

## CHAPTER 147

### (Senate Bill 351)

AN ACT concerning

#### **Forensic Laboratories – Standards and Oversight**

FOR the purpose of requiring the Secretary of Health and Mental Hygiene to adopt regulations that set certain standards and requirements; specifying the required contents of certain regulations; requiring ~~an individual who a~~ laboratory that examines or analyzes forensic specimens ~~on behalf of a certain laboratory~~ to demonstrate satisfactory performance in a certain proficiency testing program; requiring the Secretary to adopt certain regulations for a certain proficiency testing program; requiring ~~a certain employee~~ the Department of Health and Mental Hygiene to review certain proficiency tests and proficiency ~~test results at certain times~~ testing programs; requiring the Secretary to conduct certain inspections for a certain purpose; authorizing the Secretary to conduct certain investigations and surveys; providing that certain documents are public documents; requiring ~~the Secretary~~ a forensic laboratory to make certain information available to the public within a certain time of a written request; requiring the Secretary to adopt regulations that set qualifications for certain personnel; requiring the Secretary to set certain fees; ~~authorizing the Secretary to set a certain fee~~; requiring a ~~person~~ forensic laboratory to hold a certain license before the ~~person~~ forensic laboratory may offer or perform certain tests, examinations, or analyses in the State on or after a certain date; requiring the Secretary to issue a letter of exception to certain laboratories under certain circumstances; authorizing the Secretary to grant a certain waiver to certain laboratories; requiring an applicant to provide certain evidence to qualify for a certain license; requiring a certain applicant to submit an application to the Secretary on a certain form; specifying the required contents of an application for a certain license; requiring a certain applicant to pay a certain fee to the Department of Health and Mental Hygiene; requiring the Secretary to issue a certain license to a certain applicant; specifying the required contents of a certain license; requiring a certain license to designate the tests, examinations, or analyses that may be offered or performed by the laboratory; prohibiting a certain laboratory from operating in a manner not designated by its license; providing that a certain license is not transferable; providing that a certain license expires on a certain date, unless the license is renewed in accordance with this Act; authorizing a certain licensee to renew its license for an additional term under certain circumstances; requiring the

Secretary to renew the license of each licensee ~~who~~ that meets certain requirements; authorizing the Secretary to deny a certain license or suspend, revoke, or limit a certain license or the authority of a certain licensee to offer or perform tests that a certain license sets forth under certain circumstances; ~~requiring the Secretary to take certain actions if the Secretary finds that a certain laboratory no longer meets certain standards and requirements and the Secretary does not suspend or revoke the laboratory's license; requiring the Secretary to undertake a certain due diligence review under certain circumstances; requiring~~ authorizing the Secretary to order a certain laboratory to take certain actions if the Secretary finds that the laboratory provided erroneous or questionable reports, analyses, examinations, or test results; requiring a State's Attorney to provide certain notice to certain victims under certain circumstances; providing for certain penalties; requiring the Secretary to give a certain applicant or licensee notice and an opportunity for a hearing under certain circumstances; requiring a certain laboratory to post a certain notice in a certain place; specifying the required contents of a certain notice; requiring the Secretary to specify the form of a certain notice; authorizing an employee of a forensic laboratory to disclose certain information to the Secretary under certain circumstances; prohibiting a certain laboratory from ~~discriminating or retaliating~~ taking certain adverse employment actions against a certain employee for ~~a certain reason~~ certain reasons; authorizing a certain employee to initiate ~~judicial~~ an action under certain circumstances; providing that a certain employee who prevails in a certain ~~judicial~~ action is entitled to certain remedies; limiting the time in which a certain ~~judicial~~ action may be filed; establishing a Forensic Laboratory Advisory Committee; specifying the membership of the Advisory Committee; requiring the ~~Secretary~~ Governor to designate a chair of the Advisory Committee and appoint members of the Advisory Committee at certain times; establishing the terms of the members of the Advisory Committee; prohibiting a member of the Advisory Committee from receiving certain compensation; requiring the Department to staff the Advisory Committee; establishing the Maryland Forensic Laboratory Improvement Fund as a special fund; providing for the funding of a certain fund; requiring the Governor's Office of Crime Control and Prevention to administer a certain fund; specifying the purposes for which grants shall be made from a certain fund; providing that certain proceedings, records, and files of a certain organization or agency certain organizations or agencies are not discoverable and are not admissible in a certain criminal case; providing that certain reports, findings, recommendations, and corrective actions issued by a certain organization or agency are discoverable and admissible to a certain extent; requiring the Governor to include certain funds in the State budget for a certain purpose for certain years; requiring the Secretary to make certain appointments on or before a certain date; requiring the Secretary to adopt certain regulations on or

before a certain date; defining certain terms; modifying a certain definition; ~~providing that this Act does not apply to a certain type of testing;~~ and generally relating to standards and oversight for forensic laboratories.

BY repealing and reenacting, without amendments,  
 Article – Health – General  
 Section 1–101(c) and (j)  
 Annotated Code of Maryland  
 (2005 Replacement Volume and 2006 Supplement)

BY adding to  
 Article – Health – General  
 Section 17–2A–01 through ~~17–2A–16~~ 17–2A–12 to be under the new subtitle  
 “Subtitle 2A. Forensic Laboratories”  
 Annotated Code of Maryland  
 (2005 Replacement Volume and 2006 Supplement)

BY repealing and reenacting, with amendments,  
 Article – ~~Health Occupations~~ Health – General  
 Section ~~1–401~~ 19–2301  
 Annotated Code of Maryland  
 (2005 Replacement Volume and 2006 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Health – General**

1–101.

- (c) “Department” means the Department of Health and Mental Hygiene.
- (j) “Secretary” means the Secretary of Health and Mental Hygiene.

