

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 879

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 5, strike “an individual who” and substitute “a laboratory that”; in line 6, strike “on behalf of a certain laboratory”; in line 9, strike “a certain employee” and substitute “the Department of Health and Mental Hygiene”; in line 10, strike “test results at certain times” and substitute “testing programs”; in line 11, after “purpose,” insert “authorizing the Secretary to conduct certain investigations and surveys; providing that certain documents are public documents;”; in the same line, strike “the Secretary” and substitute “a forensic laboratory”; strike beginning with “authorizing” in line 14 down through “fee,” in line 15; in line 15, in each instance, strike “person” and substitute “forensic laboratory”; and in line 17, after “date,” insert “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;”.

On page 2, strike beginning with “requiring” in line 10 down through “circumstances,” in line 14; in line 14, strike “requiring” and substitute “authorizing”; in line 17, after “results,” insert “requiring a State’s Attorney to provide certain notice to certain victims under certain circumstances;”; in line 21, after “notice,” insert “authorizing an employee of a forensic laboratory to disclose certain information to the Secretary under certain circumstances;”; in line 22, strike “discriminating or retaliating” and substitute “taking certain adverse employment actions”; in line 23, strike “a certain reason” and substitute “certain reasons”; in line 24, strike “judicial” and substitute “an”; in line 25, strike “judicial”; in line 26, strike “judicial”; in line 28, strike “Secretary” and substitute “Governor”; strike beginning with “establishing” in line 30 down through the semicolon in line 33; in line 34, strike “a certain organization or agency” and substitute “certain organizations or agencies”; and strike beginning with “providing” in line 35 down through the semicolon in line 39.

(Over)

On pages 2 and 3, strike beginning with “providing” in line 42 on page 2 down through the semicolon in line 1 on page 3.

On page 3, in line 10, strike “17–2A–16” and substitute “17–2A–12”; in line 15, strike “Health Occupations” and substitute “Health – General”; and in line 16, strike “1–401” and substitute “19–2301”.

AMENDMENT NO. 2

On page 3, after line 28, insert:

“(B) (1) “FORENSIC ANALYSIS” MEANS A MEDICAL, CHEMICAL, TOXICOLOGIC, 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) 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 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.”;

and in line 29, strike “(B)” and substitute “(D)”.

On pages 3 and 4, strike beginning with “TESTS” in line 30 on page 3 down through “ACT” in line 2 on page 4 and substitute “FORENSIC ANALYSIS”.

On page 4, in line 5, strike “OTHER” and substitute “ANOTHER”; after line 5, insert:

“(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.”;

(Over)

in line 6, strike “(C)” and substitute “(E)”; after line 9, insert:

“(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.”;

strike in their entirety lines 11 through 14, inclusive; in line 26, strike “AND”; and after line 26, insert:

“(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”.

On page 5, in line 1, strike “(III)” and substitute “(VI)”; and in line 3, strike “SAFE” and substitute “ACCURATE”.

AMENDMENT NO. 3

On page 5, strike beginning with “AN” in line 4 down through “PERFORMED” in line 8 and substitute “**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"; strike beginning with "BEFORE" in line 14 down through "PROGRAM" in line 15; in line 16, strike "AN EMPLOYEE OF THE" and substitute "THE"; strike beginning with "ALL" in line 16 down through "YEARS" in line 17 and substitute "A FORENSIC LABORATORY'S PROFICIENCY TESTING PROGRAM"; in line 19, strike "SET FORTH IN REGULATIONS ADOPTED"; in line 22, after the semicolon insert "AND"; in line 23, strike "PERIODIC INSPECTIONS" and substitute "AN INSPECTION"; strike beginning with the semicolon in line 24 down through "LABORATORY" in line 26; after line 26, insert:

"(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.";

and in line 27, strike "17-2A-04." and substitute "17-2A-03.".

On page 6, strike in their entirety lines 1 through 17, inclusive, and substitute:

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

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

(Over)

(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.”.

AMENDMENT NO. 4

On page 6, before line 18, insert:

“17-2A-04.

