GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2009

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HOUSE DRH70370-LH-200 (3/25)

Short Title:	Spectral Fluorescence Signature Drug Analysis.	(Public)
Sponsors:	Representative R. Warren.	
Referred to:		

A BILL TO BE ENTITLED

2	AN ACT TO PROVIDE THAT THE RESULTS OF A SPECTRAL FLORESCENCE				
3	SIGNATURE ANALYSIS WITH REGARD AS TO WHETHER A SUBSTANCE IS A				
4	DRUG ARE ADMISSIBLE IN EVIDENCE IN COURT, TO REQUIRE A PERMIT TO				
5	CONDUCT A SPECTRAL FLORESCENCE SIGNATURE ANALYSIS, AND TO				
6	DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO				
7	ESTABLISH AND ADMINISTER A PERMIT PROGRAM FOR THE PRACTICE OF				
8	SPECTRAL FLORESCENCE SIGNATURE ANALYSIS.				
9	The General Assembly of North Carolina enacts:				
10	SECTION 1. Article 5 of Chapter 90 is amended by adding a new section to read:				
11	" <u>§ 90-95.8. Spectral Florescence Signature Analysis.</u>				
12	(a) Spectral Florescence Signature Analysis. – In any prosecution under Article 5 of				
13	Chapter 90 of the General Statutes, the results of a spectral florescence signature analysis that				
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15	of any violation under Article 5 of this Chapter to identify a disputed substance as one of the				
16	following controlled substances: heroin as defined at G.S. 90-89(2)(j); MDMA as defined at				
17	G.S. 90-89(3)(c); cocaine and any salt, isomer, salts of isomers, compound, derivative, or				
18	preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative,				
19 20	or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or				
20 21	preparation thereof that is chemically equivalent or identical with any of these substances, as defined at $C = 00.00(1)(d)$; mathematical as defined at $C = 00.00(2)(d)$; mathematical as defined at $C = 0$				
21	defined at G.S. 90-90(1)(d); methamphetamine as defined at G.S. 90-90(3)(c); marijuana as defined at G.S. 90-94(1).				
22	(b) Criteria for Admissibility. – The results of a Spectral Florescence Signature				
23 24	Analysis are admissible in evidence in court under this Article only if the analysis meets both				
24 25	of the following requirements:				
25 26	(1) It is performed in accordance with the rules of the Department of Health and				
20	Human Services.				
28	(2) The person performing the analysis had, at the time of the analysis, a current				
29	permit issued by the Department of Health and Human Services authorizing				
30	the person to perform a Spectral Fluorescence Signature Analysis using the				
31	type of instrument employed.				
32	(c) Inadmissibility of Analysis Results. – The results of a Spectral Florescence				
33	Signature Analysis of a disputed substance alleged to be a controlled substance performed in				
34	accordance with this section are not admissible in evidence if:				



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	(1)	The defendant objects to the introduction into evide	ence of the results of the
	<u></u>	Spectral Florescence Signature Analysis of a disp	
		analysis of the alleged controlled substance; and	
	<u>(2)</u>	The defendant demonstrates that, with respect to	the instrument used to
		analyze the alleged controlled substance, preventive	
		required by the regulations of the Department of	-
		Services had not been performed within the time li	
		regulations.	<u> </u>
(d) Judic	ial Notice. – The court shall take judicial notice of all of	of the following:
<u> </u>	(1)	The rules of the Department of Health and Human S	-
	$\overline{(2)}$	The list of permits issued to the person performing	
	<u> </u>	instrument on which the person is authorized to pe	• • • •
		substances, and the date the permit was issued.	
	<u>(3)</u>	The preventive maintenance records of the Dep	partment of Health and
	<u>107</u>	Human Services.	
	(4)	Whether at the time of the Spectral Florescence	Signature Analysis, the
	<u>(17</u>	Spectral Florescence Signature analyst possessed a	
		Spectral Florescence Signature analyst to perform	
		Signature Analysis administered.	
	<u>(5)</u>	Whether preventive maintenance had been perfe	ormed on the Spectral
	<u>(0)</u>	Florescence Signature Analysis instrument in acco	
		the Department of Health and Human Services.	realize with the rates of
(e)) No F	Restriction on Other Types of Analyses. – This sec	ction does not limit the
		other competent evidence to identify these substances,	
ests."		and competent evidence to identify these substances,	
<u>, , , , , , , , , , , , , , , , , , , </u>		TION 2. Chapter 90 of the General Statutes is am	ended by adding a new
rticle	to read:		
		" <u>Article 42.</u>	
		"Spectral Florescence Signature Analysis.	
' <u>§ 90-</u>	640. Perr	nit required.	
Α	person sha	all not conduct Spectral Fluorescence Signature Analys	ses without first applying
for an	d receiving	g a permit to engage in the practice from the Departme	ent of Health and Human
Servic	ces.	-	
" <u>§ 90</u>	-641. D	epartment of Health and Human Services estat	olish permit program;
	prev	entive maintenance.	
<u>(a)</u>) <u>Perm</u>	it Program Established The Department of Health a	nd Human Services shall
establ	ish a perr	nit program that establishes the qualifications requin	ed for an individual to
condu	ct Spectra	l Florescence Signature Analyses and the acceptable	methods for conducting
Specti	al Flores	cence Signature Analysis. The Department shall is	sue permits to conduct
Specti	al Floresc	ence Signature Analyses to individuals it finds qual	ified subject to periodic
renew	al, termina	tion, and revocation of the permit in the Department's	discretion.
<u>(b</u>)) <u>Preve</u>	entive Maintenance Subject to review and approva	al by the Department of
Health	n and Hur	nan Services, any State or local law enforcement a	igency or group of law
enforc	cement ago	encies may contract with the vendor of any approv	ed Spectral Florescence
Signat	ture Analy	vsis instrument to perform preventive maintenance of	on instruments used for
Spect	al Floresc	ence Signature Analysis. Such preventive maintenance	shall be carried out in a
manne	er set forth	and within the time limits prescribed by the Departme	ent of Health and Human
Servic	es. Any v	endor who performs preventive maintenance shall pro	vide a record of all such
		tenance to the Department of Health and Human Service	
the same	me.		

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1	(c) Public List of Permittees. – The Department of Health and Human	Services shall	
2	post on a Web page a list of all persons who have a permit authorizing the	em to perform	
3	Spectral Florescence Signature Analyses, the instruments that each person is	authorized to	
4	operate, the effective dates of the permits, and the records of preventive maintena	<u>ince.</u> "	
5	SECTION 3. This act becomes effective October 1, 2009.		