

SENATE BILL 351

J3

71r0894
CF 71r0977

By: **Senators Kelley, Astle, Currie, DeGrange, Exum, Gladden, Pinsky, Raskin,
and Stone**

Introduced and read first time: February 1, 2007

Assigned to: Finance

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,
24 examinations, or analyses that may be offered or performed by the laboratory;
25 prohibiting a certain laboratory from operating in a manner not designated by

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

19 **Article – Health – General**

20 1–101.

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

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

23 **SUBTITLE 2A. FORENSIC LABORATORIES.**

24 **17–2A–01.**

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

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

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

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

8 **17-2A-02.**

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

12 **17-2A-03.**

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

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

19 **(3) THE REGULATIONS SHALL:**

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

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

25 **(III) ESTABLISH ANY ADDITIONAL STANDARDS THAT THE**
26 **SECRETARY CONSIDERS NECESSARY TO ASSURE THAT FORENSIC**
27 **LABORATORIES PROVIDE SAFE AND RELIABLE SERVICES.**

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

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

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

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

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

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

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

20 **(2) PERIODIC INSPECTIONS OF EACH FORENSIC LABORATORY**
21 **FOR WHICH A LICENSE HAS BEEN ISSUED; AND**

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

24 **17-2A-04.**

25 **THE SECRETARY SHALL MAKE REPORTS OF INSPECTIONS CONDUCTED BY**
26 **THE SECRETARY UNDER THIS SUBTITLE, DISCREPANCY LOGS, CONTAMINATION**
27 **RECORDS, PROFICIENCY TESTS AND TEST RESULTS, AND DIRECTED PLANS OF**

1 CORRECTION AVAILABLE TO THE PUBLIC WITHIN 10 DAYS OF A WRITTEN
2 REQUEST.

3 17-2A-05.

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

6 17-2A-06.

7 THE SECRETARY:

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

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

11 17-2A-07.

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

15 17-2A-08.

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

20 17-2A-09.

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

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

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

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

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

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

7 **17-2A-10.**

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

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

13 **(1) FORENSIC LABORATORY;**

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

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

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

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

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

23 **17-2A-11.**

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

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

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

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

8 **(3) IS IN COMPLIANCE WITH ALL STANDARDS AND**
9 **REQUIREMENTS OF THIS SUBTITLE AND REGULATIONS ADOPTED UNDER THIS**
10 **SUBTITLE.**

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

13 **17-2A-12.**

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

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

25 **(1) SHALL IMPOSE A DIRECTED PLAN OF CORRECTION;**

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

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

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

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

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

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

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

15 **(III) THE SUSPECT OR DEFENDANT AFFECTED BY THE**
16 **ERRONEOUS OR QUESTIONABLE TEST RESULTS;**

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

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

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

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

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

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

6 **17-2A-13.**

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

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

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

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

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

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

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

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

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

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

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

11 **(1) REINSTATEMENT;**

12 **(2) REIMBURSEMENT FOR LOST WAGES;**

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

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

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

20 **17-2A-14.**

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

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

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

26 **(B) EACH DAY A VIOLATION IS CONTINUED AFTER THE FIRST**
27 **CONVICTION IS A SUBSEQUENT OFFENSE.**

1 **17-2A-15.**

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

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

7 (1) THE AMERICAN SOCIETY FOR CLINICAL LABORATORY
8 SCIENCE;

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

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

12 (4) THE CLINICAL LABORATORY MANAGEMENT ASSOCIATION;

13 (5) THE AMERICAN ASSOCIATION FOR LABORATORY
14 ACCREDITATION;

15 (6) THE CLINICAL AND LABORATORY STANDARDS INSTITUTE;
16 AND

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

18 (C) THE SECRETARY SHALL:

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

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

22 **17-2A-16.**

23 (A) THERE IS A SPECIAL FUND CALLED THE MARYLAND FORENSIC
24 LABORATORY IMPROVEMENT FUND.

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

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

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

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

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

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

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

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

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

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

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

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

30 (6) A committee or individual designated by the holder of a pharmacy
31 permit, as defined in § 12–101 of this article, that performs the functions listed in

1 subsection (c) of this section, as part of a pharmacy's ongoing quality assurance
2 program;

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

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

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

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

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

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

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

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

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

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

27 (13) A Mortality and Quality Review Committee established under
28 § 5–801 of the Health – General Article; [or]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (f) (1) A person shall have the immunity from liability described under §
21 5–637 of the Courts and Judicial Proceedings Article for any action as a member of the
22 medical review committee or for giving information to, participating in, or contributing
23 to the function of the medical review committee.

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

30 (g) Notwithstanding this section, §§ 14–410 and 14–412 of this article apply
31 to:

32 (1) The Board of Physicians; and

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

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

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

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

19 SECTION 3. AND BE IT FURTHER ENACTED, That the Secretary of Health
20 and Mental Hygiene shall make initial appointments to the Forensic Laboratory
21 Advisory Committee on or before November 1, 2007.

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

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