

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 867
HOUSE BILL 432

AN ACT TO AUTHORIZE THE STATE BUREAU OF INVESTIGATION TO CONDUCT BACKGROUND INVESTIGATIONS ON PERSONS TO BE CONFIRMED BY THE GENERAL ASSEMBLY, THE SENATE, OR THE HOUSE OF REPRESENTATIVES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-19.1 reads as rewritten:

"§ 114-19.1. Fees for performing certain background investigations.—When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient of such information a reasonable fee for retrieving such information. The fee authorized by this ~~subsection~~ section shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be budgeted for the support of the State Bureau of Investigation.

As used in this section, 'administration of criminal justice' means the performance of any of the following activities: the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The term also includes screening for suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer, or as an officer of the court, or for suitability for appointment of a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives.

Nothing in this section shall be construed as enlarging any right to receive any record of the State Bureau of Investigation. Such rights are and shall be controlled by G.S. 114-15, G.S. 114-19, G.S. 120-19.4A, and other applicable statutes."

Sec. 2. Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-19.4A. Requests to State Bureau of Investigation for background investigation of a person who must be confirmed by legislative action.—The President of the Senate or the Speaker of the House may request that the State Bureau of Investigation perform a background investigation on a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives. The person being investigated shall be given written notice by regular mail at least 10 days prior to the date that the State Bureau of Investigation is requested to perform the background investigation by the presiding officer of the body from which the request

originated. There is a rebuttable presumption that the person being investigated received the notice if the presiding officer has a copy of the notice. The State Bureau of Investigation shall perform the requested background investigation and shall provide the information, including criminal records, to the presiding officer of the body from which the request originated. A copy of the information also shall be provided to the person being investigated. The term 'background investigation' shall be limited to an investigation of a person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985)."

Sec. 3. G.S. 114-15 reads as rewritten:

"§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.—The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c). The Bureau also is authorized at the request of the Governor to conduct a background investigation on a person that the Governor plans to nominate for a position that must be confirmed by the General Assembly, the Senate, or the House of Representatives. The background investigation of the proposed nominee shall be limited to an investigation of the person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419

of the 1985 Session Laws (First Session, 1985).. The Governor must give the person being investigated written notice that he intends to request a background investigation at least 10 days prior to the date that he requests the State Bureau of Investigation to conduct the background investigation. The written notice shall be sent by regular mail, and there is created a rebuttable presumption that the person received the notice if the Governor has a copy of the notice.

All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of G.S. 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the district attorney of any district if the same concerns persons or investigations in his district.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund."

Sec. 4. Chapter 147 of the General Statutes is amended by adding a new section to read:

"§ 147-16.3. Timely nominations if legislative body must confirm.—Notwithstanding any other provision of law, whenever:

(1) a statute specifies that an office shall be filled by nomination by the Governor and confirmation by the General Assembly or by one house thereof, and

(2) the statute specifies that the nominee shall take office without legislative action if the General Assembly adjourns without action being taken or fails to take action within a specified time, and

(3) the Governor fails to nominate a person for the office by May 15 of a regular session of the General Assembly during an odd-numbered year or by June 7 of a regular session of the General Assembly during an even-numbered year, and

(4) the appropriate legislative body does not act on the nomination before it next adjourns for more than 10 days or sine die, the nominee shall serve only on an interim basis until 60 days after the convening of the next regular session of the General Assembly, subject to rejection or approval by the appropriate legislative body before that time."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of August, 1987.