

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 259

FINAL READING

Introduced by Lindstrom, 18.

Read first time January 15, 2019

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to consumer protection; to amend sections
2 8-1704, 8-1707, 8-1726, 69-2103, 69-2104, 69-2112, and 69-2117,
3 Reissue Revised Statutes of Nebraska, and sections 8-1101,
4 8-1101.01, 8-1103, 8-1108.02, and 8-1111, Revised Statutes
5 Cumulative Supplement, 2018; to redefine terms; to change provisions
6 relating to the Securities Act of Nebraska, the Commodity Code, and
7 the Consumer Rental Purchase Agreement Act; to change or eliminate
8 obsolete provisions; to adopt certain federal provisions; to restate
9 Securities Act Cash Fund provisions; to repeal the original
10 sections; and to declare an emergency.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-1101, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 8-1101 For purposes of the Securities Act of Nebraska, unless the
4 context otherwise requires:

5 (1) Agent means any individual other than a broker-dealer who
6 represents a broker-dealer or issuer in effecting or attempting to effect
7 sales of securities, but agent does not include an individual who
8 represents (a) an issuer in (i) effecting a transaction in a security
9 exempted by subdivision (6), (7), or (8) of section 8-1110, (ii)
10 effecting certain transactions exempted by section 8-1111, (iii)
11 effecting transactions in a federal covered security as described in
12 section 18(b)(3) of the Securities Act of 1933, or (iv) effecting
13 transactions with existing employees, limited liability company members,
14 partners, or directors of the issuer or any of its subsidiaries if no
15 commission or other remuneration is paid or given directly or indirectly
16 for soliciting any person in this state or (b) a broker-dealer in
17 effecting transactions described in section 15(h)(2) of the Securities
18 Exchange Act of 1934. A partner, limited liability company member,
19 officer, or director of a broker-dealer is an agent only if he or she
20 otherwise comes within this definition;

21 (2) Broker-dealer means any person engaged in the business of
22 effecting transactions in securities for the account of others or for his
23 or her own account. Broker-dealer does not include (a) an issuer-dealer,
24 agent, bank, savings institution, or trust company, (b) an issuer
25 effecting a transaction in its own security exempted by subdivision (5)
26 (a), (b), (c), (d), (e), or (f) of section 8-1110 or which qualifies as a
27 federal covered security pursuant to section 18(b)(1) of the Securities
28 Act of 1933, (c) a person who has no place of business in this state if
29 he or she effects transactions in this state exclusively with or through
30 the issuers of the securities involved in the transactions, other broker-
31 dealers, or banks, savings institutions, credit unions, trust companies,

1 insurance companies, investment companies as defined in the Investment
2 Company Act of 1940, pension or profit-sharing trusts, or other financial
3 institutions or institutional buyers, whether acting for themselves or as
4 trustees, (d) a person who has no place of business in this state if
5 during any period of twelve consecutive months he or she does not direct
6 more than five offers to sell or to buy into this state in any manner to
7 persons other than those specified in subdivision (2)(c) of this section,
8 or (e) a person who is a resident of Canada and who has no office or
9 other physical presence in Nebraska if the following conditions are
10 satisfied: (i) The person must be registered with, or be a member of, a
11 securities self-regulatory organization in Canada or a stock exchange in
12 Canada; (ii) the person must maintain, in good standing, its provisional
13 or territorial registration or membership in a securities self-regulatory
14 organization in Canada, or stock exchange in Canada; (iii) the person
15 effects, or attempts to effect, (A) a transaction with or for a Canadian
16 client who is temporarily present in this state and with whom the
17 Canadian broker-dealer had a bona fide customer relationship before the
18 client entered this state or (B) a transaction with or for a Canadian
19 client in a self-directed tax advantaged retirement plan in Canada of
20 which that client is the holder or contributor; and (iv) the person
21 complies with all provisions of the Securities Act of Nebraska relating
22 to the disclosure of material information in connection with the
23 transaction;

24 (3) Department means the Department of Banking and Finance. Director
25 means the Director of Banking and Finance of the State of Nebraska except
26 as further provided in section 8-1120;

27 (4) Federal covered adviser means a person who is ~~(a) registered~~
28 ~~under section 203 of the Investment Advisers Act of 1940 or (b) is~~
29 ~~excluded from the definition of investment adviser under section 202 of~~
30 ~~the Investment Advisers Act of 1940;~~

31 (5) Federal covered security means any security described as a

1 covered security under section 18(b) of the Securities Act of 1933 or
2 rules and regulations under the act;

3 (6) Guaranteed means guaranteed as to payment of principal,
4 interest, or dividends;

5 (7) Investment adviser means any person who for compensation engages
6 in the business of advising others, either directly or through
7 publications or writings, as to the value of securities or as to the
8 advisability of investing in, purchasing, or selling securities or who
9 for compensation and as a part of a regular business issues or
10 promulgates analyses or reports concerning securities. Investment adviser
11 also includes financial planners and other persons who, as an integral
12 component of other financially related services, provide the foregoing
13 investment advisory services to others for compensation and as part of a
14 business or who hold themselves out as providing the foregoing investment
15 advisory services to others for compensation. Investment adviser does not
16 include (a) an investment adviser representative, (b) a bank, savings
17 institution, or trust company, (c) a lawyer, accountant, engineer, or
18 teacher whose performance of these services is solely incidental to the
19 practice of his or her profession, (d) a broker-dealer or its agent whose
20 performance of these services is solely incidental to its business as a
21 broker-dealer and who receives no special compensation for them, (e) an
22 issuer-dealer, (f) a publisher of any bona fide newspaper, news column,
23 newsletter, news magazine, or business or financial publication or
24 service, whether communicated in hard copy form, by electronic means, or
25 otherwise which does not consist of the rendering of advice on the basis
26 of the specific investment situation of each client, (g) a person who has
27 no place of business in this state if (i) his or her only clients in this
28 state are other investment advisers, federal covered advisers, broker-
29 dealers, banks, savings institutions, credit unions, trust companies,
30 insurance companies, investment companies as defined in the Investment
31 Company Act of 1940, pension or profit-sharing trusts, or other financial

1 institutions or institutional buyers, whether acting for themselves or as
2 trustees, or (ii) during the preceding twelve-month period, he or she has
3 had five or fewer clients who are residents of this state other than
4 those persons specified in subdivision (g)(i) of this subdivision, (h)
5 any person that is a federal covered adviser or is excluded from the
6 definition of investment adviser under section 202 of the Investment
7 Adviser Act of 1940, or (i) such other persons not within the intent of
8 this subdivision as the director may by rule and regulation or order
9 designate;

10 (8) Investment adviser representative means any partner, limited
11 liability company member, officer, or director or any person occupying a
12 similar status or performing similar functions of a partner, limited
13 liability company member, officer, or director or other individual,
14 except clerical or ministerial personnel, who is employed by or
15 associated with an investment adviser that is registered or required to
16 be registered under the Securities Act of Nebraska or who has a place of
17 business located in this state and is employed by or associated with a
18 federal covered adviser, and who (a) makes any recommendations or
19 otherwise renders advice regarding securities, (b) manages accounts or
20 portfolios of clients, (c) determines which recommendation or advice
21 regarding securities should be given, (d) solicits, offers, or negotiates
22 for the sale of or sells investment advisory services, or (e) supervises
23 employees who perform any of the foregoing;

24 (9) Issuer means any person who issues or proposes to issue any
25 security, except that (a) with respect to certificates of deposit,
26 voting-trust certificates, or collateral-trust certificates or with
27 respect to certificates of interest or shares in an unincorporated
28 investment trust not having a board of directors, or persons performing
29 similar functions, or of the fixed, restricted management, or unit type,
30 the term issuer means the person or persons performing the acts and
31 assuming the duties of depositor or manager pursuant to the provisions of

1 the trust or other agreement or instrument under which the security is
2 issued and (b) with respect to a fractional or pooled interest in a
3 viatical settlement contract, issuer means the person who creates, for
4 the purpose of sale, the fractional or pooled interest. In the case of a
5 viatical settlement contract that is not fractionalized or pooled, issuer
6 means the person effecting a transaction with a purchaser of such
7 contract;

8 (10) Issuer-dealer means (a) any issuer located in the State of
9 Nebraska or (b) any issuer which registered its securities by
10 qualification who proposes to sell to the public of the State of Nebraska
11 the securities that it issues without the benefit of another registered
12 broker-dealer. Such securities shall have been approved for sale in the
13 State of Nebraska pursuant to section 8-1104;

14 (11) Nonissuer means not directly or indirectly for the benefit of
15 the issuer;

16 (12) Person means an individual, a corporation, a partnership, a
17 limited liability company, an association, a joint-stock company, a trust
18 in which the interests of the beneficiaries are evidenced by a security,
19 an unincorporated organization, a government, or a political subdivision
20 of a government;

21 (13) Sale or sell includes every contract of sale of, contract to
22 sell, or disposition of a security or interest in a security for value.
23 Offer or offer to sell includes every attempt or offer to dispose of, or
24 solicitation of an offer to buy, a security or interest in a security for
25 value. Any security given or delivered with or as a bonus on account of
26 any purchase of securities or any other thing is considered to constitute
27 part of the subject of the purchase and to have been offered and sold for
28 value. A purported gift of assessable stock shall be considered to
29 involve an offer and sale. Every sale or offer of a warrant or right to
30 purchase or subscribe to another security of the same or another issuer,
31 as well as every sale or offer of a security which gives the holder a

1 present or future right or privilege to convert into another security of
2 the same or another issuer, shall be considered to include an offer of
3 the other security;

4 (14) Securities Act of 1933, Securities Exchange Act of 1934,
5 Investment Advisers Act of 1940, Investment Company Act of 1940, and
6 Commodity Exchange Act means the acts as they existed on January 1, 2019
7 ~~2017~~;

8 (15) Security means any note, stock, treasury stock, bond,
9 debenture, units of beneficial interest in a real estate trust, evidence
10 of indebtedness, certificate of interest or participation in any profit-
11 sharing agreement, collateral-trust certificate, preorganization
12 certificate or subscription, transferable share, investment contract,
13 viatical settlement contract or any fractional or pooled interest in such
14 contract, membership interest in any limited liability company organized
15 under Nebraska law or any other jurisdiction unless otherwise excluded
16 from this definition, voting-trust certificate, certificate of deposit
17 for a security, certificate of interest or participation in an oil, gas,
18 or mining title or lease or in payments out of production under such a
19 title or lease, in general any interest or instrument commonly known as a
20 security, or any certificate of interest or participation in, temporary
21 or interim certificate for, guarantee of, or warrant or right to
22 subscribe to or purchase any of the foregoing. Security does not include
23 any insurance or endowment policy or annuity contract issued by an
24 insurance company. Security also does not include a membership interest
25 in a limited liability company when all of the following exist: (a) The
26 member enters into a written commitment to be engaged actively and
27 directly in the management of the limited liability company; and (b) all
28 members of the limited liability company are actively engaged in the
29 management of the limited liability company. For the limited purposes of
30 determining professional malpractice insurance premiums, a security
31 issued through a transaction that is exempted pursuant to subdivision

1 (23) of section 8-1111 shall not be considered a security;

2 (16) State means any state, territory, or possession of the United
3 States as well as the District of Columbia and Puerto Rico; and

4 (17) Viatical settlement contract means an agreement for the
5 purchase, sale, assignment, transfer, devise, or bequest of all or any
6 portion of the death benefit or ownership of a life insurance policy or
7 contract for consideration which is less than the expected death benefit
8 of the life insurance policy or contract. Viatical settlement contract
9 does not include (a) the assignment, transfer, sale, devise, or bequest
10 of a death benefit of a life insurance policy or contract made by the
11 viator to an insurance company or to a viatical settlement provider or
12 broker licensed pursuant to the Viatical Settlements Act, (b) the
13 assignment of a life insurance policy or contract to a bank, savings
14 bank, savings and loan association, credit union, or other licensed
15 lending institution as collateral for a loan, or (c) the exercise of
16 accelerated benefits pursuant to the terms of a life insurance policy or
17 contract and consistent with applicable law.

18 Sec. 2. Section 8-1101.01, Revised Statutes Cumulative Supplement,
19 2018, is amended to read:

20 8-1101.01 For purposes of the Securities Act of Nebraska, federal
21 rules and regulations adopted under the Investment Advisors Act of 1940
22 or the Securities Act of 1933 means such rules and regulations as they
23 existed on January 1, 2019 ~~2017~~, ~~except that references to Rule 147 and~~
24 ~~Rule 147A adopted under the Securities Act of 1933 shall be to such rules~~
25 ~~as published in the Federal Register on November 21, 2016.~~

26 Sec. 3. Section 8-1103, Revised Statutes Cumulative Supplement,
27 2018, is amended to read:

28 8-1103 (1) It shall be unlawful for any person to transact business
29 in this state as a broker-dealer, issuer-dealer, or agent, except in
30 certain transactions exempt under section 8-1111, unless he or she is
31 registered under the Securities Act of Nebraska. It shall be unlawful for

1 any broker-dealer to employ an agent for purposes of effecting or
2 attempting to effect transactions in this state unless the agent is
3 registered. It shall be unlawful for an issuer to employ an agent unless
4 the issuer is registered as an issuer-dealer and unless the agent is
5 registered. The registration of an agent shall not be effective unless
6 the agent is employed by a broker-dealer or issuer-dealer registered
7 under the act. When the agent begins or terminates employment with a
8 registered broker-dealer or issuer-dealer, the broker-dealer or issuer-
9 dealer shall promptly notify the director.

10 (2)(a) It shall be unlawful for any person to transact business in
11 this state as an investment adviser or as an investment adviser
12 representative unless he or she is registered under the act.

13 (b) Except with respect to federal covered advisers whose only
14 clients are those described in subdivision (7)(g)(i) of section 8-1101,
15 it shall be unlawful for any federal covered adviser to conduct advisory
16 business in this state unless such person files with the director the
17 documents which are filed with the Securities and Exchange Commission, as
18 the director may by rule and regulation or order require, a consent to
19 service of process, and payment of the fee prescribed in subsection (6)
20 of this section prior to acting as a federal covered adviser in this
21 state.

22 (c)(i) It shall be unlawful for any investment adviser required to
23 be registered under the Securities Act of Nebraska to employ an
24 investment adviser representative unless the investment adviser
25 representative is registered under the act.

26 (ii) It shall be unlawful for any federal covered adviser to employ,
27 supervise, or associate with an investment adviser representative having
28 a place of business located in this state unless such investment adviser
29 representative is registered under the Securities Act of Nebraska or is
30 exempt from registration.

31 (d) The registration of an investment adviser representative shall

1 not be effective unless the investment adviser representative is employed
2 by a registered investment adviser or a federal covered adviser. When an
3 investment adviser representative begins or terminates employment with an
4 investment adviser, the investment adviser shall promptly notify the
5 director. When an investment adviser representative begins or terminates
6 employment with a federal covered adviser, the investment adviser
7 representative shall promptly notify the director.

8 (3) A broker-dealer, issuer-dealer, agent, investment adviser, or
9 investment adviser representative may apply for registration by filing
10 with the director an application and payment of the fee prescribed in
11 subsection (6) of this section. If the applicant is an individual, the
12 application shall include the applicant's social security number.
13 Registration of a broker-dealer or issuer-dealer shall automatically
14 constitute registration of all partners, limited liability company
15 members, officers, or directors of such broker-dealer or issuer-dealer as
16 agents, except any partner, limited liability company member, officer, or
17 director whose registration as an agent is denied, suspended, or revoked
18 under subsection (9) of this section, without the filing of applications
19 for registration as agents or the payment of fees for registration as
20 agents. The application shall contain whatever information the director
21 requires concerning such matters as:

22 (a) The applicant's form and place of organization;

23 (b) The applicant's proposed method of doing business;

24 (c) The qualifications and business history of the applicant and, in
25 the case of a broker-dealer or investment adviser, the qualifications and
26 business history of any partner, limited liability company member,
27 officer, director, person occupying a similar status or performing
28 similar functions of a partner, limited liability company member,
29 officer, or director, or person directly or indirectly controlling the
30 broker-dealer or investment adviser;

31 (d) Any injunction or administrative order or conviction of a

1 misdemeanor involving a security or any aspect of the securities business
2 and any conviction of a felony;

3 (e) The applicant's financial condition and history; and

4 (f) Information to be furnished or disseminated to any client or
5 prospective client if the applicant is an investment adviser.

6 (4)(a) If no denial order is in effect and no proceeding is pending
7 under subsection (9) of this section, registration shall become effective
8 at noon of the thirtieth day after an application is filed, complete with
9 all amendments. The director may specify an earlier effective date.

10 (b) The director shall require as conditions of registration:

11 (i) That the applicant, except for renewal, and, in the case of a
12 corporation, partnership, or limited liability company, the officers,
13 directors, partners, or limited liability company members pass such
14 examination or examinations as the director may prescribe as evidence of
15 knowledge of the securities business;

16 (ii) That an issuer-dealer and its agents pass an examination
17 prescribed and administered by the department. Such examination shall be
18 administered upon request and upon payment of an examination fee of five
19 dollars. Any applicant for issuer-dealer registration who has
20 satisfactorily passed any other examination approved by the director
21 shall be exempted from this requirement upon furnishing evidence of
22 satisfactory completion of such examination to the director;

23 (iii) That an issuer-dealer have a minimum net capital of twenty-
24 five thousand dollars. In lieu of a minimum net capital requirement of
25 twenty-five thousand dollars, the director may require an issuer-dealer
26 to post a corporate surety bond with a surety company licensed to do
27 business in Nebraska in an amount equal to such capital requirements.
28 When the director finds that a surety bond with a surety company would
29 cause an undue burden on an issuer-dealer, the director may require the
30 issuer-dealer to post a signature bond. Every such surety or signature
31 bond shall run in favor of Nebraska, shall provide for an action thereon

1 by any person who has a cause of action under section 8-1118, and shall
2 provide that no action may be maintained to enforce any liability on the
3 bond unless brought within the time periods specified by section 8-1118;

4 (iv) That a broker-dealer have such minimum net capital as the
5 director may by rule and regulation or order require, subject to the
6 limitations provided in section 15 of the Securities Exchange Act of
7 1934. In lieu of any such minimum net capital requirement, the director
8 may by rule and regulation or order require a broker-dealer to post a
9 corporate surety bond with a surety company licensed to do business in
10 Nebraska in an amount equal to such capital requirement, subject to the
11 limitations of section 15 of the Securities Exchange Act of 1934. Every
12 such surety bond shall run in favor of Nebraska, shall provide for an
13 action thereon by any person who has a cause of action under section
14 8-1118, and shall provide that no action may be maintained to enforce any
15 liability on the bond unless brought within the time periods specified by
16 section 8-1118; and

17 (v) That an investment adviser have such minimum net capital as the
18 director may by rule and regulation or order require, subject to the
19 limitations of section 222 of the Investment Advisers Act of 1940, which
20 may include different requirements for those investment advisers who
21 maintain custody of clients' funds or securities or who have
22 discretionary authority over such funds or securities and those
23 investment advisers who do not. In lieu of any such minimum net capital
24 requirement, the director may require by rule and regulation or order an
25 investment adviser to post a corporate surety bond with a surety company
26 licensed to do business in Nebraska in an amount equal to such capital
27 requirement, subject to the limitations of section 222 of the Investment
28 Advisers Act of 1940. Every such surety bond shall run in favor of
29 Nebraska, shall provide for an action thereon by any person who has a
30 cause of action under section 8-1118, and shall provide that no action
31 may be maintained to enforce any liability on the bond unless brought

1 within the time periods specified by section 8-1118.

2 (c) The director may waive the requirement of an examination for any
3 applicant who by reason of prior experience can demonstrate his or her
4 knowledge of the securities business. Registration of a broker-dealer,
5 agent, investment adviser, and investment adviser representative shall be
6 effective for a period of not more than one year and shall expire on
7 December 31 unless renewed. Registration of an issuer-dealer shall be
8 effective for a period of not more than one year and may be renewed as
9 provided in this section. Notice filings by a federal covered adviser
10 shall be effective for a period of not more than one year and shall
11 expire on December 31 unless renewed.

12 (d) The director may restrict or limit an applicant as to any
13 function or activity in this state for which registration is required
14 under the Securities Act of Nebraska.

15 (5) Registration of a broker-dealer, issuer-dealer, agent,
16 investment adviser, or investment adviser representative may be renewed
17 by filing with the director or with a registration depository designated
18 by the director prior to the expiration date such information as the
19 director by rule and regulation or order may require to indicate any
20 material change in the information contained in the original application
21 or any renewal application for registration as a broker-dealer, issuer-
22 dealer, agent, investment adviser, or investment adviser representative
23 previously filed with the director by the applicant, and payment of the
24 prescribed fee. A federal covered adviser may renew its notice filing by
25 filing with the director prior to the expiration thereof the documents
26 filed with the Securities and Exchange Commission, as the director by
27 rule and regulation or order may require, a consent to service of
28 process, and the prescribed fee.

29 (6) The fee for initial or renewal registration shall be two hundred
30 fifty dollars for a broker-dealer, two hundred dollars for an investment
31 adviser, one hundred dollars for an issuer-dealer, forty dollars for an

1 agent, and forty dollars for an investment adviser representative. The
2 fee for initial or renewal filings for a federal covered adviser shall be
3 two hundred dollars. When an application is denied or withdrawn, the
4 director shall retain all of the fee.

5 (7)(a) Every registered broker-dealer, issuer-dealer, and investment
6 adviser shall make and keep such accounts, correspondence, memoranda,
7 papers, books, and other records as the director may prescribe by rule
8 and regulation or order, except as provided by section 15 of the
9 Securities Exchange Act of 1934, in connection with broker-dealers, and
10 section 222 of the Investment Advisers Act of 1940, in connection with
11 investment advisers. All records so required shall be preserved for such
12 period as the director may prescribe by rule and regulation or order.

13 (b) All the records of a registered broker-dealer, issuer-dealer, or
14 investment adviser shall be subject at any time or from time to time to
15 such reasonable periodic, special, or other examinations by
16 representatives of the director, within or without this state, as the
17 director deems necessary or appropriate in the public interest or for the
18 protection of investors and advisory clients. For the purpose of avoiding
19 unnecessary duplication of examinations, the director, insofar as he or
20 she deems it practicable in administering this subsection, may cooperate
21 with the securities administrators of other states, the Securities and
22 Exchange Commission, and any national securities exchange or national
23 securities association registered under the Securities Exchange Act of
24 1934. Costs of such examinations shall be borne by the registrant.

25 (c) Every registered broker-dealer, except as provided in section 15
26 of the Securities Exchange Act of 1934, and investment adviser, except as
27 provided by section 222 of the Investment Advisers Act of 1940, shall
28 file such financial reports as the director may prescribe by rule and
29 regulation or order.

30 (d) If any information contained in any document filed with the
31 director is or becomes inaccurate or incomplete in any material respect,

1 a broker-dealer, issuer-dealer, agent, investment adviser, or investment
2 adviser representative shall promptly file a correcting amendment or a
3 federal covered adviser shall file a correcting amendment when such
4 amendment is required to be filed with the Securities and Exchange
5 Commission.

6 (8) With respect to investment advisers, the director may require
7 that certain information be furnished or disseminated to clients as
8 necessary or appropriate in the public interest or for the protection of
9 investors and advisory clients. To the extent determined by the director
10 in his or her discretion, information furnished to clients of an
11 investment adviser that would be in compliance with the Investment
12 Advisers Act of 1940 and the rules and regulations under such act may be
13 used in whole or in part to satisfy the information requirement
14 prescribed in this subsection.

15 (9)(a) The director may by order deny, suspend, or revoke
16 registration of any broker-dealer, issuer-dealer, agent, investment
17 adviser, or investment adviser representative or bar, censure, or impose
18 a fine pursuant to subsection (4) of section 8-1108.01 on any registrant
19 or any partner, limited liability company member, officer, director, or
20 person occupying a similar status or performing similar functions of a
21 partner, limited liability company member, officer, or director for a
22 registrant from employment with any broker-dealer, issuer-dealer, or
23 investment adviser if he or she finds that the order is in the public
24 interest and that the applicant or registrant or, in the case of a
25 broker-dealer, issuer-dealer, or investment adviser, any partner, limited
26 liability company member, officer, director, person occupying a similar
27 status or performing similar functions of a partner, limited liability
28 company member, officer, or director, or person directly or indirectly
29 controlling the broker-dealer, issuer-dealer, or investment adviser:

30 (i) Has filed an application for registration under this section
31 which, as of any date after filing in the case of an order denying

1 effectiveness, was incomplete in any material respect or contained any
2 statement which was, in the light of the circumstances under which it was
3 made, false or misleading with respect to any material fact;

4 (ii) Has willfully violated or willfully failed to comply with any
5 provision of the Securities Act of Nebraska or any rule and regulation or
6 order under the act;

7 (iii) Has been convicted, within the past ten years, of any
8 misdemeanor involving a security or commodity or any aspect of the
9 securities or commodities business or any felony;

10 (iv) Is permanently or temporarily enjoined by any court of
11 competent jurisdiction from engaging in or continuing any conduct or
12 practice involving any aspect of the securities or commodities business;

13 (v) Is the subject of an order of the director denying, suspending,
14 or revoking registration as a broker-dealer, issuer-dealer, agent,
15 investment adviser, or investment adviser representative;

16 (vi) Is the subject of an adjudication or determination, after
17 notice and opportunity for hearing, within the past ten years by a
18 securities or commodities agency or administrator of another state or a
19 court of competent jurisdiction that the person has willfully violated
20 the Securities Act of 1933, the Securities Exchange Act of 1934, the
21 Investment Advisers Act of 1940, the Investment Company Act of 1940, the
22 Commodity Exchange Act, or the securities or commodities law of any other
23 state;

24 (vii) Has engaged in dishonest or unethical practices in the
25 securities or commodities business;

26 (viii) Is insolvent, either in the sense that his or her liabilities
27 exceed his or her assets or in the sense that he or she cannot meet his
28 or her obligations as they mature, but the director may not enter an
29 order against a broker-dealer, issuer-dealer, or investment adviser under
30 this subdivision without a finding of insolvency as to the broker-dealer,
31 issuer-dealer, or investment adviser;

1 (ix) Has not complied with a condition imposed by the director under
2 subsection (4) of this section or is not qualified on the basis of such
3 factors as training, experience, or knowledge of the securities business;

4 (x) Has failed to pay the proper filing fee, but the director may
5 enter only a denial order under this subdivision, and he or she shall
6 vacate any such order when the deficiency has been corrected;

7 (xi) Has failed to reasonably supervise his or her agents or
8 employees, if he or she is a broker-dealer or issuer-dealer, or his or
9 her investment adviser representatives or employees, if he or she is an
10 investment adviser, to assure their compliance with the Securities Act of
11 Nebraska;

12 (xii) Has been denied the right to do business in the securities
13 industry, or the person's respective authority to do business in an
14 investment-related industry has been revoked by any other state, federal,
15 or foreign governmental agency or self-regulatory organization for cause,
16 or the person has been the subject of a final order in a criminal, civil,
17 injunctive, or administrative action for securities, commodities, or
18 fraud-related violations of the law of any state, federal, or foreign
19 governmental unit; or

20 (xiii) Has refused to allow or otherwise impedes the department from
21 conducting an examination under subsection (7) of this section or has
22 refused the department access to a registrant's office to conduct an
23 examination under subsection (7) of this section.

24 (b) The director may by order bar any person from engaging in the
25 securities business in this state if the director finds that the order is
26 in the public interest and that the person has:

27 (i) Willfully violated or willfully failed to comply with any
28 provision of the Securities Act of Nebraska or any rule and regulation or
29 order under the act; or

30 (ii) Engaged in dishonest or unethical practices in the securities
31 business, which activity at the time was subject to regulation by the

1 Securities Act of Nebraska.

2 (c)(i) For purposes of subdivisions (9)(a)(vii) and (9)(b)(ii) of
3 this section, the director may, by rule and regulation or order,
4 determine that a violation of any provision of the fair practice or
5 ethical rules or standards promulgated by the Securities and Exchange
6 Commission, the Financial Industry Regulatory Authority, or a self-
7 regulatory organization approved by the Securities and Exchange
8 Commission, in effect on January 1, 2019 ~~2017~~, constitutes a dishonest or
9 unethical practice in the securities or commodities business.

10 (ii) The director may not institute a proceeding under this section
11 on the basis of a final judicial or administrative order made known to
12 him or her by the applicant prior to the effective date of the
13 registration unless the proceeding is instituted within the next ninety
14 days following registration. For purposes of this subdivision, a final
15 judicial or administrative order does not include an order that is stayed
16 or subject to further review or appeal. This subdivision shall not apply
17 to renewed registrations.

18 (iii) The director may by order summarily postpone or suspend
19 registration pending final determination of any proceeding under this
20 subsection. Upon the entry of the order, the director shall promptly
21 notify the applicant or registrant, as well as the employer or
22 prospective employer if the applicant or registrant is an agent or
23 investment adviser representative, that it has been entered and of the
24 reasons therefor and that within fifteen business days after the receipt
25 of a written request the matter will be set down for hearing. If no
26 hearing is requested within fifteen business days of the issuance of the
27 order and none is ordered by the director, the order shall automatically
28 become a final order and shall remain in effect until it is modified or
29 vacated by the director. If a hearing is requested or ordered, the
30 director, after notice of and opportunity for hearing, shall enter his or
31 her written findings of fact and conclusions of law and may affirm,

1 modify, or vacate the order. No order may be entered under this section
2 denying or revoking registration without appropriate prior notice to the
3 applicant or registrant, as well as the employer or prospective employer
4 if the applicant or registrant is an agent or investment adviser
5 representative, and opportunity for hearing.

6 (10)(a) If the director finds that any registrant or applicant for
7 registration is no longer in existence or has ceased to do business as a
8 broker-dealer, issuer-dealer, agent, investment adviser, or investment
9 adviser representative, is subject to an adjudication of mental
10 incompetence or to the control of a committee, conservator, or guardian,
11 or cannot be located after reasonable search, the director may by order
12 cancel the registration or application.

13 (b) If an applicant for registration does not complete the
14 registration application and fails to respond to a notice or notices from
15 the department to correct the deficiency or deficiencies for a period of
16 one hundred twenty days or more after the date the department sends the
17 initial notice to correct the deficiency, the department may deem the
18 registration application as abandoned and may issue a notice of
19 abandonment of the registration application to the applicant in lieu of
20 proceedings to deny the application.

21 (c) Withdrawal from registration as a broker-dealer, issuer-dealer,
22 agent, investment adviser, or investment adviser representative shall
23 become effective thirty days after receipt of an application to withdraw
24 or within a shorter period of time as the director may determine unless a
25 revocation or suspension proceeding is pending when the application is
26 filed or a proceeding to revoke or suspend or to impose conditions upon
27 the withdrawal is instituted within thirty days after the application is
28 filed. If a revocation or suspension proceeding is pending or instituted,
29 withdrawal shall become effective at such time and upon such conditions
30 as the director shall order.

31 Sec. 4. Section 8-1108.02, Revised Statutes Cumulative Supplement,

1 2018, is amended to read:

2 8-1108.02 (1) The director, by rule and regulation or order, may
3 require the filing of any or all of the following documents with respect
4 to a federal covered security under section 18(b)(2) of the Securities
5 Act of 1933:

6 (a) Prior to the initial offer of such federal covered security in
7 this state, all documents that are part of a federal registration
8 statement filed with the Securities and Exchange Commission under the
9 Securities Act of 1933, together with a consent to service of process
10 signed by the issuer and with a filing fee as prescribed by section
11 8-1108.03;

12 (b) After the initial offer of such federal covered security in this
13 state, all documents which are part of any amendment to the federal
14 registration statement filed with the Securities and Exchange Commission
15 under the Securities Act of 1933; and

16 (c) A sales report of the total amount of such federal covered
17 securities offered or sold in this state, together with the filing fee
18 prescribed by section 8-1108.03.

19 (2)(a) The director, by rule and regulation or order, may require
20 the filing of any document required to be filed with the Securities and
21 Exchange Commission under the Securities Act of 1933 with respect to a
22 federal covered security under section 18(b)(3) of the Securities Act of
23 1933 together with a filing fee of two hundred dollars.

24 (b) The director, by rule and regulation or order, may require the
25 filing of any document required to be filed with the Securities and
26 Exchange Commission under the Securities Act of 1933 with respect to a
27 federal covered security under section 18(b)(4) of the Securities Act of
28 1933 together with a filing fee of two hundred dollars. In addition, for
29 federal covered securities under section 18(b)(4)(F) ~~18(b)(4)(E)~~ of the
30 Securities Act of 1933, the director may also require the submission of a
31 consent to service of process signed by the issuer and may require that

1 such filing be made no later than fifteen days after the first sale of
2 such federal covered security in this state.

3 (c) In connection with filings made pursuant to subdivisions (a) and
4 (b) of this subsection, the director, by rule and regulation or order,
5 may require the filing of all documents which are part of any amendment
6 which the issuer is required to file with the Securities and Exchange
7 Commission.

8 (3) The director may issue a stop order suspending the offer and
9 sale of a federal covered security, except a federal covered security
10 under section 18(b)(1) of the Securities Act of 1933, if he or she finds
11 that (a) the order is in the public interest and (b) there is a failure
12 to comply with any condition established under this section or with any
13 other applicable provision of the Securities Act of Nebraska.

14 (4) The director, by rule and regulation or order, may waive any or
15 all of the provisions of this section, except that the director does not
16 have the authority to waive the payment of fees as required by this
17 section.

18 (5) No person may bring an action pursuant to section 8-1118 based
19 on the failure of an issuer to file any notice or pay any fee required by
20 this section.

