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Short Title: Chemical Analysis Reports/District Court.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND PROCEDURES GOVERNING THE ADMISSIBILITY OF WRITTEN
CHEMICAL ANALYSIS RESULTS.

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.

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

(1) It is performed in accordance with the rules of the Department of Health and Human Services.

(2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed.

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.



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1 (b2) Breath Analysis Results Preventive Maintenance. – The Department of Health and
2 Human Services shall perform preventive maintenance on breath-testing instruments used for
3 chemical analysis. A court or administrative agency shall take judicial notice of the preventive
4 maintenance records of the Department. Notwithstanding the provisions of subsection (b), the
5 results of a chemical analysis of a person's breath performed in accordance with this section are
6 not admissible in evidence if:

7 (1) The defendant objects to the introduction into evidence of the results of the
8 chemical analysis of the defendant's breath; and

9 (2) The defendant demonstrates that, with respect to the instrument used to analyze
10 the defendant's breath, preventive maintenance procedures required by the
11 regulations of the Department of Health and Human Services had not been
12 performed within the time limits prescribed by those regulations.

13 (b3) Sequential Breath Tests Required. – The methods governing the administration of
14 chemical analyses of the breath shall require the testing of at least duplicate sequential breath
15 samples. The results of the chemical analysis of all breath samples are admissible if the test results
16 from any two consecutively collected breath samples do not differ from each other by an alcohol
17 concentration greater than 0.02. Only the lower of the two test results of the consecutively
18 administered tests can be used to prove a particular alcohol concentration. A person's refusal to
19 give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal
20 under G.S. 20-16.2(c).

21 A person's refusal to give the second or subsequent breath sample shall make the result of the
22 first breath sample, or the result of the sample providing the lowest alcohol concentration if more
23 than one breath sample is provided, admissible in any judicial or administrative hearing for any
24 relevant purpose, including the establishment that a person had a particular alcohol concentration
25 for conviction of an offense involving impaired driving.

26 (b4) Repealed by Session Laws 2006-253, s. 16, effective December 1, 2006, and applicable
27 to offenses committed on or after that date.

28 (b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to
29 submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to
30 or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement officer;
31 except that a person charged with a violation of G.S. 20-141.4 shall be requested, at any relevant
32 time after the driving, to provide a blood sample in addition to or in lieu of a chemical analysis of
33 the breath. However, if a breath sample shows an alcohol concentration of .08 or more, then
34 requesting a blood sample shall be in the discretion of a law enforcement officer. If a subsequent
35 chemical analysis is requested pursuant to this subsection, the person shall again be advised of the
36 implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a
37 chemical analysis of the blood or other bodily fluid or substance is a willful refusal under
38 G.S. 20-16.2. If a person willfully refuses to provide a blood sample under this subsection, and the
39 person is charged with a violation of G.S. 20-141.4, then a law enforcement officer with probable
40 cause to believe that the offense involved impaired driving or was an alcohol-related offense made
41 subject to the procedures of G.S. 20-16.2 shall seek a warrant to obtain a blood sample. The failure
42 to obtain a blood sample pursuant to this subsection shall not be grounds for the dismissal of a
43 charge and is not an appealable issue.

44 (b6) The Department of Health and Human Services shall post on a Web page a list of all
45 persons who have a permit authorizing them to perform chemical analyses, the types of analyses
46 that they can perform, the instruments that each person is authorized to operate, the effective dates
47 of the permits, and the records of preventive maintenance. A court or administrative agency shall
48 take judicial notice of whether, at the time of the chemical analysis, the chemical analyst
49 possessed a permit authorizing the chemical analyst to perform the chemical analysis administered
50 and whether preventive maintenance had been performed on the breath-testing instrument in
51 accordance with the Department's rules.