**SUBTITLE 2A. FORENSIC LABORATORIES.**

**17–2A–01.**

**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(B) (1) “FORENSIC ANALYSIS” MEANS A MEDICAL, CHEMICAL, TOXICOLOGIC, ~~BALLISTIC FIREARMS~~, 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 ACT.**

**(2) “FORENSIC ANALYSIS” INCLUDES AN EXAMINATION OR TEST REQUIRED BY A LAW ENFORCEMENT AGENCY, PROSECUTOR, CRIMINAL SUSPECT OR DEFENDANT, OR COURT.**

**(3) “FORENSIC ANALYSIS” DOES NOT INCLUDE:**

**(I) A TEST OF A SPECIMEN OF BREATH OR BLOOD TO DETERMINE ALCOHOL CONCENTRATION OR CONTROLLED DANGEROUS SUBSTANCE CONTENT;**

**(II) FORENSIC INFORMATION TECHNOLOGY;**

**(III) ~~FORENSIC FIELD TESTS~~ A PRESUMPTIVE TEST PERFORMED AT A CRIME SCENE;**

**(IV) 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 COUNTY DEPARTMENT OF CORRECTIONS OR THE STATE DEPARTMENT OF ~~CORRECTIONS~~ PUBLIC SAFETY AND CORRECTIONAL SERVICES; OR**

**(V) AN EXPERT EXAMINATION OR TEST CONDUCTED PRINCIPALLY FOR THE PURPOSE OF SCIENTIFIC RESEARCH, MEDICAL PRACTICE, CIVIL OR ADMINISTRATIVE LITIGATION, OR ANY OTHER PURPOSE UNRELATED TO DETERMINING THE CONNECTION OF PHYSICAL EVIDENCE TO A CRIMINAL ACT.**

**(C) “FORENSIC INFORMATION TECHNOLOGY” MEANS DIGITAL OR ELECTRONIC EVIDENCE THAT IS STORED OR TRANSMITTED ELECTRONICALLY.**

**~~(D)~~ (1) “FORENSIC LABORATORY” MEANS A FACILITY, ENTITY, OR SITE THAT OFFERS OR PERFORMS ~~TESTS, EXAMINATIONS, OR ANALYSES THAT MAY BE USED TO DETERMINE A CONNECTION BETWEEN THE ITEMS TESTED, EXAMINED, OR ANALYZED AND A CRIMINAL ACT~~ FORENSIC ANALYSIS.**

(2) **“FORENSIC LABORATORY” INCLUDES A LABORATORY OWNED OR OPERATED BY THE STATE, A COUNTY OR MUNICIPAL CORPORATION IN THE STATE, OR ~~OTHER~~ ANOTHER GOVERNMENTAL ENTITY.**

(3) **“FORENSIC LABORATORY” DOES NOT INCLUDE:**

(I) **A FORENSIC LABORATORY OPERATED BY THE FEDERAL GOVERNMENT; OR**

(II) **A LABORATORY LICENSED OR CERTIFIED BY THE DEPARTMENT OF AGRICULTURE.**

~~(E)~~ (E) **“LICENSE” MEANS A PERMIT, LETTER OF EXCEPTION, CERTIFICATE, OR OTHER DOCUMENT ISSUED BY THE SECRETARY GRANTING APPROVAL OR AUTHORITY TO OFFER OR PERFORM FORENSIC LABORATORY TESTS, EXAMINATIONS, OR ANALYSES IN THE STATE.**

(F) **“LIMITED FORENSIC ANALYSIS” MEANS A FORENSIC LABORATORY TEST OR ANALYSIS DEFINED IN REGULATIONS ADOPTED BY THE SECRETARY.**

(G) **“PHYSICAL EVIDENCE” MEANS ANY OBJECT, THING, OR SUBSTANCE RELATING TO A CRIMINAL ACT.**

**17-2A-02.**

~~**THIS SUBTITLE DOES NOT APPLY TO THE TESTING OF A PERSON’S BLOOD OR BREATH TO DETERMINE ALCOHOL CONCENTRATION OR CONTROLLED DANGEROUS SUBSTANCE CONTENT.**~~

~~**17-2A-03.**~~

(A) (1) **THE SECRETARY SHALL ADOPT REGULATIONS THAT SET STANDARDS AND REQUIREMENTS FOR FORENSIC LABORATORIES.**

(2) **THE REGULATIONS SHALL CONTAIN THE STANDARDS AND REQUIREMENTS THAT THE SECRETARY CONSIDERS NECESSARY TO ASSURE THE CITIZENS OF THE STATE THAT FORENSIC LABORATORIES PROVIDE SAFE, RELIABLE, AND ACCURATE SERVICES.**

**(3) THE REGULATIONS SHALL:**

**(I) REQUIRE THE DIRECTOR OF A FORENSIC LABORATORY TO ESTABLISH AND ADMINISTER AN ONGOING QUALITY ASSURANCE PROGRAM USING STANDARDS ACCEPTABLE TO THE SECRETARY;**

**(II) REQUIRE THE DIRECTOR OF A FORENSIC LABORATORY TO RETAIN ALL CASE FILES FOR AT LEAST 10 YEARS; ~~AND~~**

**(III) ESTABLISH QUALIFICATIONS FOR THE PERSONNEL OF FORENSIC LABORATORIES;**

**(IV) ESTABLISH PROCEDURES FOR VERIFYING THE BACKGROUND AND EDUCATION OF THE PERSONNEL OF FORENSIC LABORATORIES;**

**(V) REQUIRE THE SECRETARY TO CHARGE FEES THAT MAY NOT EXCEED THE ACTUAL DIRECT AND INDIRECT COSTS TO THE DEPARTMENT TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE; AND**

**~~(III)~~ (VI) ESTABLISH ANY ADDITIONAL STANDARDS THAT THE SECRETARY CONSIDERS NECESSARY TO ASSURE THAT FORENSIC LABORATORIES PROVIDE ~~SAFE~~ ACCURATE AND RELIABLE SERVICES.**