21 (6) All federal covered securities offered or sold in this state
22 must be sold through a registered agent of a broker-dealer registered
23 under the Securities Act of Nebraska or by persons duly exempted or
24 excluded from such registration, except that this subsection shall not
25 apply to the offer or sale of the following, so long as a federal covered
26 security under section 18(b)(4)(E) of the Securities Act of 1933 if no
27 commission or other remuneration is paid directly or indirectly for
28 soliciting any prospective buyer: -

29 (a) A federal covered security under section 18(b)(4)(F) of the
30 Securities Act of 1933; or

31 (b) A federal covered security under section 18(b)(3) of the

1 Securities Act of 1933 which is exempt from federal registration pursuant
2 to Tier 2 of federal Regulation A, 17 C.F.R. 230.251(a).

3 Sec. 5. Section 8-1111, Revised Statutes Cumulative Supplement,
4 2018, is amended to read:

5 8-1111 Except as provided in this section, sections 8-1103 to 8-1109
6 shall not apply to any of the following transactions:

7 (1) Any isolated transaction, whether effected through a broker-
8 dealer or not;

9 (2)(a) Any nonissuer transaction by a registered agent of a
10 registered broker-dealer, and any resale transaction by a sponsor of a
11 unit investment trust registered under the Investment Company Act of
12 1940, in a security of a class that has been outstanding in the hands of
13 the public for at least ninety days if, at the time of the transaction:

14 (i) The issuer of the security is actually engaged in business and
15 not in the organization stage or in bankruptcy or receivership and is not
16 a blank check, blind pool, or shell company whose primary plan of
17 business is to engage in a merger or combination of the business with, or
18 an acquisition of, an unidentified person or persons;

19 (ii) The security is sold at a price reasonably related to the
20 current market price of the security;

21 (iii) The security does not constitute the whole or part of an
22 unsold allotment to, or a subscription or participation by, the broker-
23 dealer as an underwriter of the security;

24 (iv) A nationally recognized securities manual designated by rule
25 and regulation or order of the director or a document filed with the
26 Securities and Exchange Commission which is publicly available through
27 the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR)
28 contains:

29 (A) A description of the business and operations of the issuer;

30 (B) The names of the issuer's officers and the names of the issuer's
31 directors, if any, or, in the case of a non-United-States issuer, the

1 corporate equivalents of such persons in the issuer's country of
2 domicile;

3 (C) An audited balance sheet of the issuer as of a date within
4 eighteen months or, in the case of a reorganization or merger when
5 parties to the reorganization or merger had such audited balance sheet, a
6 pro forma balance sheet; and

7 (D) An audited income statement for each of the issuer's immediately
8 preceding two fiscal years, or for the period of existence of the issuer
9 if in existence for less than two years, or, in the case of a
10 reorganization or merger when the parties to the reorganization or merger
11 had such audited income statement, a pro forma income statement; and

12 (v) The issuer of the security has a class of equity securities
13 listed on a national securities exchange registered under the Securities
14 Exchange Act of 1934 unless:

15 (A) The issuer of the security is a unit investment trust registered
16 under the Investment Company Act of 1940;

17 (B) The issuer of the security has been engaged in continuous
18 business, including predecessors, for at least three years; or

19 (C) The issuer of the security has total assets of at least two
20 million dollars based on an audited balance sheet as of a date within
21 eighteen months or, in the case of a reorganization or merger when
22 parties to the reorganization or merger had such audited balance sheet, a
23 pro forma balance sheet; or

24 (b) Any nonissuer transaction in a security by a registered agent of
25 a registered broker-dealer if:

26 (i) The issuer of the security is actually engaged in business and
27 not in the organization stage or in bankruptcy or receivership and is not
28 a blank check, blind pool, or shell company whose primary plan of
29 business is to engage in a merger or combination of the business with, or
30 an acquisition of, an unidentified person or persons; and

31 (ii) The security is senior in rank to the common stock of the

1 issuer both as to payment of dividends or interest and upon dissolution
2 or liquidation of the issuer and such security has been outstanding at
3 least three years and the issuer or any predecessor has not defaulted
4 within the current fiscal year or the three immediately preceding fiscal
5 years in the payment of any dividend, interest, principal, or sinking
6 fund installment on the security when due and payable.

7 The director may by order deny or revoke the exemption specified in
8 subdivision (a) or (b) of subdivision (2) of this section with respect to
9 a specific security. Upon the entry of such an order, the director shall
10 promptly notify all registered broker-dealers that such order has been
11 entered and the reasons for such order and that within fifteen business
12 days after receipt of a written request the matter will be set for
13 hearing. If no hearing is requested within fifteen business days of the
14 issuance of the order and none is ordered by the director, the order
15 shall automatically become a final order and shall remain in effect until
16 modified or vacated by the director. If a hearing is requested or
17 ordered, the director shall, after notice of and opportunity for hearing
18 to all interested persons, enter his or her written findings of fact and
19 conclusions of law and may affirm, modify, or vacate the order. No such
20 order shall operate retroactively. No person may be considered to have
21 violated the Securities Act of Nebraska by reason of any offer or sale
22 effected after the entry of any such order if he or she sustains the
23 burden of proof that he or she did not know, and in the exercise of
24 reasonable care could not have known, of the order;

25 (3) Any nonissuer transaction effected by or through a registered
26 agent of a registered broker-dealer pursuant to an unsolicited order or
27 offer to buy, but the director may by rule and regulation or order
28 require that the customer acknowledge upon a specified form that the sale
29 was unsolicited and that a signed copy of each such form be preserved by
30 the broker-dealer for a specified period;

31 (4) Any transaction between the issuer or other person on whose

1 behalf the offering is made and an underwriter or among underwriters;