1 (c) Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law,
2 when a blood or urine test is specified as the type of chemical analysis by a law enforcement
3 officer, a physician, registered nurse, emergency medical technician, or other qualified person
4 shall withdraw the blood sample and obtain the urine sample, and no further authorization or
5 approval is required. If the person withdrawing the blood or collecting the urine requests written
6 confirmation of the law enforcement officer's request for the withdrawal of blood or collecting the
7 urine, the officer shall furnish it before blood is withdrawn or urine collected. When blood is
8 withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person
9 withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or
10 corporation employing that person, or contracting for the service of withdrawing blood or
11 collecting urine, may be held criminally or civilly liable by reason of withdrawing the blood or
12 collecting the urine, except that there is no immunity from liability for negligent acts or omissions.
13 A person requested to withdraw blood or collect urine pursuant to this subsection may refuse to do
14 so only if it reasonably appears that the procedure cannot be performed without endangering the
15 safety of the person collecting the sample or the safety of the person from whom the sample is
16 being collected. If the officer requesting the blood or urine requests a written justification for the
17 refusal, the medical provider who determined the sample could not be collected safely shall
18 provide written justification at the time of the refusal.

19 (c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the
20 North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department
21 Laboratory, or any other laboratory approved for chemical analysis by the Department of Health
22 and Human Services (DHHS), are admissible as evidence in all administrative hearings, and in any
23 court, without further authentication and without the testimony of the analyst. For the purposes of
24 this section, a "laboratory approved for chemical analysis" by the DHHS includes, but is not
25 limited to, any hospital laboratory approved by DHHS pursuant to the program resulting from the
26 federal Clinical Laboratory Improvement Amendments of 1988 (CLIA).

27 The results shall be certified by the person who performed the analysis. The provisions of this
28 subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in
29 the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

- 30 (1) The State notifies the defendant no later than 15 business days after receiving
31 the report and at least 15 business days before the proceeding at which the
32 evidence would be used of its intention to introduce the report into evidence
33 under this subsection and provides a copy of the report to the defendant, and
34 (2) The defendant fails to file a written objection with the court, with a copy to the
35 State, at least five business days before the proceeding at which the report
36 would be used that the defendant objects to the introduction of the report into
37 evidence.

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

43 If the proceeding at which the report would be introduced into evidence under this subsection
44 is continued, the notice provided by the State, the written objection filed by the defendant, or the
45 failure of the defendant to file a written objection shall remain effective at any subsequent
46 calendaring of that proceeding.

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

- 1 Nothing in this subsection precludes the right of any party to call any witness or to introduce
2 any evidence supporting or contradicting the evidence contained in the report.
- 3 (c2) Repealed by Session Laws 2013-194, s. 1, effective June 26, 2013.
- 4 (c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses.
- 5 (1) For the purpose of establishing the chain of physical custody or control of blood
6 or urine tested or analyzed to determine whether it contains alcohol, a
7 controlled substance or its metabolite, or any impairing substance, a statement
8 signed by each successive person in the chain of custody that the person
9 delivered it to the other person indicated on or about the date stated is prima
10 facie evidence that the person had custody and made the delivery as stated,
11 without the necessity of a personal appearance in court by the person signing
12 the statement.
- 13 (2) The statement shall contain a sufficient description of the material or its
14 container so as to distinguish it as the particular item in question and shall state
15 that the material was delivered in essentially the same condition as received.
16 The statement may be placed on the same document as the report provided for
17 in subsection (c1) or the affidavit provided for in subsection (e1) of this
18 section-section, as applicable.
- 19 (3) The provisions of this subsection may be utilized in any administrative hearing,
20 but can only be utilized in cases tried in the district and superior court divisions,
21 or in an adjudicatory hearing in juvenile court, if:
- 22 a. The State notifies the defendant no later than 15 business days after
23 receiving the statement and at least 15 business days before the
24 proceeding at which the statement would be used of its intention to
25 introduce the statement into evidence under this subsection and provides
26 a copy of the statement to the defendant, and
- 27 b. The defendant fails to file a written notification with the court, with a
28 copy to the State, at least five business days before the proceeding at
29 which the statement would be used that the defendant objects to the
30 introduction of the statement into evidence.
- 31 If the defendant's attorney of record, or the defendant if that person has no
32 attorney, fails to file a written objection as provided in this subsection, then the
33 objection shall be deemed waived and the statement shall be admitted into
34 evidence without the necessity of a personal appearance by the person signing
35 the statement. Upon filing a timely objection, the admissibility of the ~~report~~
36 statement shall be determined and governed by the appropriate rules of
37 evidence.
- 38 If the proceeding at which the statement would be introduced into evidence
39 under this subsection is continued, the notice provided by the State, the written
40 objection filed by the defendant, or the failure of the defendant to file a written
41 objection shall remain effective at any subsequent calendaring of that
42 proceeding.
- 43 (4) Nothing in this subsection precludes the right of any party to call any witness or
44 to introduce any evidence supporting or contradicting the evidence contained in
45 the statement.
- 46 (c4) Repealed by Session Laws 2013-194, s. 1, effective June 26, 2013.
- 47 (c5) The testimony of an analyst regarding the results of a chemical analysis of blood or
48 urine admissible pursuant to subsection (c1) of this section, and reported by that analyst, shall be
49 permitted by remote testimony, as defined in G.S. 15A-1225.3, in all administrative hearings, and
50 in any court, if all of the following occur:

