

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 213
HOUSE BILL 476

AN ACT TO CLARIFY THE CONTROLLED SUBSTANCE EXAMINATION
REGULATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-231 reads as rewritten:

"§ 95-231. Definitions.

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

- (1) 'Approved laboratory' means a clinical chemistry laboratory which performs controlled substances testing and which has demonstrated satisfactory performance in the forensic urine drug testing programs of the United States Department of Health and Human Services or the College of American Pathologists for the type of tests and controlled substances being evaluated.
- (4) (1a) 'Controlled substance' is as defined in G.S. 90-87(5) or a metabolite thereof.
- (1b) 'Controlled substance examination' means all actions related to drug testing for the purpose of determining if an examinee has used controlled substances.
- (2) 'Examiner' means a person, firm, or corporation, doing business in the State, including State, county, and municipal employers, who is the employer or prospective employer of the examinee and who performs or has performed by another person an approved laboratory 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.
- (4) 'Screening' means initial controlled substance examination performed for the purpose of determining use of controlled substances by an examinee."

Sec. 2. G.S. 95-232 reads as rewritten:

"§ 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.~~ Approved laboratories: the examiner shall use only approved laboratories for screening and confirmation of samples.

(c1) Confirmation of samples: an approved laboratory 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.~~ examiner.

(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.

(f) Retesting of positive samples: the examinee shall have the right to retest a confirmed positive sample at the same or another approved laboratory. The examiner, through the approved laboratory, shall make confirmed positive samples available to the affected examinee, or a designated agent, during the time which the sample is required to be retained. The examinee must request release of the sample in writing specifying to which approved laboratory the sample is to be sent. The examinee incurs all reasonable expenses for chain of custody procedures, shipping, and retesting of positive samples related to this request."

Sec. 3. G.S. 95-234 reads as rewritten:

"§ 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 affected 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 which final determination shall be subject to judicial review 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.

(e) The Commissioner of Labor may adopt, modify, or revoke such rules as are necessary for carrying out the provisions of this Article. The rules adopted shall promote individual dignity and privacy while not posing an undue burden on employers."

Sec. 4. Article 20 of Chapter 95 of the General Statutes is amended to add a new section to read:

"§ 95-235. Certain federal agencies exempted.

The provisions of this Article shall not apply to a controlled substance examination required by the United States Department of Transportation or the United States Nuclear Regulatory Commission."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives