

§ 95-136.2. Third-party subpoenas to the Department.

(a) The Commissioner, any current employee, or any former employee of the Department may only be required to appear and testify regarding an occupational safety and health inspection under one of the following circumstances:

- (1) An enforcement proceeding is brought under this Article.
- (2) An action is filed in which the Department is a party.
- (3) The Commissioner consents in writing to waive the exemption provided by subsection (b) of this section.
- (4) A court finds all of the following:
 - a. The information sought is essential to the underlying case.
 - b. There are no reasonable alternative means for acquiring the information.
 - c. A significant injustice would occur if the requested testimony was not available.

(b) Except as provided in subsection (a) of this section, the Commissioner, any current employee, and any former employee of the Department may not be subpoenaed to appear or testify for an inquiry into any occupational safety and health inspection.

(c) Any written report, citation, or investigative finding issued by the Department pursuant to an occupational safety and health inspection shall be admissible in any judicial or administrative civil proceeding to the same extent as if the author were available to testify, unless the court finds the document clearly lacks indicia of reliability or would result in manifest injustice.

(d) This section does not apply to a subpoena requesting only documents or other records. (2025-28, s. 1.1.)