- 1 (1) The State has provided a copy of the report to the attorney of record for the
2 defendant, or to the defendant if that person has no attorney, as required by
3 subsections (c1) and (c3) of this section.
- 4 (2) The State notifies the attorney of record for the defendant or the defendant if
5 that person has no attorney, at least 15 business days before the proceeding at
6 which the evidence would be used of its intention to introduce the testimony
7 regarding the chemical analysis into evidence using remote testimony.
- 8 (3) The defendant's attorney of record, or the defendant if that person has no
9 attorney, fails to file a written objection with the court, with a copy to the State,
10 at least five business days before the proceeding at which the testimony will be
11 presented that the defendant objects to the introduction of the remote testimony.

12 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
13 a written objection as provided in this subsection, then the objection shall be deemed waived and
14 the analyst shall be allowed to testify by remote testimony.

15 The method used for remote testimony authorized by this subsection shall allow the trier of
16 fact and all parties to observe the demeanor of the analyst as the analyst testifies in a similar
17 manner as if the analyst were testifying in the location where the hearing or trial is being
18 conducted. The court shall ensure that the defendant's attorney, or the defendant if that person has
19 no attorney, has a full and fair opportunity for examination and cross-examination of the analyst.

20 Nothing in this section shall preclude the right of any party to call any witness. Nothing in this
21 subsection shall obligate the Administrative Office of the Courts or the State Crime Laboratory to
22 incur expenses related to remote testimony absent an appropriation of funds for that purpose.

23 (d) Right to Additional Test. – Nothing in this section shall be construed to prohibit a
24 person from obtaining or attempting to obtain an additional chemical analysis. If the person is not
25 released from custody after the initial appearance, the agency having custody of the person shall
26 make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone
27 to arrange for any additional test and allow access to the person in accordance with the agreed
28 procedure in G.S. 20-38.5. The failure or inability of the person who submitted to a chemical
29 analysis to obtain any additional test or to withdraw blood does not preclude the admission of
30 evidence relating to the chemical analysis.

31 (d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests
32 pursuant to this section, any law enforcement officer with probable cause may, without a court
33 order, compel the person to provide blood or urine samples for analysis if the officer reasonably
34 believes that the delay necessary to obtain a court order, under the circumstances, would result in
35 the dissipation of the percentage of alcohol in the person's blood or urine.

36 (d2) Notwithstanding any other provision of law, when a blood or urine sample is requested
37 under subsection (d1) of this section by a law enforcement officer, a physician, registered nurse,
38 emergency medical technician, or other qualified person shall withdraw the blood and obtain the
39 urine sample, and no further authorization or approval is required. If the person withdrawing the
40 blood or collecting the urine requests written confirmation of the charging officer's request for the
41 withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or
42 urine obtained. A person requested to withdraw blood or collect urine pursuant to this subsection
43 may refuse to do so only if it reasonably appears that the procedure cannot be performed without
44 endangering the safety of the person collecting the sample or the safety of the person from whom
45 the sample is being collected. If the officer requesting the blood or urine requests a written
46 justification for the refusal, the medical provider who determined the sample could not be
47 collected safely shall provide written justification at the time of the refusal.

48 (d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's
49 request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution,
50 person, firm, or corporation employing that person, or contracting for the service of withdrawing
51 blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that

1 there is no immunity from liability for negligent acts or omissions. The results of the analysis of
2 blood or urine under this subsection shall be admissible if performed by the State Crime
3 Laboratory or any other hospital or qualified laboratory.

