3 Sec. 3. (1) The forensic science commission is created in the
4 legislative council.

5 (2) The commission consists of the following 11 members
6 appointed by the governor:

7 (a) One individual who has experience as a forensic scientist



1 in a supervisory role in the forensic science division of the
2 department of state police who is selected from a list of 10
3 individuals submitted by the department of state police.

4 (b) One physician who is board certified as a pathologist and
5 has experience in forensic pathology.

6 (c) One individual who has experience as a forensic science
7 practitioner.

8 (d) One individual from the private sector or a university in
9 this state who has earned a doctor of philosophy in psychology or a
10 related field and who has published scholarship related to
11 cognitive bias in a peer-reviewed journal.

12 (e) One individual from the private sector or a university in
13 this state who has earned a doctor of philosophy in statistics or a
14 related field and who has published scholarship related to
15 statistics in a peer-reviewed journal.

16 (f) Three individuals from the private sector or a university
17 in this state, each of whom has earned a doctor of philosophy in a
18 distinct field relevant to forensic science and who has published
19 scholarship related to the field in a peer-reviewed journal.

20 (g) One individual selected from a list of 10 individuals
21 submitted by the Prosecuting Attorneys Association of Michigan.

22 (h) One individual selected from a list of 10 individuals
23 submitted by the Criminal Defense Attorneys of Michigan.

24 (i) One individual from an accrediting body for an industry
25 that is not a forensic science industry and that is a signatory to
26 the International Laboratory Accreditation Cooperation Mutual
27 Recognition Arrangements for Testing Laboratories.

28 (3) The members first appointed to the commission must be
29 appointed within 90 days after the effective date of this act.



1 (4) Except as otherwise provided in this subsection, members
2 of the commission serve for terms of 4 years or until a successor
3 is appointed, whichever is later. Of the members first appointed,
4 the 2 members appointed under subsection (2)(g) and (h) shall serve
5 for 2 years, the 4 members appointed under subsection (2)(a), (b),
6 (c), and (i) shall serve for 3 years, and the 5 members appointed
7 under subsection (2)(d), (e), and (f) shall serve for 4 years. The
8 governor may reappoint an individual who has previously served as a
9 member of the commission.

10 (5) If a vacancy occurs on the commission, the governor shall
11 make an appointment for the unexpired term in the same manner as
12 the original appointment.

13 (6) The governor may remove a member of the commission for
14 incompetence, dereliction of duty, malfeasance, misfeasance, or
15 nonfeasance in office, or any other good cause.

16 (7) The first meeting of the commission must be called not
17 later than 180 days after the effective date of this act. At the
18 first meeting, the commission shall elect from among its members a
19 chairperson and other officers as it considers necessary or
20 appropriate. After the first meeting, the commission must meet at
21 least quarterly, or more frequently if requested by 6 or more
22 members.

23 (8) Six of the members of the commission constitute a quorum
24 for the transaction of business at a meeting of the commission. At
25 least 6 of the members present and serving are required for
26 official action of the commission. A commission member may not vote
27 by proxy.

28 (9) The business that the commission may perform must be
29 conducted at a public meeting of the commission held in compliance



1 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

2 (10) A writing prepared, owned, used, in the possession of, or
3 retained by the commission in the performance of an official
4 function is subject to the freedom of information act, 1976 PA 442,
5 MCL 15.231 to 15.246.

6 (11) Members of the commission must serve without
7 compensation. However, members of the commission may be reimbursed
8 for their actual and necessary expenses incurred in the performance
9 of their official duties as members of the commission.

10 (12) The commission shall do all of the following:

11 (a) Establish and update policies and procedures to implement
12 this act.

13 (b) Engage criminal justice stakeholders.

14 (c) On or before December 1 of each year, submit a report to
15 the legislature evaluating the needs and performance of the
16 forensic science division of the department of state police, the
17 forensic science service providers, and the forensic medical
18 service providers and describing the work of the commission for
19 that year.

20 (13) The legislative council shall provide the commission with
21 suitable office space, staff, and necessary equipment.

22 Sec. 5. (1) The commission shall develop and implement a
23 system for the reporting of professional negligence, misconduct, or
24 nonconformance by or in a forensic laboratory that affects the
25 integrity of the forensic science or forensic medicine results.

26 (2) If an employee of a forensic laboratory or any other
27 individual has discovered, has suspicion, or has reason to believe
28 an act of professional negligence, misconduct, or nonconformance
29 has affected the integrity of the forensic science or forensic



1 medicine results, that employee or individual may report that act
2 in the manner required by the commission.

3 (3) A forensic laboratory shall report an act of professional
4 negligence, misconduct, or nonconformance that has affected the
5 integrity of the forensic science or forensic medicine results in
6 the manner required by the commission.

7 Sec. 7. (1) The commission shall investigate the conduct and
8 operation of a forensic science or forensic medicine method,
9 technique, or analysis used in a criminal case if the commission
10 receives a report from any source alleging professional negligence,
11 misconduct, or nonconformance by or in a forensic laboratory and 6
12 or more members of the commission concur in the commission
13 investigating the conduct. An investigation under this subsection
14 is limited to the allegations in the report.

15 (2) The commission may investigate a forensic laboratory or
16 the use of a forensic discipline on its own initiative if 6 or more
17 members of the commission concur that an investigation of the
18 forensic laboratory or the use of a forensic discipline is
19 necessary to advance the integrity and reliability of forensic
20 science and forensic medicine in this state.

