

**§68.0831 FS | SUBPOENA**

(1) As used in this section, the term "department" means the Department of Legal Affairs.

(2) Whenever the department has reason to believe that any person may be in possession, custody, or control of any documentary material or may have any information, which documentary material or information is relevant to a civil investigation authorized by s. 68.083, the department may, before the institution of a civil proceeding thereon, issue in writing and cause to be served upon the person a subpoena requiring the person to:

(a) Produce such documentary material for inspection and copying or reproduction;

(b) Answer, under oath and in writing, written interrogatories;

(c) Give sworn oral testimony concerning the documentary material or information; or

(d) Furnish any combination of such material, answers, or testimony.

(3) The subpoena shall:

(a) Be served upon the person in the manner required for service of process in this state or by certified mail showing receipt by the addressee or by the authorized agent of the addressee.

(b) State the nature of the conduct that constitutes the violation of this act and that is alleged to have occurred or to be imminent.

(c) Describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such materials to be reasonably identified.

(d) Prescribe a date and time at which the person must appear to testify, under oath or affirmation, or by which the person must answer written interrogatories or produce the documentary material for inspection or copying; however, such date shall not be earlier than 30 days after the date of service of the subpoena.



(e) Specify a place for the taking of testimony or for the submission of answers to interrogatories and identify the person who is to take custody of any documentary material. Inspection and copying of documentary material shall be carried out at the place where the documentary material is located or at such other place as may be thereafter agreed to by the person and such designated custodian. Upon written agreement between the person and the designated custodian, copies may be substituted for original documents.

(4) Such subpoena may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(a) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state in aid of a grand jury investigation; or

(b) The standards applicable to a discovery request under the Florida Rules of Civil Procedure, to the extent that the application of such standards to any such subpoena is appropriate and consistent with the provisions and purposes of this act.

(5) This section does not limit the power of the department to require the appearance of witnesses or production of documents or other tangible evidence located outside the state.

(6) Within 30 days after the service of a subpoena upon any person or at any time before the return date specified therein, whichever period is longer, the person served may file, and serve on the department, a petition for an order of the court modifying or setting aside the subpoena. Any such petition shall be filed in the circuit court of the Second Judicial Circuit in and for Leon County. The time allowed for compliance in whole or in part with the subpoena as deemed proper and ordered by the court shall not run while the petition is pending before the court. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon the failure of the subpoena to comply with this section or upon any



constitutional or other legal right or privilege of such person.

(7) In case of the failure of any person to comply in whole or in part with a subpoena and when such person has not filed a petition under subsection (6), the circuit court of the Second Judicial Circuit in and for Leon County, upon application of the department, may issue an order requiring compliance. The failure to obey the order of the court shall be punishable as a contempt of court.

(8) The examination of all witnesses under this section shall be conducted by the department before an officer authorized to administer oaths in this state. The testimony shall be taken stenographically or by a sound-recording device. Any person compelled to appear under a subpoena for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for any such objection. If such person refuses to answer any question, the person conducting the examination may petition the circuit court as provided by subsection (11).

(9) When the testimony is fully transcribed, the person conducting the deposition shall afford the witness, and counsel, if any, a reasonable opportunity to examine the transcript, and the transcript shall be read to or by the witness, unless such examination and reading is waived by the witness. Any changes in form or substance that the witness desires to make shall be entered and identified upon the transcript by the officer or the department, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness unless the witness waives the signing in writing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after his or her being afforded a reasonable opportunity to examine it, the person conducting the examination shall sign it and state on the record the fact of the waiver, illness, absence, or refusal to sign, together with the reason, if any, given therefor. Any person required to testify or to submit documentary evidence is



entitled, on payment of reasonable costs, to procure a copy of any document produced by such person and of his or her own testimony as stenographically reported or, in the case of a deposition, as reduced to writing by or under the direction of the person taking the deposition.

(10) The department shall have the authority to stipulate to protective orders with respect to documents and information submitted in response to a subpoena under this section.

(11) The department may request that any natural person who refuses to comply with this section on the ground that the testimony or documents may incriminate him or her be ordered by the circuit court to provide the testimony or the documents. Except in a prosecution for perjury, a natural person who complies with a court order to provide testimony or documents after asserting a privilege against self-incrimination to which he or she is entitled by law may not be subject to a criminal proceeding with respect to the transaction to which he or she is required to testify or produce documents. Any natural person who fails to comply with such a court order to testify or produce documents may be adjudged in contempt and imprisoned until the time the person purges himself or herself of the contempt.

(12) While in the possession of the custodian, documentary material, answers to interrogatories, and transcripts of oral testimony shall be available, under such reasonable terms and conditions as the department shall prescribe, for examination by the person who produced such materials or answers or that person's duly authorized representative.

(13) This section does not impair the authority of the department to:

- (a) Institute a civil proceeding under s. 68.083;
- (b) Invoke the power of a court to compel the production of evidence before a grand jury; or
- (c) Maintain the confidential and exempt status of the complaint and any other information as provided in s. 68.083(8).

(14)

- (a) A person who knows or has reason to believe that a subpoena pursuant to this section is pending shall not:



1. Alter, destroy, conceal, or remove any record, document, or thing with the purpose of impairing its verity or availability in such proceeding or investigation; or

2. Make, present, or use any record, document, or thing knowing it to be false.

(b) Any natural person who violates this subsection is subject to a civil penalty of not more than \$100,000, reasonable attorney fees, and costs. Any other person who violates this subsection is subject to a civil penalty of not more than \$1 million, reasonable attorney fees, and costs.

*History - (s. 4, ch. 2013-104.)*