4 (e) Recording Results of Chemical Analysis of Breath. – A person charged with an
5 implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis
6 results the State intends to offer into evidence may request in writing a copy of the results. The
7 failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall
8 not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

9 (e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical
10 analyst sworn to and properly executed before an official authorized to administer oaths shall be
11 admissible in evidence without further authentication and without the testimony of the analyst in
12 any hearing or trial in the District Court Division of the General Court of Justice with respect to
13 the following matters:

- 14 (1) The alcohol concentration or concentrations or the presence or absence of an
15 impairing substance of a person given a chemical analysis and who is involved
16 in the hearing or trial.
- 17 (2) The time of the collection of the blood, breath, or other bodily fluid or
18 substance sample or samples for the chemical analysis.
- 19 (3) The type of chemical analysis administered and the procedures followed.
- 20 (4) The type and status of any permit issued by the Department of Health and
21 Human Services that the analyst held on the date the analyst performed the
22 chemical analysis in question.
- 23 (5) If the chemical analysis is performed on a breath-testing instrument for which
24 regulations adopted pursuant to subsection (b) require preventive maintenance,
25 the date the most recent preventive maintenance procedures were performed on
26 the breath-testing instrument used, as shown on the maintenance records for
27 that instrument.

28 The Department of Health and Human Services shall develop a form for use by chemical analysts
29 in making this affidavit.

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

- 32 (1) The State notifies the defendant no later than 15 business days after receiving
33 the affidavit and at least 15 business days before the proceeding at which the
34 affidavit would be used of its intention to introduce the affidavit into evidence
35 under this subsection and provides a copy of the affidavit to the defendant, and
- 36 (2) The defendant fails to file a written notification with the court, with a copy to
37 the State, at least five business days before the proceeding at which the affidavit
38 would be used that the defendant objects to the introduction of the affidavit into
39 evidence.

40 The failure to file a timely objection as provided in this subsection shall be deemed a waiver of
41 the right to object to the admissibility of the ~~affidavit~~, affidavit, and the affidavit shall be admitted
42 into evidence without the testimony of the analyst. Upon filing a timely objection, the
43 admissibility of the report shall be determined and governed by the appropriate rules of evidence.
44 The case shall be continued until the analyst can be present. The criminal case shall not be
45 dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear
46 after being ordered to appear by the court. If the proceeding at which the affidavit would be
47 introduced into evidence under this subsection is continued, the notice provided by the State, the
48 written objection filed by the defendant, or the failure of the defendant to file a written objection
49 shall remain effective at any subsequent calendaring of that proceeding.

1 Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party to
2 call any witness or to introduce any evidence supporting or contradicting the evidence contained in
3 the affidavit.

4 (f) Evidence of Refusal Admissible. – If any person charged with an implied-consent
5 offense refuses to submit to a chemical analysis or to perform field sobriety tests at the request of
6 an officer, evidence of that refusal is admissible in any criminal, civil, or administrative action
7 against the person.

8 (g) Controlled-Drinking Programs. – The Department of Health and Human Services may
9 adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to
10 chemical testing as a part of scientific, experimental, educational, or demonstration programs.
11 These regulations shall prescribe procedures consistent with controlling federal law governing the
12 acquisition, transportation, possession, storage, administration, and disposition of alcohol intended
13 for use in the programs. Any person in charge of a controlled-drinking program who acquires
14 alcohol under these regulations must keep records accounting for the disposition of all alcohol
15 acquired, and the records must at all reasonable times be available for inspection upon the request
16 of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to
17 control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic
18 beverages in places in which they may be lawfully possessed, however, need not comply with the
19 record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to
20 the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking
21 program authorized by the regulations are lawful notwithstanding the provisions of any other
22 general or local statute, regulation, or ordinance controlling alcohol.

23 (h) Disposition of Blood Evidence. – Notwithstanding any other provision of law, any
24 blood or urine sample subject to chemical analysis for the presence of alcohol, a controlled
25 substance or its metabolite, or any impairing substance pursuant to this section may be destroyed
26 by the analyzing agency 12 months after the case is filed or after the case is concluded in the trial
27 court and not under appeal, whichever is later, without further notice to the parties. However, if a
28 Motion to Preserve the evidence has been filed by either party, the evidence shall remain in the
29 custody of the analyzing agency or the agency that collected the sample until dispositive order of a
30 court of competent jurisdiction is entered."

31 **SECTION 2.** This act becomes effective October 1, 2016, and applies to trials
32 commencing on or after that date.