

523A.206 Examinations — authority and scope.

1. The commissioner may conduct an examination under this chapter of any seller as often as the commissioner deems appropriate. If a seller has a trust arrangement, the commissioner shall conduct an examination of such seller doing business in this state not less than once every five years unless the seller has provided to the commissioner, on an annual basis, a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter. The commissioner may require an audit of a seller, or other person by a certified public accountant to verify compliance with the requirements of this chapter, including rules adopted and orders issued pursuant to this chapter.

2. A seller shall reimburse the division for the expense of conducting the examination, including an audit conducted by a certified public accountant, unless the commissioner waives this requirement, or the seller has previously provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter for each year in question and the examination conducted by the commissioner does not disclose that the seller has not complied with this chapter for the years in question. The expense of an examination involving multiple sellers or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner.

3. For purposes of completing an examination under this chapter, the commissioner may examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the seller.

4. Upon determining that an examination should be conducted, the commissioner may appoint one or more examiners to perform the examination and instruct those examiners as to the scope of the examination.

5. A seller, or other person from whom information is sought, and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection 4, timely, convenient, and free access at their offices, at all reasonable hours, to all books, records, accounts, papers, documents, and all electronic or other recordings related to the property, assets, business, and affairs of the seller being examined and shall facilitate the examination as much as possible.

a. The refusal of a seller, by its officers, directors, employees, or agents, to submit to an examination or to comply with a reasonable written request of an examiner shall constitute grounds for the suspension, revocation, or denial of an application to renew any license held by the seller to engage in business subject to the commissioner's jurisdiction.

b. If a seller declines or refuses to submit to an examination as provided in this chapter, the commissioner shall immediately suspend, revoke, or deny an application to renew any license held by the seller or business to engage in business subject to the commissioner's jurisdiction, and shall report the commissioner's action to the attorney general, who shall immediately apply to the district court for the appointment of a receiver to administer the final affairs of the seller.

6. The commissioner shall not make information obtained in the course of an examination public, except when a duty under this chapter requires the commissioner to take action against a seller or to cooperate with another law enforcement agency, or when the commissioner is called as a witness in a civil or criminal proceeding.

7. This section shall not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory actions pursuant to this chapter. Findings of fact and conclusions made pursuant to an examination are deemed to be prima facie evidence in any legal or regulatory action.

2001 Acts, ch 118, §24; 2007 Acts, ch 175, §12; 2008 Acts, ch 1123, §43; 2011 Acts, ch 70, §46

Referred to in §523A.405