

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1075

Short Title: SBI Subpoena Authority.

(Public)

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Sponsors: Senator Rand.

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Referred to: Judiciary II/Election Laws

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May 4, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADMINISTRATIVE SUBPOENA AUTHORITY TO THE  
STATE BUREAU OF INVESTIGATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 114 of the General Statutes is amended by adding a new  
section to read:

**"§ 114-15.4. Administrative subpoena authority.**

(a) Pursuant to regulations promulgated by the Attorney General, the Director of  
the State Bureau of Investigation and any Special Agent in Charge designated by the  
Director may, upon a determination that reasonable suspicion exists that a person who is  
a third-party keeper of records, may possess or may have care, custody or control of any  
books, records, papers, documents or other tangible things, or objects in any form which  
may be relevant to an active law enforcement investigation conducted by the State  
Bureau of Investigation, issue in writing and cause to be served upon the person, a  
subpoena requiring production of the materials at the place designated in the subpoena.  
The subpoena shall:

(1) Describe the materials to be produced with reasonably sufficient clarity  
to enable the materials to be identified; and

1           (2)   Prescribe a return date that provides a reasonable period of time within  
2                   which the materials can be assembled and made available for inspection  
3                   and copying.

4           (b)   A subpoena issued under this section may be served by any person designated  
5 in the subpoena to serve it. Service upon a natural person may be made by personal  
6 delivery of the subpoena to him. Service upon a domestic or foreign corporation, or upon  
7 a partnership or other business entity, may be made by delivering the subpoena  
8 personally or by certified or registered mail to an officer, partner, a managing or general  
9 agent, or any other officer authorized by appointment, or by law of North Carolina to  
10 receive service of process. The affidavit of the person serving the subpoena shall be  
11 proof of service. A subpoena issued for financial records shall also be signed and  
12 approved ex parte by a superior court judge.

13          (c)   In the case of neglect or refusal to obey a subpoena issued to and served upon  
14 any person pursuant to this section, the Director or his designee may file and serve upon  
15 the person a petition for an enforcement order. The petition shall be filed in the superior  
16 court in the judicial district in which the investigation is pending, in which the subpoena  
17 was served, or in which the subpoenaed person or business entity carries on business or  
18 may be found.

19          Within 10 days after the service of a subpoena upon a third-party keeper of records, or  
20 at any time before the return date specified in the subpoena, whichever period is less, the  
21 third-party record keeper or person whose records are sought may file in superior court  
22 for the judicial district in which the subpoena was issued, a petition for an order  
23 modifying or setting aside a subpoena issued pursuant to subsection (a) or \_\_\_\_\_ a  
24 prohibition or disclosure issued pursuant to subsection (e). The petition shall specify  
25 each ground upon which the petitioner relies in seeking relief. Certification of  
26 nondisclosure pursuant to subsection (e) shall not be grounds for a petition to modify or  
27 set aside the subpoena.

28          Except as otherwise provided in this section, the superior court in which a petition is  
29 filed pursuant to this subsection, has jurisdiction to hear and determine the matter so  
30 presented, and to enter such order as may be required to effectuate the provision of this  
31 section. The petition may be heard and an order entered by a superior court judge for the  
32 district in which the petition was filed. Any failure to obey the order of the court may be  
33 punished as contempt thereof. Any petition filed or order entered relating to a subpoena  
34 issued and served with certification of nondisclosure pursuant to subsection (e) shall  
35 be under seal.

36          Any person served with a subpoena issued pursuant to this section shall proceed to  
37 assemble the materials requested and shall be prepared to produce them on the date and at  
38 the place specified in the subpoena.

39          (d)   Except as expressly provided in this section, nothing in this section shall  
40 supersede the provisions of any other law of North Carolina or of the United States that  
41 regulates access to materials by state agencies.

1        Nothing in this section or in any other statute or rule shall be deemed to prohibit the  
2 use of materials or the information contained therein, obtained pursuant to this section, in  
3 any investigation or proceeding.

4        (e) Notwithstanding any other provision of law, no person or business entity  
5 served with a subpoena issued pursuant to this section, or their representative, shall  
6 disclose to any other person the existence of such subpoena for a period of 90 days, upon  
7 certification by the Director of the State Bureau of Investigation or a Special Agent of the  
8 rank of Assistant Special Agent in Charge or above, designated by the Director, that the  
9 materials being sought may be relevant to a legitimate law enforcement inquiry and there  
10 is reason to believe that such disclosure may result in:

11            (1) Endangering the life or physical safety of any person;

12            (2) Flight from prosecution;

13            (3) Destruction of or tampering with evidence;

14            (4) Intimidation of potential witnesses;

15            (5) Defeating any remedy or penalty provided for violation of the laws of  
16 North Carolina or the United States; or

17            (6) Otherwise seriously jeopardizing an investigation.

18        The period of nondisclosure may be renewed for additional 90-day periods following  
19 recertification pursuant to this subsection.

20        Nothing in this subsection shall prohibit any person from disclosing the service of a  
21 subpoena pursuant to this section to an attorney for the purpose of filing a petition  
22 pursuant to subsection (c).

23        Any third-party record keeper, agent or employee thereof, who, in good faith reliance  
24 on a certification of nondisclosure pursuant to this section, produces any materials and  
25 does not disclose such production to the subject of the records, shall not be liable to any  
26 customer or other person for such nondisclosure."

27        Sec. 2. This act is effective upon ratification.