

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1497  
PROPOSED COMMITTEE SUBSTITUTE H1497-PCS70441-RVf-42

Short Title: Spectral Fluorescence Signature Drug Analysis.

(Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE RESULTS OF A SPECTRAL FLUORESCENCE SIGNATURE ANALYSIS WITH REGARD AS TO WHETHER A SUBSTANCE IS A DRUG ARE ADMISSIBLE AS EVIDENCE IN COURT, TO REQUIRE A PERMIT TO CONDUCT A SPECTRAL FLUORESCENCE SIGNATURE ANALYSIS, AND TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH AND ADMINISTER A PERMIT PROGRAM FOR THE PRACTICE OF SPECTRAL FLUORESCENCE SIGNATURE ANALYSIS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

**"§ 90-95.8. Spectral Fluorescence Signature Analysis.**

(a) Spectral Fluorescence Signature Analysis. – In any prosecution under Article 5 of Chapter 90 of the General Statutes, the results of a Spectral Fluorescence Signature Analysis that meets the criteria set out in this section are admissible as evidence in court for the prosecution of any violation under Article 5 of this Chapter to identify a disputed substance as one of the following controlled substances: heroin as defined in G.S. 90-89(2)j.; MDMA as defined in G.S. 90-89(3)c.; cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, as defined in G.S. 90-90(1)d.; methamphetamine as defined in G.S. 90-90(3)c.; and marijuana as defined in G.S. 90-94(1).

(b) Criteria for Admissibility. – The results of a Spectral Fluorescence Signature Analysis are admissible as evidence in court under this Article only if the analysis 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 Spectral Fluorescence Signature Analysis using the type of instrument employed.



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1 (c) Inadmissibility of Analysis Results. – The results of a Spectral Fluorescence  
2 Signature Analysis of a disputed substance alleged to be a controlled substance performed in  
3 accordance with this section are not admissible as evidence if:

4 (1) The defendant objects to the introduction into evidence of the results of the  
5 Spectral Fluorescence Signature Analysis of a disputed substance chemical  
6 analysis of the alleged controlled substance; and

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

12 (d) Judicial Notice. – The court shall take judicial notice of all of the following:

13 (1) The rules of the Department of Health and Human Services.

14 (2) The list of permits issued to the person performing the analysis, the type of  
15 instrument on which the person is authorized to perform tests of controlled  
16 substances, and the date the permit was issued.

17 (3) The preventive maintenance records of the Department of Health and  
18 Human Services.

19 (4) Whether at the time of the Spectral Fluorescence Signature Analysis, the  
20 Spectral Fluorescence Signature analyst possessed a permit authorizing the  
21 Spectral Fluorescence Signature analyst to perform the Spectral  
22 Fluorescence Signature Analysis administered.

23 (5) Whether preventive maintenance had been performed on the Spectral  
24 Fluorescence Signature Analysis instrument in accordance with the rules of  
25 the Department of Health and Human Services.

26 (e) No Restriction on Other Types of Analyses. – This section does not limit the  
27 introduction of other competent evidence to identify these substances, including other chemical  
28 tests."

29 **SECTION 2.** Chapter 90 of the General Statutes is amended by adding a new  
30 Article to read:

31 "Article 42.

32 "Spectral Fluorescence Signature Analysis.

33 **"§ 90-640. Permit required.**

34 A person shall not conduct Spectral Fluorescence Signature Analyses without first applying  
35 for and receiving a permit to engage in the practice from the Department of Health and Human  
36 Services.

37 **"§ 90-641. Department of Health and Human Services establish permit program;**  
38 **preventive maintenance.**

39 (a) Permit Program Established. – The Department of Health and Human Services shall  
40 establish a permit program that establishes the qualifications required for an individual to  
41 conduct Spectral Fluorescence Signature Analyses and the acceptable methods for conducting  
42 Spectral Fluorescence Signature Analysis. The Department may charge an applicant under this  
43 Article a fee for reviewing the application to determine if the applicant meets the requirements  
44 for obtaining the permit. The fee shall not exceed one hundred dollars (\$100.00) and shall be  
45 submitted with the application for the permit. Fees collected under this Article are receipts of  
46 the Department and shall be applied to the cost of administering the program. The Department  
47 shall issue permits to conduct Spectral Fluorescence Signature Analyses to individuals it finds  
48 qualified subject to periodic renewal, termination, and revocation of the permit in the  
49 Department's discretion.

50 (b) Preventive Maintenance. – Subject to review and approval by the Department of  
51 Health and Human Services, any State or local law enforcement agency or group of law

1 enforcement agencies may contract with the vendor of any approved Spectral Fluorescence  
2 Signature Analysis instrument to perform preventive maintenance on instruments used for  
3 Spectral Fluorescence Signature Analysis. Such preventive maintenance shall be carried out in  
4 a manner set forth and within the time limits prescribed by the Department of Health and  
5 Human Services. Any vendor who performs preventive maintenance shall provide a record of  
6 all such preventive maintenance to the Department of Health and Human Services, which shall  
7 maintain the same.

8 (c) Public List of Permittees. – The Department of Health and Human Services shall  
9 post on a Web page a list of all persons who have a permit authorizing them to perform  
10 Spectral Fluorescence Signature Analyses, the instruments that each person is authorized to  
11 operate, the effective dates of the permits, and the records of preventive maintenance."

12 **SECTION 3.** This act becomes effective October 1, 2009.