(A) AFTER DECEMBER 31, 2011, A PERSON SHALL HOLD A LICENSE ISSUED BY THE SECRETARY BEFORE THE PERSON 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.”;

in lines 18 and 23, strike “17-2A-08.” and “17-2A-09.”, respectively, and substitute “17-2A-05.” and “17-2A-06.”, respectively; and in line 22, strike “AND THE REGULATIONS ADOPTED UNDER THIS SUBTITLE”.

On page 7, in line 10, strike “**17-2A-10.**” and substitute “**17-2A-07.**”; in line 11, strike “**WHO**” and substitute “**THAT**”; in lines 12 and 13, strike “**AND THE REGULATIONS ADOPTED UNDER THIS SUBTITLE**”; and in line 23, strike “**ITS LICENSE**” and substitute “**THE LICENSE ISSUED UNDER THIS SUBTITLE**”.

AMENDMENT NO. 5

On page 8, in lines 1 and 16, strike “**17-2A-11.**” and “**17-2A-12.**”, respectively, and substitute “**17-2A-08.**” and “**17-2A-09.**”, respectively; strike beginning with “**AND**” in line 12 down through “**SUBTITLE**” in line 13; and strike beginning with “**OR**” in line 21 down through “**SUBTITLE**” in line 22.

On pages 8 and 9, strike in their entirety the lines beginning with line 23 on page 8 through line 27 on page 9, inclusive, and substitute:

“(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;

(Over)

(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;

(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."

On page 10, in line 2, strike "(D)" and substitute "(C)"; in line 4, after "NONCOMPLIANCE" insert "AFTER THE DEADLINE FOR COMPLIANCE STATED IN THE SECRETARY'S ORDER, NOT TO EXCEED A MAXIMUM PENALTY OF \$50,000"; and in line 10, strike "17-2A-13." and substitute "17-2A-10.".

AMENDMENT NO. 6

On pages 10 and 11, strike in their entirety the lines beginning with line 20 on page 10 through line 9 on page 11, inclusive, and substitute:

“(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.”.

On page 11, in lines 10 and 20, strike “(D)” and “(E)”, respectively, and substitute “(F)” and “(G)”, respectively; in line 12, strike “JUDICIAL” and substitute

(Over)

“AN”; in line 19, strike “JUDICIAL”; in line 20, strike “JUDICIAL”; in the same line, after “UNDER” insert “THIS”; in lines 20 and 21, strike “(D) OF THIS SECTION”; and in line 23, strike “17-2A-14.” and substitute “17-2A-11.”.

AMENDMENT NO. 7

On page 12, strike beginning with “A” in line 3 down through “OFFENSE” in line 4 and substitute “ON WHICH A VIOLATION OCCURS IS A SEPARATE VIOLATION UNDER THIS SECTION”; in line 5, strike “17-2A-15.” and substitute “17-2A-12.”; in line 6, strike “SECRETARY” and substitute “GOVERNOR”; and strike in their entirety lines 9 through 25, inclusive, and substitute:

“(B) THE ADVISORY COMMITTEE SHALL CONSIST OF THE FOLLOWING 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 THE AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS/LABORATORY ACCREDITATION BOARD; AND

(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.

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(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 OF HEALTH AND MENTAL HYGIENE SHALL PROVIDE STAFF FOR THE ADVISORY COMMITTEE.”.

AMENDMENT NO. 8

On page 13, strike in their entirety lines 1 through 13, inclusive, and substitute:

“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.”.

On pages 13 through 18, strike in their entirety the lines beginning with line 14 on page 13 through line 21 on page 18, inclusive.

On page 18, in line 22, strike “3.” and substitute “2.”; strike beginning with “Secretary” in line 22 down through “Hygiene” in line 23 and substitute “Governor”; in line 24, strike “November 1, 2007” and substitute “December 1, 2008”; after line 24, insert:

“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 2009;

(b) Three members in 2010; and

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(c) Two members in 2011.”;

and in line 27, strike “September 1, 2008” and substitute “December 31, 2010”.