

RCW 51.04.040 Subpoena power of director—Enforcement by superior court—Application for court approval prior to issuance—No notice required.

(1) The director and his or her authorized assistants have power to issue subpoenas to enforce the attendance and testimony of witnesses and the production and examination of books, papers, photographs, tapes, and records before the department in connection with any claim made to the department, any billing submitted to the department, or the assessment or collection of premiums. The superior court has the power to enforce any such subpoena by proper proceedings.

(2) (a) The director and his or her authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must (i) state that an order is sought pursuant to this subsection; (ii) adequately specify the records, documents, or testimony; and (iii) declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(b) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(c) The director and his or her authorized assistants may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. [2010 c 22 § 2; 1987 c 316 § 1; 1986 c 200 § 9; 1977 ex.s. c 323 § 1; 1961 c 23 § 51.04.040. Prior: 1915 c 188 § 7; RRS § 7699.]

Findings—Intent—2010 c 22: "(1) The legislature finds that underground economy activity in this state results in lost revenue to the state and is unfair to law-abiding businesses. The legislature further finds that agencies that collect taxes and overpayments on behalf of the state have authority under current law to issue subpoenas and that the issuance of subpoenas is a highly useful tool in the investigation of underground activity of businesses and the unreported employees who work for them. The legislature further finds that in the case of *State v. Miles*, the Washington supreme court held that Article 1, section 7 of the state Constitution requires judicial review of a subpoena under some circumstances.

(2) The legislature therefore intends to provide a process for the department of revenue, the department of labor and industries, and the employment security department to apply for court approval of an agency investigative subpoena which is authorized under current law in cases where the agency seeks such approval, or where court approval is required by Article 1, section 7. The legislature does not intend to require court approval except where otherwise required by law or Article 1, section 7. The legislature does not intend to create any new authority to subpoena records or create any new rights for any person." [2010 c 22 § 1.]

Severability—1977 ex.s. c 323: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 323 § 29.]

Effective date—1977 ex.s. c 323: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977." [1977 ex.s. c 323 § 30.]