**(B) (1) ~~AN INDIVIDUAL WHO EXAMINES OR ANALYZES FORENSIC SPECIMENS ON BEHALF OF A LICENSED FORENSIC LABORATORY SHALL DEMONSTRATE SATISFACTORY PERFORMANCE IN AN APPROVED PROFICIENCY TESTING PROGRAM SPECIFICALLY RELATED TO THE PARTICULAR TESTING OR ANALYSIS BEING PERFORMED~~ A FORENSIC LABORATORY THAT EXAMINES OR ANALYZES PHYSICAL EVIDENCE SHALL DEMONSTRATE SATISFACTORY PERFORMANCE IN AN APPROVED PROFICIENCY TESTING PROGRAM SPECIFICALLY RELATED TO THE PARTICULAR FORENSIC ANALYSIS BEING PERFORMED.**

**(2) THE SECRETARY SHALL ADOPT REGULATIONS FOR THE FORENSIC PROFICIENCY TESTING PROGRAM THAT:**

**(I) DEFINE SATISFACTORY PROFICIENCY TESTING PERFORMANCE; AND**

(II) SET STANDARDS AND REQUIREMENTS THAT A FORENSIC PROFICIENCY TESTING PROGRAM SHALL MEET ~~BEFORE IT MAY BE DESIGNATED AN APPROVED PROGRAM.~~

(3) ~~AN EMPLOYEE OF THE~~ THE DEPARTMENT SHALL REVIEW ~~ALL PROFICIENCY TESTS AND PROFICIENCY TEST RESULTS EVERY 2 YEARS~~ A FORENSIC LABORATORY'S PROFICIENCY TESTING PROGRAM.

(C) TO ASSURE COMPLIANCE WITH THE STANDARDS AND REQUIREMENTS ~~SET FORTH IN REGULATIONS ADOPTED~~ UNDER THIS SUBTITLE, THE SECRETARY SHALL CONDUCT:

(1) AN INSPECTION OF EACH FORENSIC LABORATORY FOR WHICH A LICENSE TO OPERATE IS SOUGHT; AND

(2) ~~PERIODIC INSPECTIONS~~ AN INSPECTION OF EACH FORENSIC LABORATORY FOR WHICH A LICENSE HAS BEEN ISSUED; ~~AND~~

(3) ~~AN INSPECTION WITHIN 6 MONTHS PRIOR TO REISSUING A LICENSE TO A FORENSIC LABORATORY.~~

(D) TO ASSURE COMPLIANCE WITH THE STANDARDS AND REQUIREMENTS UNDER THIS SUBTITLE, THE SECRETARY MAY CONDUCT:

(1) A COMPLAINT INVESTIGATION; AND

(2) A VALIDATION SURVEY OF AN ACCREDITED FORENSIC LABORATORY.

~~17-2A-04.~~ 17-2A-03.

~~THE SECRETARY SHALL MAKE REPORTS OF INSPECTIONS CONDUCTED BY THE SECRETARY UNDER THIS SUBTITLE, DISCREPANCY LOGS, CONTAMINATION RECORDS, PROFICIENCY TESTS AND TEST RESULTS, AND DIRECTED PLANS OF CORRECTION AVAILABLE TO THE PUBLIC WITHIN 10 DAYS OF A WRITTEN REQUEST.~~

~~17-2A-05.~~

~~THE SECRETARY SHALL ADOPT REGULATIONS THAT SET QUALIFICATIONS FOR THE PERSONNEL OF FORENSIC LABORATORIES.~~

~~17-2A-06.~~

~~THE SECRETARY:~~

~~(1) SHALL SET LICENSING FEES FOR FORENSIC LABORATORIES IN ACCORDANCE WITH § 2-104 OF THIS ARTICLE; AND~~

~~(2) MAY SET A FEE FOR THE PROFICIENCY TESTING PROGRAM.~~

~~17-2A-07.~~

~~ON OR AFTER SEPTEMBER 1, 2009, A PERSON SHALL HOLD A LICENSE ISSUED BY THE SECRETARY BEFORE THE PERSON MAY OFFER OR PERFORM FORENSIC LABORATORY TESTS, EXAMINATIONS, OR ANALYSES IN THE STATE.~~

(A) FORENSIC LABORATORY DEFICIENCY STATEMENTS AND PLANS OF CORRECTION ARE PUBLIC DOCUMENTS.

(B) A FORENSIC LABORATORY SHALL MAKE DISCREPANCY LOGS, CONTAMINATION RECORDS, PROFICIENCY TESTS, AND TEST RESULTS AVAILABLE TO THE PUBLIC WITHIN 30 DAYS OF A WRITTEN REQUEST.

(C) EXCEPT AS PROVIDED IN SUBSECTION (A) OF THIS SECTION, THE PROCEEDINGS, RECORDS, AND FILES OF AN ORGANIZATION OR STATE AGENCY RESPONSIBLE FOR ASSURING COMPLIANCE WITH THIS SUBTITLE SHALL BE CONFIDENTIAL AND NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN A CIVIL OR CRIMINAL ACTION.

17-2A-04.

(A) AFTER DECEMBER 31, 2011, A PERSON FORENSIC LABORATORY SHALL HOLD A LICENSE ISSUED BY THE SECRETARY BEFORE THE PERSON FORENSIC LABORATORY MAY OFFER OR PERFORM FORENSIC ANALYSIS IN THE STATE.



**(B) THE SECRETARY SHALL ISSUE A LETTER OF EXCEPTION TO A LABORATORY THAT:**

**(1) PERFORMS ONLY LIMITED FORENSIC ANALYSIS; AND**

**(2) MEETS THE EXCEPTION REQUIREMENTS IN REGULATIONS ADOPTED BY THE SECRETARY.**

**(C) THE SECRETARY MAY GRANT AN OUT-OF-STATE FORENSIC LABORATORY A WAIVER FROM THE LICENSURE REQUIREMENTS OF THIS SUBTITLE WITH CONDITIONS.**

~~17-2A-08.~~ **17-2A-05.**

**TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL PROVIDE EVIDENCE TO SATISFY THE SECRETARY THAT THE FORENSIC LABORATORY AND ITS PERSONNEL MEET THE STANDARDS AND REQUIREMENTS OF THIS SUBTITLE ~~AND THE REGULATIONS ADOPTED UNDER THIS SUBTITLE.~~**

~~17-2A-09.~~ **17-2A-06.**

**(A) AN APPLICANT FOR A LICENSE SHALL SUBMIT AN APPLICATION TO THE SECRETARY ON THE FORM THAT THE SECRETARY REQUIRES.**

**(B) AN APPLICATION FOR A LICENSE TO OPERATE A FORENSIC LABORATORY SHALL INCLUDE:**

**(1) THE NAME OF THE OPERATOR OR OWNER;**

**(2) THE TESTS OR EXAMINATIONS THAT THE FORENSIC LABORATORY WOULD PROVIDE; AND**

**(3) ANY OTHER INFORMATION THAT THE SECRETARY REQUIRES.**

**(C) THE APPLICANT SHALL PAY TO THE DEPARTMENT THE APPLICATION FEE SET BY THE SECRETARY IN ACCORDANCE WITH § 2-104 OF THIS ARTICLE.**

~~17-2A-10.~~ **17-2A-07.**

(A) **THE SECRETARY SHALL ISSUE A LICENSE TO AN APPLICANT ~~WHO~~ THAT MEETS THE STANDARDS AND REQUIREMENTS OF THIS SUBTITLE AND THE REGULATIONS ADOPTED UNDER THIS SUBTITLE.**

(B) **A FORENSIC LABORATORY LICENSE SHALL INCLUDE THE NAME OF THE:**

- (1) **FORENSIC LABORATORY;**
- (2) **LABORATORY DIRECTOR; AND**
- (3) **OPERATOR OR OWNER OF THE LABORATORY.**

(C) **A FORENSIC LABORATORY LICENSE SHALL DESIGNATE THE TESTS, EXAMINATIONS, OR ANALYSES THAT MAY BE OFFERED OR PERFORMED BY THE LABORATORY.**

(D) **A FORENSIC LABORATORY MAY NOT OPERATE IN A MANNER NOT DESIGNATED BY ~~ITS LICENSE~~ THE LICENSE ISSUED UNDER THIS SUBTITLE.**

(E) **A FORENSIC LABORATORY LICENSE ISSUED BY THE SECRETARY UNDER THIS SUBTITLE IS NOT TRANSFERABLE.**

**~~17-2A-11, 17-2A-08.~~**

(A) **A LICENSE EXPIRES ON THE DATE SET BY THE SECRETARY UNLESS THE LICENSE IS RENEWED AS PROVIDED IN THIS SECTION.**

(B) **BEFORE THE LICENSE EXPIRES, THE LICENSEE MAY RENEW ITS LICENSE FOR AN ADDITIONAL TERM, IF THE LICENSEE:**

(1) **PAYS TO THE DEPARTMENT THE RENEWAL FEE SET BY THE SECRETARY AND ANY OUTSTANDING LICENSING OR PROFICIENCY TESTING FEES;**

(2) **SUBMITS TO THE SECRETARY A RENEWAL APPLICATION ON THE FORM THAT THE SECRETARY REQUIRES; AND**

(3) IS IN COMPLIANCE WITH ALL STANDARDS AND REQUIREMENTS OF THIS SUBTITLE ~~AND REGULATIONS ADOPTED UNDER THIS SUBTITLE.~~

(C) THE SECRETARY SHALL RENEW THE LICENSE OF EACH LICENSEE THAT MEETS THE REQUIREMENTS OF THIS SECTION.

~~17-2A-12.~~ 17-2A-09.

(A) THE SECRETARY MAY DENY A LICENSE TO AN APPLICANT OR SUSPEND, REVOKE, OR LIMIT A LICENSE OR THE AUTHORITY OF A LICENSEE TO OFFER OR PERFORM TESTS THAT A LICENSE SETS FORTH, IF THE FORENSIC LABORATORY OR ITS DIRECTOR OR OTHER PERSONNEL FAIL TO MEET THE STANDARDS AND REQUIREMENTS OF THIS SUBTITLE ~~OR REGULATIONS ADOPTED UNDER THIS SUBTITLE.~~

~~(B) IF THE SECRETARY FINDS THAT A FORENSIC LABORATORY ISSUED A LICENSE UNDER THIS SUBTITLE NO LONGER MEETS THE STANDARDS AND REQUIREMENTS OF THIS SUBTITLE OR REGULATIONS ADOPTED UNDER THIS SUBTITLE AND THE SECRETARY DOES NOT SUSPEND OR REVOKE THE LABORATORY'S LICENSE, THE SECRETARY:~~

~~(1) SHALL IMPOSE A DIRECTED PLAN OF CORRECTION;~~

~~(2) REGULARLY SHALL INSPECT THE LABORATORY TO ASSURE COMPLIANCE WITH THE DIRECTED PLAN OF CORRECTION; AND~~

~~(3) MAY LIMIT THE TESTING AUTHORIZED BY THE LICENSE.~~

~~(C) IF THE SECRETARY FINDS THAT A LABORATORY THAT WAS ISSUED A LICENSE UNDER THIS SUBTITLE NO LONGER MEETS THE STANDARDS AND REQUIREMENTS OF THIS SUBTITLE OR REGULATIONS ADOPTED UNDER THIS SUBTITLE, THE SECRETARY SHALL UNDERTAKE A DUE DILIGENCE REVIEW OF THE LABORATORY TO IDENTIFY ERRONEOUS OR QUESTIONABLE REPORTS, ANALYSES, EXAMINATIONS, OR TEST RESULTS.~~

~~(D) IF THE SECRETARY FINDS THAT A FORENSIC LABORATORY PROVIDED ERRONEOUS OR QUESTIONABLE REPORTS, ANALYSES, EXAMINATIONS, OR TEST RESULTS, THE SECRETARY SHALL ORDER THE LABORATORY TO:~~

