

GENERAL ASSEMBLY OF NORTH CAROLINA  
1991 SESSION

CHAPTER 687  
SENATE BILL 723

AN ACT TO ESTABLISH SAFEGUARDS FOR CONTROLLED SUBSTANCE EXAMINATIONS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 20.

"Controlled Substance Examination Regulation.

**"§ 95-230. Purpose.**

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

**"§ 95-231. Definitions.**

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

- (1) 'Controlled substance' is as defined in G.S. 90-87(5) or a metabolite thereof.
- (2) 'Examiner' means a person, firm, or corporation, doing business in the State, including State, county, and municipal employers, and who performs or has performed by another person a controlled substance examination.
- (3) 'Examinee' means an individual who is an employee of the examiner or an applicant for employment with the examiner and who is requested or required by an examiner to submit to a controlled substance examination.

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

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

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

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

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

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

**"§ 95-233. No duty to examine.**

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

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

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

- (1) The appropriateness of the penalty for the size of the business of the employer charged; and
- (2) The gravity of the violation.

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

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

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

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

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

In the General Assembly read three times and ratified this the 13th day of July, 1991.

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James C. Gardner  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives