

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 723  
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House Committee Substitute Favorable 6/25/91

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 employer.

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

28 **"§ 95-233. No duty to examine.**

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

31 **"§ 95-234. Violation of controlled substance examination regulations; civil penalty.**

32          (a) Any employer who violates the provisions of this Article shall be subject to a  
33 civil penalty of up to two hundred fifty dollars (\$250.00) per employee with the  
34 maximum not to exceed one thousand dollars (\$1,000) per investigation by the  
35 Commissioner of Labor or his authorized representative. In determining the amount of  
36 the penalty, the Commissioner shall consider:

37               (1) The appropriateness of the penalty for the size of the business of the  
38               employer charged; and

39               (2) The gravity of the violation.

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

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

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

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

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