

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 285
Judiciary II Committee Substitute Adopted 5/2/13
PROPOSED HOUSE COMMITTEE SUBSTITUTE S285-PCS75346-RK-68

Short Title: DWI Cases/No ILAC Required.

(Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT WOULD COME INTO EFFECT ON JULY 1, 2013, THAT A LABORATORY PROVIDING CHEMICAL ANALYSES UNDER G.S. 20-139.1 BE ACCREDITED BY AN ACCREDITING BODY THAT IS A SIGNATORY TO THE INTERNATIONAL LABORATORY ACCREDITATION COOPERATION (ILAC) MUTUAL RECOGNITION ARRANGEMENT AND TO CLARIFY THAT THE RESULTS OF CHEMICAL ANALYSIS OF BLOOD OR URINE FROM ALL HOSPITAL LABORATORIES IN NORTH CAROLINA THAT ARE APPROVED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES PURSUANT TO THE CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988 (CLIA) PROGRAM ARE ADMISSIBLE AS EVIDENCE.

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.

...

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

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

- (1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and
- (2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the



* S 2 8 5 - P C S 7 5 3 4 6 - R K - 6 8 *

1 report would be used that the defendant objects to the introduction of the
2 report into evidence.

3 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
4 a written objection as provided in this subsection, then the report may be admitted into
5 evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility
6 of the report shall be determined and governed by the appropriate rules of evidence.

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

13 Nothing in this subsection precludes the right of any party to call any witness or to
14 introduce any evidence supporting or contradicting the evidence contained in the report.

15 ~~(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be~~
16 ~~performed by a laboratory that is accredited by an accrediting body that requires conformance~~
17 ~~to forensic specific requirements and which is a signatory to the International Laboratory~~
18 ~~Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the~~
19 ~~submission, identification, analysis, and storage of forensic analyses.~~

20 (c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary
21 Witnesses. –

22 (1) For the purpose of establishing the chain of physical custody or control of
23 blood or urine tested or analyzed to determine whether it contains alcohol, a
24 controlled substance or its metabolite, or any impairing substance, a
25 statement signed by each successive person in the chain of custody that the
26 person delivered it to the other person indicated on or about the date stated is
27 prima facie evidence that the person had custody and made the delivery as
28 stated, without the necessity of a personal appearance in court by the person
29 signing the statement.

30 (2) The statement shall contain a sufficient description of the material or its
31 container so as to distinguish it as the particular item in question and shall
32 state that the material was delivered in essentially the same condition as
33 received. The statement may be placed on the same document as the report
34 provided for in subsection (c1) of this section.

35 (3) The provisions of this subsection may be utilized in any administrative
36 hearing, but can only be utilized in cases tried in the district and superior
37 court divisions, or in an adjudicatory hearing in juvenile court, if:

38 a. The State notifies the defendant at least 15 business days before the
39 proceeding at which the statement would be used of its intention to
40 introduce the statement into evidence under this subsection and
41 provides a copy of the statement to the defendant, and

42 b. The defendant fails to file a written notification with the court, with a
43 copy to the State, at least five business days before the proceeding at
44 which the statement would be used that the defendant objects to the
45 introduction of the statement into evidence.

46 If the defendant's attorney of record, or the defendant if that person has no
47 attorney, fails to file a written objection as provided in this subsection, then
48 the statement may be admitted into evidence without the necessity of a
49 personal appearance by the person signing the statement. Upon filing a
50 timely objection, the admissibility of the report shall be determined and
51 governed by the appropriate rules of evidence.

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

4 (e4) ~~The results of a blood or urine test are admissible to prove a person's alcohol
5 concentration or the presence of controlled substances or metabolites or any other impairing
6 substance if:~~

7 (1) ~~A law enforcement officer or chemical analyst requested a blood and/or
8 urine sample from the person charged; and~~

9 (2) ~~A chemical analysis of blood or urine, to be admissible under this section,
10 shall be performed by a laboratory that is accredited by an accrediting body
11 that requires conformance to forensic specific requirements and which is a
12 signatory to the International Laboratory Accreditation Cooperation (ILAC)
13 Mutual Recognition Arrangement For Testing for the submission,
14 identification, analysis, and storage of forensic analyses.~~

15 ~~For purposes of establishing compliance with subdivision (2) of this subsection, the court or
16 administrative agency shall take judicial notice of the list of persons possessing permits, the
17 type of instrument on which each person is authorized to perform tests of the blood and/or
18 urine, and the date the permit was issued and the date it expires.~~

19"

20 **SECTION 2.** G.S. 8-58.20 is amended by adding a new subsection to read:

21 "(h) This section does not apply to chemical analyses under G.S. 20-139.1."

22 **SECTION 3.** This act is effective when it becomes law.