21 (3) The commission may examine or copy records or papers of
22 any forensic laboratory relating to any requirement under this act
23 while conducting an investigation under this section. The
24 commission may issue a subpoena requiring a person to produce any
25 evidence pertaining to the question involved in the investigation
26 being conducted by the commission.

27 (4) The commission may create a committee of the following
28 members, who must not be individuals employed at the forensic
29 laboratory subject to the investigation, to assist the commission



1 in an investigation under this section:

2 (a) A member of the commission, who will serve as the
3 chairperson of the committee.

4 (b) An equal number of individuals from each of the following
5 groups:

6 (i) Criminal defense attorneys.

7 (ii) Prosecuting attorneys.

8 (iii) Law enforcement officers.

9 (c) An individual who is a forensic science practitioner with
10 knowledge of the laboratory system under investigation or of a
11 change in science that affects the integrity of the results of the
12 forensic analysis.

13 (d) An individual who is an independent forensic science
14 practitioner with subject matter expertise.

15 (e) An individual who is a statistician.

16 (f) An individual who is a researcher in the relevant
17 scientific discipline.

18 (5) After the completion of an investigation under this
19 section, the commission shall create a report that contains all of
20 the following:

21 (a) A description of the allegation in the report received
22 under subsection (1) or the basis for an investigation initiated by
23 the commission under subsection (2).

24 (b) The name and location of the forensic laboratory that, and
25 the name of any forensic analyst who, is the subject of the
26 investigation.

27 (c) The disposition of the investigation.

28 (d) If corrective action was taken by the forensic laboratory,
29 a description of that action.



1 (e) Findings regarding the integrity and reliability of the
2 conduct or operation of a forensic science or forensic medicine
3 method, technique, or analysis and recommendations for best
4 practices.

5 (6) The commission shall make a report created under
6 subsection (5) available to the public on the internet and shall
7 submit that report to the state court administrative office, the
8 standing committees of the senate and house of representatives
9 concerning the judiciary, the attorney general, the Prosecuting
10 Attorneys Association of Michigan, the appellate defender office,
11 and the Criminal Defense Attorneys of Michigan.

12 (7) The commission shall develop and implement a defendant
13 notification procedure for investigations conducted under this
14 section that includes all of the following:

15 (a) Notification to institutional stakeholders, the defendant
16 in the criminal case, and that defendant's attorney, if applicable,
17 the disposition, if that disposition includes a finding that an act
18 of professional negligence, misconduct, nonconformance, or a change
19 in science affected the integrity of the results of a forensic
20 analysis.

21 (b) A requirement that the defendant in the criminal case
22 acknowledge receipt of the information described under this
23 subsection and a method for the commission to receive the
24 acknowledgment.

25 (c) A description of the technical issue and a written summary
26 of the facts.

27 (d) A referral to relevant resources, including, but not
28 limited to, public defenders.

29 (e) A protocol for the commission to provide potentially



1 affected defendants with information regarding relevant resources.

2 (8) The commission may create a committee of members from the
3 following groups to assist the commission in developing the
4 notification procedure under subsection (7):

5 (a) Forensic science division of the department of state
6 police.

7 (b) Prosecuting attorneys.

8 (c) Defense attorneys.

9 (d) Judges.

10 (e) Forensic medical service providers.

11 Sec. 9. The commission may not issue a finding related to the
12 guilt or innocence of a party in an underlying trial or any pending
13 case involving conduct investigated by the commission. A written
14 report prepared by the commission is not binding as an admission by
15 the state in any civil or criminal action.

16 Sec. 11. (1) Not later than 2 years after the effective date
17 of this act, a forensic laboratory located in this state that
18 conducts forensic analysis must be accredited by an accrediting
19 body that requires conformance to the appropriate quality assurance
20 standards required by the Federal Bureau of Investigation and to
21 forensic-specific requirements, and that is a signatory to the
22 International Laboratory Accreditation Cooperation Mutual
23 Recognition Arrangements for Testing Laboratories. The commission
24 shall verify that forensic laboratories have obtained the
25 accreditation required under this subsection. If a forensic
26 laboratory will not meet the accreditation requirements within the
27 time required by this subsection and the forensic laboratory
28 submits a petition to the commission requesting an extension of
29 time before the forensic laboratory is in violation of this



1 subsection, the commission in its discretion may grant the
2 extension of time for the forensic laboratory to meet the
3 accreditation requirements.

4 (2) Not later than 2 years after the effective date of this
5 act, a forensic science service provider that provides forensic
6 analyses located in this state must be accredited by an accrediting
7 body that requires conformance to forensic-specific requirements
8 and that is a signatory to the International Laboratory
9 Accreditation Cooperation Mutual Recognition Arrangements for
10 Testing Laboratories. The commission shall verify that forensic
11 science service providers have obtained the accreditation required
12 under this subsection. If a forensic science service provider will
13 not meet the accreditation requirements within the time required by
14 this subsection and the forensic science service provider submits a
15 petition to the commission requesting an extension of time before
16 the forensic science service provider is in violation of this
17 subsection, the commission in its discretion may grant the
18 extension of time for the forensic science service provider to meet
19 the accreditation requirements.

20 (3) The commission shall establish and maintain a publicly
21 accessible record of forensic science service providers that are
22 not accredited as required under subsection (2).

23 Enacting section 1. This act takes effect 90 days after the
24 date it is enacted into law.

25 Enacting section 2. This act does not take effect unless
26 Senate Bill No. 277 of the 100th Legislature is enacted into law.