~~(1) PROVIDE WRITTEN NOTIFICATION OF THE ERRONEOUS OR QUESTIONABLE TEST RESULTS TO:~~

~~(I) THE PERSON OR AGENCY THAT ORDERED THE TESTS;~~

~~(II) THE RELEVANT PROSECUTING AUTHORITY;~~

~~(III) THE SUSPECT OR DEFENDANT AFFECTED BY THE ERRONEOUS OR QUESTIONABLE TEST RESULTS;~~

~~(IV) THE COUNSEL OF RECORD FOR THE SUSPECT OR DEFENDANT AFFECTED BY THE ERRONEOUS OR QUESTIONABLE TEST RESULTS;~~

~~(V) THE COURT TO WHICH THE ERRONEOUS OR QUESTIONABLE TEST RESULTS WERE PROFFERED; AND~~

~~(VI) THE VICTIM OF THE CRIMINAL ACT AT ISSUE; AND~~

~~(2) TAKE ANY OTHER MEASURES NECESSARY TO MEET THE STANDARDS AND REQUIREMENTS OF THIS SUBTITLE AND THE REGULATIONS ADOPTED UNDER THIS SUBTITLE.~~

(B) (1) IF THE SECRETARY FINDS THAT A FORENSIC LABORATORY LICENSED UNDER THIS SUBTITLE NO LONGER MEETS THE STANDARDS AND REQUIREMENTS OF THIS SUBTITLE, THE SECRETARY MAY:

(I) REVOKE THE LICENSE OF THE FORENSIC LABORATORY;

OR

(II) SUSPEND THE LICENSE OF THE FORENSIC LABORATORY.

(2) IF A DEFICIENCY EXISTS, THE SECRETARY MAY:

(I) IMPOSE A DIRECTED PLAN OF CORRECTION;

(II) REGULARLY INSPECT THE FORENSIC LABORATORY TO ASSURE COMPLIANCE WITH THE DIRECTED PLAN OF CORRECTION; OR

**(III) LIMIT THE TESTING AUTHORIZED BY THE LICENSE.**

**(C) IF THE SECRETARY FINDS THAT A FORENSIC LABORATORY PROVIDED ERRONEOUS OR QUESTIONABLE TEST RESULTS, THE SECRETARY MAY ORDER THE LABORATORY TO PROVIDE WRITTEN NOTIFICATION TO:**

- (1) THE PERSON OR AGENCY THAT ORDERED THE TESTS; ~~AND~~**
- (2) THE OFFICE OF THE PUBLIC DEFENDER OR COUNSEL OF RECORD; AND**
- (3) THE STATE'S ATTORNEY.**

**(D) A STATE'S ATTORNEY WHO RECEIVES NOTIFICATION FROM A LABORATORY UNDER SUBSECTION (C) OF THIS SECTION SHALL NOTIFY THE VICTIM OF THE CRIMINAL ACT OR THE VICTIM'S REPRESENTATIVE OF THE ERRONEOUS OR QUESTIONABLE TEST RESULTS.**

**(E) A FORENSIC LABORATORY THAT FAILS TO COMPLY WITH AN ORDER ISSUED BY THE SECRETARY UNDER SUBSECTION ~~(D)~~ (C) OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF UP TO \$1,000 FOR EACH DAY OF NONCOMPLIANCE AFTER THE DEADLINE FOR COMPLIANCE STATED IN THE SECRETARY'S ORDER, NOT TO EXCEED A MAXIMUM PENALTY OF \$50,000.**

**(F) EXCEPT AS OTHERWISE PROVIDED IN THE ADMINISTRATIVE PROCEDURE ACT, BEFORE THE SECRETARY DENIES, SUSPENDS, OR REVOKES A LICENSE, OR IMPOSES A CIVIL PENALTY UNDER THIS SECTION, THE SECRETARY SHALL GIVE THE APPLICANT OR LICENSEE NOTICE AND AN OPPORTUNITY FOR A HEARING.**

**~~17-2A-13.~~ 17-2A-10.**

**(A) IN THIS SECTION, "DISCRIMINATE OR RETALIATE" INCLUDES:**

- (1) FAILING TO PROMOTE AN INDIVIDUAL OR TO PROVIDE ANOTHER EMPLOYMENT-RELATED BENEFIT FOR WHICH THE INDIVIDUAL WOULD OTHERWISE BE ELIGIBLE;**

(2) MAKING AN ADVERSE EVALUATION OR DECISION IN RELATION TO ACCREDITATION, CERTIFICATION, CREDENTIALING, OR LICENSING OF THE INDIVIDUAL; OR

(3) TAKING A PERSONNEL ACTION THAT IS ADVERSE TO THE INDIVIDUAL CONCERNED.

~~(B) (1) A FORENSIC LABORATORY SHALL POST IN A CONSPICUOUS PLACE A NOTICE TO EMPLOYEES THAT INDICATES THE MANNER IN WHICH TO REPORT INSTANCES OF NONCOMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE, INCLUDING DEFICIENCIES WITH RESPECT TO TESTING, QUALITY, AND TRAINING OF PERSONNEL.~~

~~(2) A NOTICE UNDER THIS SUBSECTION SHALL INCLUDE:~~

~~(I) THE NAME AND CONTACT INFORMATION OF THE APPROPRIATE ENTITY OR STATE AGENCY TO WHICH INSTANCES OF NONCOMPLIANCE MAY BE REPORTED; AND~~

~~(II) A DESCRIPTION OF THE RIGHTS OF AND PROTECTIONS AVAILABLE TO INDIVIDUALS WHO REPORT INSTANCES OF NONCOMPLIANCE.~~

~~(3) THE SECRETARY SHALL SPECIFY THE FORM OF THE NOTICE.~~

~~(C) A FORENSIC LABORATORY MAY NOT DISCRIMINATE OR RETALIATE AGAINST AN EMPLOYEE OF THE LABORATORY BECAUSE THAT EMPLOYEE OR ANY OTHER PERSON HAS PRESENTED A GRIEVANCE OR COMPLAINT OR HAS INITIATED OR COOPERATED IN AN INVESTIGATION OR PROCEEDING RELATING TO THE TESTS PERFORMED BY THE LABORATORY OR TO OTHER REQUIREMENTS OR PROHIBITIONS OF THIS SUBTITLE.~~

(B) AN EMPLOYEE WHO WORKS IN A FORENSIC LABORATORY MAY DISCLOSE INFORMATION TO THE SECRETARY THAT THE EMPLOYEE BELIEVES EVIDENCES A VIOLATION OF STANDARDS AND REQUIREMENTS FOR FORENSIC LABORATORIES IN THE STATE.

