

HOUSE BILL REPORT

HB 1039

As Passed House:
February 7, 2011

Title: An act relating to the subpoena authority of the department of financial institutions.

Brief Description: Addressing the subpoena authority of the department of financial institutions.

Sponsors: Representatives Bailey and Kirby; by request of Department of Financial Institutions.

Brief History:

Committee Activity:

Business & Financial Services: 1/14/11, 1/18/11 [DP].

Floor Activity:

Passed House: 2/7/11, 92-0.

Brief Summary of Bill

- Creates a process for the Department of Financial Institutions to seek judicial approval of a subpoena in advance of its issuance.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 13 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Condotta, Hudgins, Hurst, Parker, Pedersen, Rivers, Ryu and Stanford.

Staff: Alison Hellberg (786-7152).

Background:

In 2007 the Washington Supreme Court (Court) held that a search of personal banking records by the Department of Financial Institutions (Department) without a judicially issued warrant or subpoena violated Article I, section 7 of the Washington Constitution (*State v. Miles*, 160 Wn.2d 236). Article I, section 7 states that "[n]o person shall be disturbed in his private affairs . . . without authority of law." The Court invalidated the Department's statute

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to the extent it authorized the Department to issue subpoenas to third parties for otherwise private information not related to the regulated business activities.

In 2010 legislation was enacted (Substitute House Bill 2789) establishing a process for the Department of Labor and Industries, the Employment Security Department, and the Department of Revenue to seek judicial approval of a subpoena in advance of its issuance.

Summary of Bill:

The Legislature intends to provide a process for the Department to apply for court approval of an agency investigative subpoena where the agency seeks approval, or where court approval is required by law or Article I, section 7 of the state Constitution.

The Director, or authorized assistants, of the Department may apply for and obtain a superior court order authorizing a subpoena in advance of its issuance. The application must state that an order is sought pursuant to the authority granted; specify documents, records, evidence, or testimony; and include a declaration under oath that an investigation is being conducted for a lawfully authorized purpose and that the documents, records, evidence, or testimony are reasonably related to an investigation within the Department's authority. Where the application is made to the satisfaction of the court, the court must issue an order approving the subpoena. No prior notice to any person is required.

This authority is granted under the following regulatory programs of the Department: franchise investment protection; business opportunities; mortgage brokers; securities; money transmitters; commodity transactions; consumer loan companies; and check cashers and sellers.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is necessary. When the Department investigates complaints about licensees, it is important to find the money. Crooks usually do not keep the money they steal in their business accounts. These cases are dependent on getting this kind of information. Under current law you cannot get this information unless you have a neutral process to go through a magistrate. The Department has been issuing subpoenas for this information for years, up until the *Miles* case in 2007. This is a protective bill that allows a neutral third party to decide if there is a reason to request records.

(Opposed) None.

Persons Testifying: Deborah Bortner and Bill Beatty, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: None.