

HOUSE BILL 879

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CF SB 351

By: **Delegates Anderson, Ali, Barnes, Carter, Conaway, Dumais, Glenn, Hammen, Healey, Howard, Hucker, Kirk, Krysiak, Lee, Manno, Mizeur, Oaks, Pena-Melnyk, Ramirez, Rosenberg, Ross, Schuler, Smigiel, Taylor, Vallario, Waldstreicher, and Walker**

Introduced and read first time: February 9, 2007

Assigned to: Health and Government Operations and Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Forensic Laboratories – Standards and Oversight**

3 FOR the purpose of requiring the Secretary of Health and Mental Hygiene to adopt
4 regulations that set certain standards and requirements; specifying the
5 required contents of certain regulations; requiring an individual who examines
6 or analyzes forensic specimens on behalf of a certain laboratory to demonstrate
7 satisfactory performance in a certain proficiency testing program; requiring the
8 Secretary to adopt certain regulations for a certain proficiency testing program;
9 requiring a certain employee to review certain proficiency tests and proficiency
10 test results at certain times; requiring the Secretary to conduct certain
11 inspections for a certain purpose; requiring the Secretary to make certain
12 information available to the public within a certain time of a written request;
13 requiring the Secretary to adopt regulations that set qualifications for certain
14 personnel; requiring the Secretary to set certain fees; authorizing the Secretary
15 to set a certain fee; requiring a person to hold a certain license before the person
16 may offer or perform certain tests, examinations, or analyses in the State on or
17 after a certain date; requiring an applicant to provide certain evidence to qualify
18 for a certain license; requiring a certain applicant to submit an application to
19 the Secretary on a certain form; specifying the required contents of an
20 application for a certain license; requiring a certain applicant to pay a certain
21 fee to the Department of Health and Mental Hygiene; requiring the Secretary to
22 issue a certain license to a certain applicant; specifying the required contents of
23 a certain license; requiring a certain license to designate the tests,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 examinations, or analyses that may be offered or performed by the laboratory;
2 prohibiting a certain laboratory from operating in a manner not designated by
3 its license; providing that a certain license is not transferable; providing that a
4 certain license expires on a certain date, unless the license is renewed in
5 accordance with this Act; authorizing a certain licensee to renew its license for
6 an additional term under certain circumstances; requiring the Secretary to
7 renew the license of each licensee who meets certain requirements; authorizing
8 the Secretary to deny a certain license or suspend, revoke, or limit a certain
9 license or the authority of a certain licensee to offer or perform tests that a
10 certain license sets forth under certain circumstances; requiring the Secretary
11 to take certain actions if the Secretary finds that a certain laboratory no longer
12 meets certain standards and requirements and the Secretary does not suspend
13 or revoke the laboratory's license; requiring the Secretary to undertake a
14 certain due diligence review under certain circumstances; requiring the
15 Secretary to order a certain laboratory to take certain actions if the Secretary
16 finds that the laboratory provided erroneous or questionable reports, analyses,
17 examinations, or test results; providing for certain penalties; requiring the
18 Secretary to give a certain applicant or licensee notice and an opportunity for a
19 hearing under certain circumstances; requiring a certain laboratory to post a
20 certain notice in a certain place; specifying the required contents of a certain
21 notice; requiring the Secretary to specify the form of a certain notice;
22 prohibiting a certain laboratory from discriminating or retaliating against a
23 certain employee for a certain reason; authorizing a certain employee to initiate
24 judicial action under certain circumstances; providing that a certain employee
25 who prevails in a certain judicial action is entitled to certain remedies; limiting
26 the time in which a certain judicial action may be filed; establishing a Forensic
27 Laboratory Advisory Committee; specifying the membership of the Advisory
28 Committee; requiring the Secretary to designate a chair of the Advisory
29 Committee and appoint members of the Advisory Committee at certain times;
30 establishing the Maryland Forensic Laboratory Improvement Fund as a special
31 fund; providing for the funding of a certain fund; requiring the Governor's Office
32 of Crime Control and Prevention to administer a certain fund; specifying the
33 purposes for which grants shall be made from a certain fund; providing that
34 certain proceedings, records, and files of a certain organization or agency are
35 not discoverable and are not admissible in a certain criminal case; providing
36 that certain reports, findings, recommendations, and corrective actions issued
37 by a certain organization or agency are discoverable and admissible to a certain
38 extent; requiring the Governor to include certain funds in the State budget for a
39 certain purpose for certain years; requiring the Secretary to make certain
40 appointments on or before a certain date; requiring the Secretary to adopt
41 certain regulations on or before a certain date; defining certain terms; modifying
42 a certain definition; providing that this Act does not apply to a certain type of

1 testing; and generally relating to standards and oversight for forensic
2 laboratories.

3 BY repealing and reenacting, without amendments,
4 Article – Health – General
5 Section 1–101(c) and (j)
6 Annotated Code of Maryland
7 (2005 Replacement Volume and 2006 Supplement)

8 BY adding to
9 Article – Health – General
10 Section 17–2A–01 through 17–2A–16 to be under the new subtitle “Subtitle 2A.
11 Forensic Laboratories”
12 Annotated Code of Maryland
13 (2005 Replacement Volume and 2006 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Health Occupations
16 Section 1–401
17 Annotated Code of Maryland
18 (2005 Replacement Volume and 2006 Supplement)

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

21 **Article – Health – General**

22 1–101.

23 (c) “Department” means the Department of Health and Mental Hygiene.

24 (j) “Secretary” means the Secretary of Health and Mental Hygiene.

25 **SUBTITLE 2A. FORENSIC LABORATORIES.**

26 **17–2A–01.**

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

29 (B) (1) “FORENSIC LABORATORY” MEANS A FACILITY, ENTITY, OR
30 SITE THAT OFFERS OR PERFORMS TESTS, EXAMINATIONS, OR ANALYSES THAT

1 MAY BE USED TO DETERMINE A CONNECTION BETWEEN THE ITEMS TESTED,
2 EXAMINED, OR ANALYZED AND A CRIMINAL ACT.

3 (2) "FORENSIC LABORATORY" INCLUDES A LABORATORY OWNED
4 OR OPERATED BY THE STATE, A COUNTY OR MUNICIPAL CORPORATION IN THE
5 STATE, OR OTHER GOVERNMENTAL ENTITY.

6 (C) "LICENSE" MEANS A PERMIT, LETTER OF EXCEPTION, CERTIFICATE,
7 OR OTHER DOCUMENT ISSUED BY THE SECRETARY GRANTING APPROVAL OR
8 AUTHORITY TO OFFER OR PERFORM FORENSIC LABORATORY TESTS,
9 EXAMINATIONS, OR ANALYSES IN THE STATE.

10 **17-2A-02.**

11 THIS SUBTITLE DOES NOT APPLY TO THE TESTING OF A PERSON'S BLOOD
12 OR BREATH TO DETERMINE ALCOHOL CONCENTRATION OR CONTROLLED
13 DANGEROUS SUBSTANCE CONTENT.

14 **17-2A-03.**

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

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

21 (3) THE REGULATIONS SHALL:

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

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

1 (III) ESTABLISH ANY ADDITIONAL STANDARDS THAT THE
2 SECRETARY CONSIDERS NECESSARY TO ASSURE THAT FORENSIC
3 LABORATORIES PROVIDE SAFE AND RELIABLE SERVICES.

4 (B) (1) AN INDIVIDUAL WHO EXAMINES OR ANALYZES FORENSIC
5 SPECIMENS ON BEHALF OF A LICENSED FORENSIC LABORATORY SHALL
6 DEMONSTRATE SATISFACTORY PERFORMANCE IN AN APPROVED PROFICIENCY
7 TESTING PROGRAM SPECIFICALLY RELATED TO THE PARTICULAR TESTING OR
8 ANALYSIS BEING PERFORMED.

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

11 (I) DEFINE SATISFACTORY PROFICIENCY TESTING
12 PERFORMANCE; AND

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

16 (3) AN EMPLOYEE OF THE DEPARTMENT SHALL REVIEW ALL
17 PROFICIENCY TESTS AND PROFICIENCY TEST RESULTS EVERY 2 YEARS.

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

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

23 (2) PERIODIC INSPECTIONS OF EACH FORENSIC LABORATORY
24 FOR WHICH A LICENSE HAS BEEN ISSUED; AND

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

27 **17-2A-04.**

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

6 **17-2A-05.**

7 **THE SECRETARY SHALL ADOPT REGULATIONS THAT SET QUALIFICATIONS**
8 **FOR THE PERSONNEL OF FORENSIC LABORATORIES.**

9 **17-2A-06.**

10 **THE SECRETARY:**

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

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

14 **17-2A-07.**

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

18 **17-2A-08.**

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

23 **17-2A-09.**

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

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

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

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

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

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

10 **17-2A-10.**

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

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

16 **(1) FORENSIC LABORATORY;**

17 **(2) LABORATORY DIRECTOR; AND**

18 **(3) OPERATOR OR OWNER OF THE LABORATORY.**

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

22 **(D) A FORENSIC LABORATORY MAY NOT OPERATE IN A MANNER NOT**
23 **DESIGNATED BY ITS LICENSE.**

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

17-2A-11.