(C) A FORENSIC LABORATORY MAY NOT DISCRIMINATE OR RETALIATE AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE:

(1) DISCLOSES INFORMATION UNDER SUBSECTION (B) OF THIS SECTION; OR

(2) HAS AGREED TO COOPERATE WITH AN INVESTIGATION OF THE FORENSIC LABORATORY.

(D) (1) THE SECRETARY SHALL DEVELOP, THROUGH REGULATION, A DOCUMENT THAT INFORMS THE EMPLOYEES OF A FORENSIC LABORATORY OF THE PROCEDURES TO REPORT INSTANCES OF NONCOMPLIANCE OR OTHER VIOLATIONS OF THE STANDARDS AND REQUIREMENTS FOR FORENSIC LABORATORIES IN THE STATE.

(2) THE SECRETARY SHALL DISTRIBUTE THE DOCUMENT DEVELOPED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO FORENSIC LABORATORIES IN THE STATE.

(E) A FORENSIC LABORATORY SHALL POST THE DOCUMENT DEVELOPED UNDER SUBSECTION (D) OF THIS SECTION IN A CONSPICUOUS PLACE.

~~(D)~~ (F) AN EMPLOYEE OF A FORENSIC LABORATORY WHO HAS BEEN DISCRIMINATED OR RETALIATED AGAINST IN VIOLATION OF SUBSECTION (C) OF THIS SECTION MAY INITIATE ~~JUDICIAL~~ AN ACTION AND, ON PREVAILING, SHALL BE ENTITLED TO:

(1) REINSTATEMENT;

(2) REIMBURSEMENT FOR LOST WAGES;

(3) WORK BENEFITS LOST AS A RESULT OF THE UNLAWFUL ACTS OF THE EMPLOYING LABORATORY; AND

(4) REASONABLE ATTORNEY'S FEES AND COSTS ASSOCIATED WITH PURSUING THE ~~JUDICIAL~~ ACTION.

~~(E)~~ (G) NO ~~JUDICIAL~~ ACTION MAY BE BROUGHT UNDER THIS SUBSECTION ~~(D) OF THIS SECTION~~ MORE THAN 2 YEARS AFTER THE DISCRIMINATION OR RETALIATION THAT IS THE BASIS FOR THE ACTION.

~~17-2A-14, 17-2A-11.~~

(A) A PERSON THAT VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) A FINE NOT EXCEEDING \$100 FOR THE FIRST OFFENSE; AND

(2) A FINE NOT EXCEEDING \$500 FOR EACH SUBSEQUENT CONVICTION FOR A VIOLATION OF THE SAME PROVISION.

(B) EACH DAY A VIOLATION IS CONTINUED AFTER THE FIRST CONVICTION IS A SUBSEQUENT OFFENSE ON WHICH A VIOLATION OCCURS IS A SEPARATE VIOLATION UNDER THIS SECTION.

~~17-2A-15.~~ 17-2A-12.

(A) ~~THE SECRETARY~~ GOVERNOR SHALL ESTABLISH A FORENSIC LABORATORY ADVISORY COMMITTEE TO ADVISE THE SECRETARY ON MATTERS RELATING TO THE IMPLEMENTATION OF THE PROVISIONS OF THIS SUBTITLE.

~~(B) THE ADVISORY COMMITTEE SHALL CONSIST OF ONE REPRESENTATIVE OR DESIGNEE OF:~~

(1) ~~THE AMERICAN SOCIETY FOR CLINICAL LABORATORY SCIENCE;~~

(2) ~~THE UNIVERSITY OF MARYLAND SCHOOL OF MEDICINE DEPARTMENT OF MEDICAL RESEARCH AND TECHNOLOGY;~~

(3) ~~THE JOHN JAY CENTER FOR MODERN FORENSIC PRACTICE;~~

(4) ~~THE CLINICAL LABORATORY MANAGEMENT ASSOCIATION;~~

(5) ~~THE AMERICAN ASSOCIATION FOR LABORATORY ACCREDITATION;~~

(6) ~~THE CLINICAL AND LABORATORY STANDARDS INSTITUTE;~~  
AND

(7) ~~ONE DIRECTOR OF A FORENSIC LABORATORY IN THE STATE.~~



~~(C) THE SECRETARY SHALL:~~

~~(1) APPOINT MEMBERS OF THE ADVISORY COMMITTEE EVERY 2 YEARS; AND~~

~~(2) DESIGNATE THE CHAIR OF THE ADVISORY COMMITTEE.~~

(B) THE ADVISORY COMMITTEE SHALL CONSIST OF THE FOLLOWING 11 10 MEMBERS:

(1) THE DIRECTOR OF THE LABORATORIES ADMINISTRATION IN THE DEPARTMENT, OR THE DIRECTOR'S DESIGNEE;

(2) THE DIRECTOR OF THE OFFICE OF HEALTH CARE QUALITY IN THE DEPARTMENT, OR THE DIRECTOR'S DESIGNEE; AND

(3) THE FOLLOWING MEMBERS, APPOINTED BY THE GOVERNOR:

(I) ONE FROM THE AMERICAN SOCIETY FOR CLINICAL LABORATORY SCIENCE;

(II) ONE FROM THE UNIVERSITY OF MARYLAND SCHOOL OF MEDICINE, DEPARTMENT OF MEDICAL RESEARCH AND TECHNOLOGY;

(III) ONE FROM THE AMERICAN ASSOCIATION FOR LABORATORY ACCREDITATION;

(IV) ONE FROM THE AMERICAN ACADEMY OF FORENSIC SCIENCES;

~~(V) ONE FROM FORENSIC QUALITY SERVICES;~~

~~(VI)~~ (V) ONE FROM THE AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS/LABORATORY ACCREDITATION BOARD; AND

~~(VII)~~ (VI) THREE DIRECTORS OF FORENSIC LABORATORIES IN THE STATE, INCLUDING:

1. ONE FROM A FORENSIC LABORATORY OPERATED BY THE STATE;

**2. ONE FROM A FORENSIC LABORATORY OPERATED BY A COUNTY; AND**

**3. ONE FROM A FORENSIC LABORATORY OPERATED BY A MUNICIPAL CORPORATION.**

**(C) (1) THE TERM OF AN APPOINTED MEMBER IS 3 YEARS.**

**(2) THE TERMS OF APPOINTED MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR APPOINTED MEMBERS OF THE ADVISORY COMMITTEE ON OCTOBER 1, 2007.**

**(D) THE GOVERNOR SHALL DESIGNATE THE CHAIR OF THE ADVISORY COMMITTEE.**

**(E) A MAJORITY OF THE MEMBERS SERVING ON THE ADVISORY COMMITTEE REPRESENTS A QUORUM TO CONDUCT BUSINESS.**

**(F) A MEMBER OF THE ADVISORY COMMITTEE MAY NOT RECEIVE COMPENSATION BUT IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.**

**(G) THE DEPARTMENT SHALL PROVIDE STAFF FOR THE ADVISORY COMMITTEE.**

**~~17-2A-16.~~**

**~~(A) THERE IS A SPECIAL FUND CALLED THE MARYLAND FORENSIC LABORATORY IMPROVEMENT FUND.~~**

**~~(B) THE FUND SHALL CONTAIN SUCH FUNDS AS PROVIDED IN THE STATE BUDGET.~~**

**~~(C) THE FUND MAY INCLUDE FUNDS GENERATED BY LICENSING AND ENFORCEMENT FEES IMPOSED UNDER THIS SUBTITLE.~~**

**~~(D) THE FUND SHALL BE ADMINISTERED BY THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION.~~**

~~(E) GRANTS SHALL BE MADE FROM THE FUND TO FORENSIC LABORATORIES FOR THE PURPOSE OF PAYING FOR FACILITIES, EQUIPMENT, AND TRAINING OR OTHER COSTS ASSOCIATED WITH COMPLIANCE WITH THIS SUBTITLE.~~

19-2301.

(a) In this subtitle the following words have the meanings indicated.

(b) “Accreditation organization” means a private entity that conducts inspections and surveys of health care facilities based on nationally recognized and developed standards.

(c) “Deemed status” means a status under which a health care facility may be exempt from routine surveys conducted by the Department.

(d) “Health care facility” means:

(1) A hospital as defined in § 19-301(b) of this title;

(2) A health maintenance organization as defined in § 19-701(g) of this title;

(3) A freestanding ambulatory care facility as defined in § 19-3B-01 of this title;

(4) An assisted living facility as defined in § 19-1801 of this title;

(5) A laboratory as defined in § 17-201 of this article;

(6) A home health agency as defined in § 19-401 of this title;

(7) A residential treatment center as defined in § 19-301 of this title;  
[and]

(8) A comprehensive rehabilitation facility as defined in § 19-1201 of this title; AND

(9) A FORENSIC LABORATORY AS DEFINED IN § 17-2A-01 OF THIS ARTICLE.

**Article — Health Occupations**~~1-401.~~~~(a) (1) In this section the following words have the meanings indicated.~~~~(2) (i) “Alternative health care system” means a system of health care delivery other than a hospital or related institution.~~~~(ii) “Alternative health care system” includes:~~~~1. A health maintenance organization;~~~~2. A preferred provider organization;~~~~3. An independent practice association;~~~~4. A community health center that is a nonprofit, freestanding ambulatory health care provider governed by a voluntary board of directors and that provides primary health care services to the medically indigent;~~~~5. A freestanding ambulatory care facility as that term is defined in § 19-3B-01 of the Health General Article; or~~~~6. Any other health care delivery system that utilizes a medical review committee.~~~~(3) “Medical review committee” means a committee or board that:~~~~(i) Is within one of the categories described in subsection (b) of this section; and~~~~(ii) Performs functions that include at least one of the functions listed in subsection (c) of this section.~~~~(4) (i) “Provider of health care” means any person who is licensed by law to provide health care to individuals.~~~~(ii) “Provider of health care” does not include any nursing institution that is conducted by and for those who rely on treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination.~~

~~(5) "The Maryland Institute for Emergency Medical Services Systems" means the State agency described in § 13-503 of the Education Article.~~

~~(b) For purposes of this section, a medical review committee is:~~

~~(1) A regulatory board or agency established by State or federal law to license, certify, or discipline any provider of health care;~~

~~(2) A committee of the Faculty or any of its component societies or a committee of any other professional society or association composed of providers of health care;~~

~~(3) A committee appointed by or established in a local health department for review purposes;~~

~~(4) A committee appointed by or established in the Maryland Institute for Emergency Medical Services Systems;~~

~~(5) A committee of the medical staff or other committee, including any risk management, credentialing, or utilization review committee established in accordance with § 19-319 of the Health General Article, of a hospital, related institution, or alternative health care system, if the governing board of the hospital, related institution, or alternative health care system forms and approves the committee or approves the written bylaws under which the committee operates;~~

~~(6) A committee or individual designated by the holder of a pharmacy permit, as defined in § 12-101 of this article, that performs the functions listed in subsection (c) of this section, as part of a pharmacy's ongoing quality assurance program;~~

~~(7) Any person, including a professional standard review organization, who contracts with an agency of this State or of the federal government to perform any of the functions listed in subsection (c) of this section;~~

~~(8) Any person who contracts with a provider of health care to perform any of those functions listed in subsection (c) of this section that are limited to the review of services provided by the provider of health care;~~

~~(9) An organization, established by the Maryland Hospital Association, Inc. and the Faculty, that contracts with a hospital, related institution, or alternative delivery system to:~~

~~(i) Assist in performing the functions listed in subsection (c) of this section; or~~

~~(ii) Assist a hospital in meeting the requirements of § 19-319(c) of the Health General Article;~~

~~(10) A committee appointed by or established in an accredited health occupations school;~~

~~(11) An organization described under § 14-501 of this article that contracts with a hospital, related institution, or health maintenance organization to:~~

~~(i) Assist in performing the functions listed in subsection (c) of this section; or~~

~~(ii) Assist a health maintenance organization in meeting the requirements of Title 19, Subtitle 7 of the Health General Article, the National Committee for Quality Assurance (NCQA), or any other applicable credentialing law or regulation;~~

~~(12) An accrediting organization as defined in § 14-501 of this article;~~

~~(13) A Mortality and Quality Review Committee established under § 5-801 of the Health General Article; [or]~~

~~(14) A center designated by the Maryland Health Care Commission as the Maryland Patient Safety Center that performs the functions listed in subsection (c)(1) of this section; OR~~

~~**(15) AN ORGANIZATION OR STATE AGENCY RESPONSIBLE FOR ASSURING COMPLIANCE WITH TITLE 17, SUBTITLE 2A OF THE HEALTH GENERAL ARTICLE.**~~

~~(e) For purposes of this section, a medical review committee:~~

~~(1) Evaluates and seeks to improve the quality of health care provided by providers of health care;~~

~~(2) Evaluates the need for and the level of performance of health care provided by providers of health care;~~

~~(3) Evaluates the qualifications, competence, and performance of providers of health care; or~~

~~(4) Evaluates and acts on matters that relate to the discipline of any provider of health care.~~

~~(d) (1) Except as otherwise provided in this section, the proceedings, records, and files of a medical review committee are not discoverable and are not admissible in evidence in any civil action.~~

~~(2) The proceedings, records, and files of a medical review committee are confidential and are not discoverable and are not admissible in evidence in any civil action arising out of matters that are being reviewed and evaluated by the medical review committee if requested by the following:~~

~~(i) The Department of Health and Mental Hygiene to ensure compliance with the provisions of § 19-319 of the Health General Article;~~

~~(ii) A health maintenance organization to ensure compliance with the provisions of Title 19, Subtitle 7 of the Health General Article and applicable regulations;~~

~~(iii) A health maintenance organization to ensure compliance with the National Committee for Quality Assurance (NCQA) credentialing requirements; or~~

~~(iv) An accrediting organization to ensure compliance with accreditation requirements or the procedures and policies of the accrediting organization.~~

~~(3) If the proceedings, records, and files of a medical review committee are requested by any person from any of the entities in paragraph (2) of this subsection:~~

~~(i) The person shall give the medical review committee notice by certified mail of the nature of the request and the medical review committee shall be granted a protective order preventing the release of its proceedings, records, and files; and~~

~~(ii) The entities listed in paragraph (2) of this subsection may not release any of the proceedings, records, and files of the medical review committee.~~

~~(e) Subsection (d)(1) of this section does not apply to:~~

~~(1) A civil action brought by a party to the proceedings of the medical review committee who claims to be aggrieved by the decision of the medical review committee; or~~

~~(2) Any record or document that is considered by the medical review committee and that otherwise would be subject to discovery and introduction into evidence in a civil trial.~~

~~(f) (1) A person shall have the immunity from liability described under § 5-637 of the Courts and Judicial Proceedings Article for any action as a member of the medical review committee or for giving information to, participating in, or contributing to the function of the medical review committee.~~

~~(2) A contribution to the function of a medical review committee includes any statement by any person, regardless of whether it is a direct communication with the medical review committee, that is made within the context of the person's employment or is made to a person with a professional interest in the functions of a medical review committee and is intended to lead to redress of a matter within the scope of a medical review committee's functions.~~

~~(g) Notwithstanding this section, §§ 14-410 and 14-412 of this article apply to:~~

~~(1) The Board of Physicians; and~~

~~(2) Any other entity, to the extent that it is acting in an investigatory capacity for the Board of Physicians.~~

~~(h) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE INTERNAL PROCEEDINGS, RECORDS, AND FILES OF AN ORGANIZATION OR STATE AGENCY RESPONSIBLE FOR ASSURING COMPLIANCE WITH TITLE 17, SUBTITLE 2A OF THE HEALTH GENERAL ARTICLE ARE NOT DISCOVERABLE AND ARE NOT ADMISSIBLE IN A CRIMINAL CASE IN WHICH EVIDENCE PRODUCED BY A FORENSIC LABORATORY IS INVOLVED.~~

~~(2) REPORTS, FINDINGS, RECOMMENDATIONS, AND CORRECTIVE ACTIONS ISSUED BY AN ORGANIZATION OR STATE AGENCY RESPONSIBLE FOR ASSURING COMPLIANCE WITH TITLE 17, SUBTITLE 2A OF THE HEALTH GENERAL ARTICLE TO A FORENSIC LABORATORY ARE DISCOVERABLE AND ADMISSIBLE TO THE EXTENT REQUIRED BY LAW.~~



~~SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall include in the State budget for fiscal year 2009 and each year thereafter an appropriation sufficient to fund not less than one supervisor, three surveyors, and related administrative costs for the Office of Health Care Quality Laboratory Licensing and Certification Unit to implement this Act.~~

SECTION ~~2.~~ 2. AND BE IT FURTHER ENACTED, That the ~~Secretary of Health and Mental Hygiene~~ Governor shall make initial appointments to the Forensic Laboratory Advisory Committee on or before ~~November 1, 2007~~ December 1, 2008.

SECTION 3. AND BE IT FURTHER ENACTED, That the terms of the appointed members of the Forensic Laboratory Advisory Committee shall expire as follows:

- (a) Three members in ~~2008~~ 2009;
- (b) Three members in ~~2009~~ 2010; and
- (c) ~~Three members in 2010~~ Two members in 2011.

SECTION 4. AND BE IT FURTHER ENACTED, That the Secretary of Health and Mental Hygiene shall adopt the regulations necessary to implement this Act, including standards for licensing, on or before ~~September 1, 2008~~ December 31, 2010.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.

**Approved by the Governor, April 24, 2007.**