

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 285
Judiciary II Committee Substitute Adopted 5/2/13

Short Title: Eliminate ILAC Requirement.

(Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT UNDER G.S. 20-139.1 THAT A LABORATORY CONFORM TO FORENSIC SPECIFIC REQUIREMENTS AND BE ACCREDITED BY AN ACCREDITING BODY THAT IS A SIGNATORY TO THE INTERNATIONAL LABORATORY ACCREDITATION COOPERATION (ILAC) MUTUAL RECOGNITION ARRANGEMENT AND TO ALLOW FOR THE ADMISSIBILITY OF A CHEMICAL ANALYSIS UNDER G.S. 20-139.1, PERFORMED BY AN INDIVIDUAL WHO QUALIFIES AS AN EXPERT WITNESS UNDER RULE 702 OF THE NORTH CAROLINA RULES OF EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-139.1 reads as rewritten:

"§ 20-139.1. **Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

...

(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, Services, or any other individual from any other laboratory who can demonstrate competence pursuant to subsection (c2) of this section are admissible as evidence in all administrative hearings, and in any court, without further authentication and without the testimony of the analyst. The results shall be certified by the person who performed the analysis. The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

- (1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and
- (2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report may be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.



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1 The report containing the results of any blood or urine test may be transmitted
2 electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall
3 be admissible in any court or administrative hearing without further authentication. A copy of
4 the report shall be sent to the charging officer, the clerk of superior court in the county in which
5 the criminal charges are pending, the Division of Motor Vehicles, and the Department of
6 Health and Human Services.

7 Nothing in this subsection precludes the right of any party to call any witness or to
8 introduce any evidence supporting or contradicting the evidence contained in the report.

9 (c2) Expert Witness. – A chemical analysis of blood or urine, to be admissible under this
10 section, shall be performed by ~~a laboratory that is accredited by an accrediting body that~~
11 ~~requires conformance to forensic specific requirements and which is a signatory to the~~
12 ~~International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement~~
13 ~~For Testing for the submission, identification, analysis, and storage of forensic analyses.~~an
14 individual who qualifies as an expert witness under G.S. 8C-1, Rule 702. In making its findings
15 under G.S. 8C-1, Rule 702(a)(1)-(3), the court shall take judicial notice and apply all of the
16 following:

- 17 (1) An analysis of the defendant's blood, breath, or urine qualifies as sufficient
18 data under G.S. 8C-1, Rule 702(a)(1).
- 19 (2) The principles and methods previously accepted as reliable within the
20 meaning of G.S. 8C-1, Rule 702(a)(2) by the appellate courts of this State,
21 including, but not limited to, gas headspace chromatography, gas
22 chromatography-mass spectrometry, liquid chromatography-mass
23 spectrometry, and liquid chromatography-tandem mass spectrometry.
- 24 (3) As provided in subdivision (e)(2) of this section, a defendant who has failed
25 to timely object to the introduction of the affidavit into evidence has waived
26 any and all objections to the admissibility of the affidavit, including the
27 requirement under G.S. 8C-1, Rule 702(a)(3).

28 (c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary
29 Witnesses. –

- 30 (1) For the purpose of establishing the chain of physical custody or control of
31 blood or urine tested or analyzed to determine whether it contains alcohol, a
32 controlled substance or its metabolite, or any impairing substance, a
33 statement signed by each successive person in the chain of custody that the
34 person delivered it to the other person indicated on or about the date stated is
35 prima facie evidence that the person had custody and made the delivery as
36 stated, without the necessity of a personal appearance in court by the person
37 signing the statement.
- 38 (2) The statement shall contain a sufficient description of the material or its
39 container so as to distinguish it as the particular item in question and shall
40 state that the material was delivered in essentially the same condition as
41 received. The statement may be placed on the same document as the report
42 provided for in subsection (c1) of this section.
- 43 (3) The provisions of this subsection may be utilized in any administrative
44 hearing, but can only be utilized in cases tried in the district and superior
45 court divisions, or in an adjudicatory hearing in juvenile court, if:
 - 46 a. The State notifies the defendant at least 15 business days before the
47 proceeding at which the statement would be used of its intention to
48 introduce the statement into evidence under this subsection and
49 provides a copy of the statement to the defendant, and
 - 50 b. The defendant fails to file a written notification with the court, with a
51 copy to the State, at least five business days before the proceeding at

1 which the statement would be used that the defendant objects to the
2 introduction of the statement into evidence.

3 If the defendant's attorney of record, or the defendant if that person has no
4 attorney, fails to file a written objection as provided in this subsection, then
5 the statement may be admitted into evidence without the necessity of a
6 personal appearance by the person signing the statement. Upon filing a
7 timely objection, the admissibility of the report shall be determined and
8 governed by the appropriate rules of evidence.

- 9 (4) Nothing in this subsection precludes the right of any party to call any
10 witness or to introduce any evidence supporting or contradicting the
11 evidence contained in the statement.

12 (c4) The results of a blood or urine test are admissible to prove a person's alcohol
13 concentration or the presence of controlled substances or metabolites or any other impairing
14 substance if:

- 15 (1) A law enforcement officer or chemical analyst requested a blood and/or
16 urine sample from the person charged; and
17 (2) A chemical analysis of blood or urine, to be admissible under this section,
18 shall be performed by a laboratory that is accredited by an accrediting body
19 that requires conformance to forensic specific requirements and which is a
20 signatory to the International Laboratory Accreditation Cooperation (ILAC)
21 Mutual Recognition Arrangement For Testing for the submission,
22 identification, analysis, and storage of forensic analyses. an individual who
23 qualifies as an expert witness under G.S. 8C-1, Rule 702.

24 For purposes of establishing compliance with subdivision (2) of this subsection, the court or
25 administrative agency shall take judicial notice of the list of persons possessing permits, the
26 type of instrument on which each person is authorized to perform tests of the blood and/or
27 urine, and the date the permit was issued and the date it expires.

28 ...

29 (e1) Use of Chemical Analyst's ~~Affidavit in District Court.~~ Affidavit. – An affidavit by a
30 chemical analyst sworn to and properly executed before an official authorized to administer
31 oaths is admissible in evidence without further authentication and without the testimony of the
32 analyst in any hearing or trial in ~~the District Court Division~~ any criminal proceeding of the
33 General Court of Justice with respect to the following matters:

- 34 (1) The alcohol concentration or concentrations or the presence or absence of an
35 impairing substance of a person given a chemical analysis and who is
36 involved in the hearing or trial.
37 (2) The time of the collection of the blood, breath, or other bodily fluid or
38 substance sample or samples for the chemical analysis.
39 (3) The type of chemical analysis administered and the procedures followed.
40 (4) The type and status of any permit issued by the Department of Health and
41 Human Services that the analyst held on the date the analyst performed the
42 chemical analysis in question.
43 (5) If the chemical analysis is performed on a breath-testing instrument for
44 which regulations adopted pursuant to subsection (b) require preventive
45 maintenance, the date the most recent preventive maintenance procedures
46 were performed on the breath-testing instrument used, as shown on the
47 maintenance records for that instrument.

48 The Department of Health and Human Services shall develop a form for use by chemical
49 analysts in making this affidavit. The affidavit shall include all of the following statements and
50 information: (i) that the analyst is qualified by education, training, and experience to perform
51 the analysis; (ii) the name and location of the laboratory where the analysis was performed; (iii)

1 that performing this type of analysis is part of that individual's regular duties; (iv) that the tests
2 were performed pursuant to the standards applicable to that individual's duties and the
3 laboratory accrediting body's standards for that discipline; and (v) that the evidence was
4 handled in accordance with established and accepted procedures while in the custody of the
5 laboratory.

6 An affidavit completed in accordance with this subsection shall be sufficient to constitute
7 prima facie evidence regarding the person's qualifications. The analyst shall attach the affidavit
8 to the laboratory report and shall provide the affidavit to the investigating officer and the
9 district attorney in the prosecutorial district in which the criminal charges are pending.

10 (e2) Except as governed by subsection (c1), (c2), or (c3) of this section, the State can
11 only use the provisions of subsection (e1) of this section if:

- 12 (1) The State notifies the defendant at least 15 business days before the
13 proceeding at which the affidavit would be used of its intention to introduce
14 the affidavit into evidence under this subsection and provides a copy of the
15 affidavit to the defendant, and
- 16 (2) The defendant fails to file a written notification with the court, with a copy
17 to the State, at least five business days before the proceeding at which the
18 affidavit would be used that the defendant objects to the introduction of the
19 affidavit into evidence.

20 The failure to file a timely objection as provided in this subsection shall be deemed a
21 waiver of the right to object to the admissibility of the affidavit. Upon filing a timely objection,
22 the admissibility of the report shall be determined and governed by the appropriate rules of
23 evidence. The case shall be continued until the analyst can be present. The criminal case shall
24 not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to
25 appear after being ordered to appear by the court. Nothing in subsection (e1) or subsection (e2)
26 of this section precludes the right of any party to call any witness or to introduce any evidence
27 supporting or contradicting the evidence contained in the affidavit.

28"

29 **SECTION 2.** This act becomes effective December 1, 2013.