(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.

(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;

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

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

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

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

14 (1) **PROVIDE WRITTEN NOTIFICATION OF THE ERRONEOUS OR**
15 **QUESTIONABLE TEST RESULTS TO:**

16 (I) **THE PERSON OR AGENCY THAT ORDERED THE TESTS;**

17 (II) **THE RELEVANT PROSECUTING AUTHORITY;**

18 (III) **THE SUSPECT OR DEFENDANT AFFECTED BY THE**
19 **ERRONEOUS OR QUESTIONABLE TEST RESULTS;**

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

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

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

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

1 **(E) A FORENSIC LABORATORY THAT FAILS TO COMPLY WITH AN ORDER**
2 **ISSUED BY THE SECRETARY UNDER SUBSECTION (D) OF THIS SECTION IS**
3 **SUBJECT TO A CIVIL PENALTY OF UP TO \$1,000 FOR EACH DAY OF**
4 **NONCOMPLIANCE.**

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

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

11 **(A) IN THIS SECTION, “DISCRIMINATE OR RETALIATE” INCLUDES:**

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

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

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

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

25 **(2) A NOTICE UNDER THIS SUBSECTION SHALL INCLUDE:**

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

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

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

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

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

14 (1) REINSTATEMENT;

15 (2) REIMBURSEMENT FOR LOST WAGES;

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

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

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

23 **17-2A-14.**

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

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

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

3 (B) EACH DAY A VIOLATION IS CONTINUED AFTER THE FIRST
4 CONVICTION IS A SUBSEQUENT OFFENSE.

5 **17-2A-15.**

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

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

11 (1) THE AMERICAN SOCIETY FOR CLINICAL LABORATORY
12 SCIENCE;

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

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

16 (4) THE CLINICAL LABORATORY MANAGEMENT ASSOCIATION;

17 (5) THE AMERICAN ASSOCIATION FOR LABORATORY
18 ACCREDITATION;

19 (6) THE CLINICAL AND LABORATORY STANDARDS INSTITUTE;
20 AND

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

22 (C) THE SECRETARY SHALL:

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

25 (2) DESIGNATE THE CHAIR OF 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.

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;

1 5. A freestanding ambulatory care facility as that term
2 is defined in § 19–3B–01 of the Health – General Article; or

3 6. Any other health care delivery system that utilizes a
4 medical review committee.

5 (3) “Medical review committee” means a committee or board that:

6 (i) Is within one of the categories described in subsection (b) of
7 this section; and

8 (ii) Performs functions that include at least one of the functions
9 listed in subsection (c) of this section.

10 (4) (i) “Provider of health care” means any person who is licensed
11 by law to provide health care to individuals.

12 (ii) “Provider of health care” does not include any nursing
13 institution that is conducted by and for those who rely on treatment by spiritual
14 means through prayer alone in accordance with the tenets and practices of a
15 recognized church or religious denomination.

16 (5) “The Maryland Institute for Emergency Medical Services Systems”
17 means the State agency described in § 13–503 of the Education Article.

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

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

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

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

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

28 (5) A committee of the medical staff or other committee, including any
29 risk management, credentialing, or utilization review committee established in
30 accordance with § 19–319 of the Health – General Article, of a hospital, related

1 institution, or alternative health care system, if the governing board of the hospital,
2 related institution, or alternative health care system forms and approves the
3 committee or approves the written bylaws under which the committee operates;

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

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

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

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

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

19 (ii) Assist a hospital in meeting the requirements of § 19–319(e)
20 of the Health – General Article;

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

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

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

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

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

1 (13) A Mortality and Quality Review Committee established under § 5–
2 801 of the Health – General Article; [or]

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

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

9 (c) For purposes of this section, a medical review committee:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (f) (1) A person shall have the immunity from liability described under §
24 5-637 of the Courts and Judicial Proceedings Article for any action as a member of the
25 medical review committee or for giving information to, participating in, or contributing
26 to the function of the medical review committee.

27 (2) A contribution to the function of a medical review committee
28 includes any statement by any person, regardless of whether it is a direct
29 communication with the medical review committee, that is made within the context of
30 the person's employment or is made to a person with a professional interest in the
31 functions of a medical review committee and is intended to lead to redress of a matter
32 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 3. AND BE IT FURTHER ENACTED, That the Secretary of Health and Mental Hygiene shall make initial appointments to the Forensic Laboratory Advisory Committee on or before November 1, 2007.

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.

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