GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2009

Н

HOUSE BILL 1497

	Short Title:	Spectral Fluorescence Signature Drug Analysis.	(Public)					
	Sponsors:	Representatives R. Warren, Spear (Primary Sponsors); and Wray.						
	Referred to:	Science and Technology, if favorable, Judiciary III.						
		April 13, 2009						
1		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		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							
14		teria set out in this section are admissible in evidence in court for the pro						
15	•	ion under Article 5 of this Chapter to identify a disputed substance as or						
16		ntrolled substances: heroin as defined at G.S. 90-89(2)(j); MDMA as de						
17)(c); cocaine and any salt, isomer, salts of isomers, compound, derivation of the second seco						
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		hereof that is chemically equivalent or identical with any of these substances $\frac{1}{2} = \frac{1}{2} 1$						
21 22		S. 90-90(1)(d); methamphetamine as defined at G.S. 90-90(3)(c); mari	uana as					
22 23	defined at G.		ionoturo					
		riteria for Admissibility. – The results of a Spectral Florescence S	-					
24 25	<u>Analysis are admissible in evidence in court under this Article only if the analysis meets both</u> of the following requirements:							
23 26	<u>or the follow</u>		alth and					
20 27	<u>(1</u>	Human Services.						
27	()		ourront					
28 29	<u>(2</u>	permit issued by the Department of Health and Human Services aut						
29 30		the person to perform a Spectral Fluorescence Signature Analysis u	-					
31		type of instrument employed.	sing the					
32	<u>(c)</u> In	admissibility of Analysis Results. – The results of a Spectral Flor	rascanca					
33								
33 34	Signature Analysis of a disputed substance alleged to be a controlled substance performed in accordance with this section are not admissible in evidence if:							
34	(1		ts of the					
36	<u>(1</u>	Spectral Florescence Signature Analysis of a disputed substance of						
30 37		analysis of the alleged controlled substance; and	monnou					
51		<u>unary site of the uneque controlled bubblance</u> , and						



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1		(2)	The defendant demonstrates that, with respect to the in	strument used to		
2			analyze the alleged controlled substance, preventive mainte	nance procedures		
3			required by the regulations of the Department of He	alth and Human		
4			Services had not been performed within the time limits pr	escribed by those		
5			regulations.			
6	<u>(d)</u>		ial Notice The court shall take judicial notice of all of the fo			
7		(1)	The rules of the Department of Health and Human Services			
8		<u>(2)</u>	The list of permits issued to the person performing the ana			
9			instrument on which the person is authorized to perform t	ests of controlled		
10		(2)	substances, and the date the permit was issued.	t of Hoolth and		
11 12		<u>(3)</u>	The preventive maintenance records of the Departmen Human Services.	t of Health and		
12		(A)	Whether at the time of the Spectral Florescence Signation	ura Analysis tha		
14		<u>(4)</u>	Spectral Florescence Signature analyst possessed a permi			
15			Spectral Florescence Signature analyst possessed a permit Spectral Florescence Signature analyst to perform the Spe			
16			Signature Analysis administered.	<u>ettar i forescence</u>		
17		(5)	Whether preventive maintenance had been performed	on the Spectral		
18		<u> </u>	Florescence Signature Analysis instrument in accordance			
19			the Department of Health and Human Services.			
20	<u>(e)</u>	<u>No</u> F	Restriction on Other Types of Analyses This section do	<u>pes not limit the</u>		
21	introducti	on of c	other competent evidence to identify these substances, including	ng other chemical		
22	tests."					
23			TION 2. Chapter 90 of the General Statutes is amended	by adding a new		
24	article to	read:				
25			" <u>Article 42.</u>			
26	" S DD (/ /	"Spectral Florescence Signature Analysis.				
27 28	" <u>§ 90-640. Permit required.</u>					
28 29	-	A person shall not conduct Spectral Fluorescence Signature Analyses without first applying for and receiving a permit to engage in the practice from the Department of Health and Human				
30	Services.		g a permit to engage in the practice from the Department of th			
31		1. D	epartment of Health and Human Services establish p	ermit program:		
32	<u></u>		entive maintenance.	<u></u> pro <u>gram</u> ,		
33	<u>(a)</u>	-	it Program Established. – The Department of Health and Hun	nan Services shall		
34			nit program that establishes the qualifications required for			
35	conduct Spectral Florescence Signature Analyses and the acceptable methods for conducting					
36	Spectral Florescence Signature Analysis. The Department shall issue permits to conduct					
37	Spectral Florescence Signature Analyses to individuals it finds qualified subject to periodic					
38		renewal, termination, and revocation of the permit in the Department's discretion.				
39	(b) Preventive Maintenance. – Subject to review and approval by the Department of					
40	Health and Human Services, any State or local law enforcement agency or group of law					
41		-	encies may contract with the vendor of any approved Spe			
42			vsis instrument to perform preventive maintenance on instructional states and the second states and the second states and the second states are stated as a second state of the second states are stated as a second state of the second states are stated as a second state of the second states are stated as a second state of the second states are stated as a second state of the second states are stated as a second state of the			
43 44	-		ence Signature Analysis. Such preventive maintenance shall be and within the time limits preseried by the Department of H			
14 15	-		and within the time limits prescribed by the Department of H			
-5 -6			endor who performs preventive maintenance shall provide a tenance to the Department of Health and Human Services, wh			
FO F7	the same.		tenance to the Department of Treatm and Truthan Services, will	ion shan mannam		
+7 18	(c)		c List of Permittees. – The Department of Health and Hum	an Services shall		
49			page a list of all persons who have a permit authorizing			
50	-		sence Signature Analyses, the instruments that each person	•		
51			ctive dates of the permits, and the records of preventive mainte			

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SECTION 3. This act becomes effective October 1, 2009.