

16-310. Same; audit of accounts or trusts by secretary of state; redeposit of improperly paid moneys; actions by attorney general; funds held under agreements not subject to legal process; notice of intent to sell and engage in agreements; obstructing or refusing to submit to examination; audit fee. (a) The secretary of state, or the secretary's representative, shall audit in accordance with this subsection all accounts or trusts of each prearranged funeral agreement, plan or contract entered into pursuant to K.S.A. 16-301 et seq., and amendments thereto. Audits under this section shall be conducted on a random basis and not more than 25 audits shall be conducted during any one calendar year, except that the secretary of state may conduct an audit under this section at any time upon receipt of a complaint. For such purposes, the secretary of state or the secretary's representative is authorized to administer oaths and to examine under oath the directors, officers, employees and agents of any seller of personal property or funeral or burial merchandise. Such examination may be reduced to writing by the person taking it and the examiner may make findings as to the condition of each account or trust examined. Accounting records and information required by this section shall be maintained in a format approved by the secretary of state. For the purposes of such audits, the secretary of state may require any person or officer of a partnership, association, firm or corporation who sells such merchandise to furnish and submit the books, records, papers and instruments of such partnership, association, firm or corporation for examination.

(b) In the event the secretary of state determines that moneys have been improperly obtained from the account or trust by the seller of personal property or funeral or burial merchandise during the period covered by the audit, then the secretary of state may order the seller of personal property or funeral or burial merchandise to redeposit to the account or trust such moneys improperly withdrawn within 30 days.

(c) The attorney general, at the request of the secretary of state, may initiate an action to recover payments required to be redeposited to the account or trust under subsection (b), or to recover other moneys received or disbursed in violation of this act. In addition, the attorney general may seek to enjoin any violation of this act.

(d) In the absence of fraud, all funds held in an account or trust established pursuant to a prearranged funeral agreement, plan or contract shall not be subject to attachment, garnishment or other legal process, nor be seized, taken, appropriated or applied to pay any debt or liability of the seller of personal property or funeral or burial merchandise, buyer or beneficiary, by any legal or equitable process or by operation of law.

(e) No person, partnership, association, firm or corporation shall enter into any prearranged funeral agreement, plan or contract until such person, partnership, association, firm or corporation has filed with the secretary of state a notification of its intention to sell and engage in such prearranged agreements, plans or contracts. Such notice shall include the name of the person, partnership, association, firm or corporation, its principal place of business and the name and address of the bank or savings and loan association, trustee or trustees to be utilized under the provisions of this section.

(f) Whenever any person, partnership, association, firm or corporation refuses to submit the books, records, papers and instruments to the examination and inspection of the secretary of state, or of any of the secretary's representatives, or in any manner obstruct or interfere with the examination or audit authorized by this section, or refuse to be examined under oath concerning any of the affairs of its prearranged funeral agreements, plans or contracts, the secretary of state may request the attorney general to institute proceedings for the appointment of a receiver for such person, partnership, association, firm or corporation.

(g) Any person, partnership, association, firm or corporation which refuses or neglects to comply with the requirements of this act for a period of 90 days after demand to do so is made upon it by the secretary of state shall be subject to the penalties provided in K.S.A. 16-305, and amendments thereto. The attorney general, upon the request of the secretary of state, shall then begin an action for the appointment of a receiver for such person, partnership, association, firm or corporation and to dissolve the same.

(h) Whenever an audit is made pursuant to this section, the person, partnership, association, firm or corporation so audited shall pay to the secretary of state such expenses relating to the audit as assessed by the secretary of state pursuant to K.S.A. 75-442, and amendments thereto.

History: L. 1987, ch. 77, § 2; L. 1988, ch. 94, § 3; L. 1989, ch. 48, § 74; L. 1992, ch. 172, § 1; July 1.