

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 723
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Short Title: Controlled Substance Exams.

(Public)

Sponsors:

Referred to:

April 22, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH SAFEGUARDS FOR CONTROLLED SUBSTANCE
3 EXAMINATIONS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 95 of the General Statutes is amended by adding the
6 following new Article to read:

7 **“ARTICLE 20.**
8 **“CONTROLLED SUBSTANCE EXAMINATION REGULATION.**

9 **“§ 95-230. Purpose.**

10 The General Assembly finds that individuals should be protected from unreliable
11 and inadequate examinations and screening for controlled substances. The purpose of
12 this Article is to establish procedural and other requirements for the administration of
13 controlled substance examinations.

14 **“§ 95-231. Definitions.**

15 As used in this Article, unless the context clearly requires otherwise:

16 (1) ‘Controlled substance’ is as defined in G.S. 90-87(5) or a metabolite
17 thereof.

18 (2) ‘Examiner’ means a person, firm, or corporation, doing business in the
19 State, including State, county, and municipal employers, and who
20 performs or has performed by another person a controlled substance
21 examination.

1 (3) 'Examinee' means an individual who is an employee of the examiner
2 or an applicant for employment with the examiner and who is
3 requested or required by an examiner to submit to a controlled
4 substance examination.

5 **"§ 95-232. Procedural requirements for the administration of controlled substance**
6 **examinations.**

7 (a) An examiner who requests or requires an examinee to submit to a controlled
8 substance examination shall comply with the procedural requirements set forth in this
9 section.

10 (b) Collection of samples: the collection of samples for examination or screening
11 shall be performed under reasonable and sanitary conditions. Individual dignity shall be
12 preserved to the extent practicable. Samples shall be collected in a manner reasonably
13 calculated to prevent substitution of samples and interference with the collection,
14 examination, or screening of samples.

15 (c) Approved labs: the examiner shall use only laboratories that have
16 demonstrated satisfactory performance in the proficiency testing programs of the
17 National Institute on Drug Abuse, or the College of American Pathology. An approved
18 lab shall confirm any sample that produces a positive result by a second examination of
19 the sample utilizing gas chromatography with mass spectrometry or an equivalent
20 scientifically accepted method.

21 (d) Retention of samples: a portion of every sample that produces a confirmed
22 positive examination result shall be preserved by the laboratory that conducts the
23 confirmatory examination for a period of at least 90 days from the time the results of the
24 confirmed positive examination are mailed or otherwise delivered to the examinee's
25 employer.

26 (e) Chain of custody: the examiner or his agent shall establish procedures
27 regarding chain of custody for sample collection and examination to ensure proper
28 record keeping, handling, labeling, and identification of examination samples.

29 **"§ 95-233. No duty to examine.**

30 Nothing in this Article shall be construed to place a duty on examiners to conduct
31 controlled substance examinations.

32 **"§ 95-234. Violation of controlled substance examination regulations; civil penalty.**

33 (a) Any examiner who violates the provisions of this Article shall be subject to a
34 civil penalty of up to two hundred fifty dollars (\$250.00) per examinee with the
35 maximum not to exceed one thousand dollars (\$1,000) per investigation by the
36 Commissioner of Labor or his authorized representative. In determining whether or not
37 a violation of this Article has occurred, the Commissioner shall determine whether the
38 examiner responsible for the violation was the one who performed the examination or
39 the one for whom the examination was performed. In determining the amount of the
40 penalty, the Commissioner shall consider:

41 (1) The appropriateness of the penalty for the size of the business of the
42 employer charged; and

43 (2) The gravity of the violation.

1 The determination by the Commissioner shall be final, unless within 15 days after
2 receipt of notice thereof by certified mail, the person charged with the violation takes
3 exception to the determination, in which event final determination of the penalty shall
4 be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a
5 judicial proceeding pursuant to Article 4 of Chapter 150B.

6 (b) The amount of the penalty when finally determined may be recovered in a
7 civil action brought by the Commissioner in the General Court of Justice.

8 (c) Sums collected under this section by the Commissioner shall be paid into the
9 General Fund.

10 (d) Assessment of penalties under this section shall be subject to a two-year
11 statute of limitations commencing at the time of the occurrence of the violation."

12 Sec. 2. This act becomes effective October 1, 1991.