2 (5) Any transaction in a bond or other evidence of indebtedness
3 secured by a real or chattel mortgage or deed of trust or by an agreement
4 for the sale of real estate or chattels if the entire mortgage, deed of
5 trust, or agreement, together with all the bonds or other evidences of
6 indebtedness secured thereby, are offered and sold as a unit. Such
7 exemption shall not apply to any transaction in a bond or other evidence
8 of indebtedness secured by a real estate mortgage or deed of trust or by
9 an agreement for the sale of real estate if the real estate securing the
10 evidences of indebtedness are parcels of real estate the sale of which
11 requires the subdivision in which the parcels are located to be
12 registered under the federal Interstate Land Sales Full Disclosure Act,
13 15 U.S.C. 1701 et seq., as such act existed on January 1, 2019 ~~2017~~;

14 (6) Any transaction by an executor, personal representative,
15 administrator, sheriff, marshal, receiver, guardian, or conservator;

16 (7) Any transaction executed by a bona fide pledgee without any
17 purpose of evading the Securities Act of Nebraska;

18 (8)(a) Any offer or sale to any of the following, whether the
19 purchaser is acting for itself or in some fiduciary capacity:

20 (i) A bank, savings institution, credit union, trust company, or
21 other financial institution;

22 (ii) An insurance company;

23 (iii) An investment company as defined in the Investment Company Act
24 of 1940;

25 (iv) A pension or profit-sharing trust;

26 (v) A broker-dealer;

27 (vi) A corporation with total assets in excess of five million
28 dollars, not formed for the specific purpose of acquiring the securities
29 offered;

30 (vii) A Massachusetts or similar business trust with total assets in
31 excess of five million dollars, not formed for the specific purpose of

1 acquiring the securities offered;

2 (viii) A partnership with total assets in excess of five million
3 dollars, not formed for the specific purpose of acquiring the securities
4 offered;

5 (ix) A trust with total assets in excess of five million dollars,
6 not formed for the specific purpose of acquiring the securities, whose
7 purchase is directed by a person who has such knowledge and experience in
8 financial and business matters that he or she is capable of evaluating
9 the merits and risks of the prospective investment;

10 (x) Any entity in which all of the equity owners are individuals who
11 are individual accredited investors as defined in subdivision (b) of this
12 subdivision;

13 (xi) An institutional buyer as may be defined by the director by
14 rule and regulation or order; or

15 (xii) An individual accredited investor.

16 (b) For purposes of subdivision (8)(a) of this section, individual
17 accredited investor means (i) any director, executive officer, or general
18 partner of the issuer of the securities being offered or sold, or any
19 director, executive officer, or general partner of a general partner of
20 that issuer, (ii) any manager of a limited liability company that is the
21 issuer of the securities being offered or sold, (iii) any natural person
22 whose individual net worth, or joint net worth with that person's spouse,
23 at the time of his or her purchase, exceeds one million dollars,
24 excluding the value of the primary residence of such person, or (iv) any
25 natural person who had an individual income in excess of two hundred
26 thousand dollars in each of the two most recent years or joint income
27 with that person's spouse in excess of three hundred thousand dollars in
28 each of those years and has a reasonable expectation of reaching the same
29 income level in the current year;

30 (9)(a) Any transaction pursuant to an offering in which sales are
31 made to not more than fifteen persons, other than those designated in

1 subdivisions (8), (11), and (17) of this section, in this state during
2 any period of twelve consecutive months if (i) the seller reasonably
3 believes that all the buyers are purchasing for investment, (ii) no
4 commission or other remuneration is paid or given directly or indirectly
5 for soliciting any prospective buyer except to a registered agent of a
6 registered broker-dealer, (iii) a notice generally describing the terms
7 of the transaction and containing a representation that the conditions of
8 this exemption are met is filed by the seller with the director within
9 thirty days after the first sale for which this exemption is claimed,
10 except that failure to give such notice may be cured by an order issued
11 by the director in his or her discretion, and (iv) no general or public
12 advertisements or solicitations are made.

13 (b) If a seller (i) makes sales pursuant to this subdivision for
14 five consecutive twelve-month periods or (ii) makes sales of at least one
15 million dollars from an offering or offerings pursuant to this
16 subdivision, the seller shall, within ninety days after the earlier of
17 either such occurrence, file with the director audited financial
18 statements and a sales report which lists the names and addresses of all
19 purchasers and holders of the seller's securities and the amount of
20 securities held by such persons. Subsequent thereto, such seller shall
21 file audited financial statements and sales reports with the director
22 each time an additional one million dollars in securities is sold
23 pursuant to this subdivision or after the elapse of each additional
24 sixty-month period during which sales are made pursuant to this
25 subdivision;

26 (10) Any offer or sale of a preorganization certificate or
27 subscription if (a) no commission or other remuneration is paid or given
28 directly or indirectly for soliciting any prospective subscriber, (b) the
29 number of subscribers does not exceed ten, and (c) no payment is made by
30 any subscriber;

31 (11) Any transaction pursuant to an offer to existing security

1 holders of the issuer, including persons who at the time of the
2 transaction are holders of convertible securities, nontransferable
3 warrants, or transferable warrants exercisable within not more than
4 ninety days of their issuance, if (a) no commission or other
5 remuneration, other than a standby commission, is paid or given directly
6 or indirectly for soliciting any security holder in this state or (b) the
7 issuer first files a notice specifying the terms of the offer and the
8 director does not by order disallow the exemption within the next five
9 full business days;

10 (12) Any offer, but not a sale, of a security for which registration
11 statements have been filed under both the Securities Act of Nebraska and
12 the Securities Act of 1933 if no stop order or refusal order is in effect
13 and no public proceeding or examination looking toward such an order is
14 pending under either the Securities Act of Nebraska or the Securities Act
15 of 1933;

16 (13) The issuance of any stock dividend, whether the corporation
17 distributing the dividend is the issuer of the stock or not, if nothing
18 of value is given by the stockholders for the distribution other than the
19 surrender of a right to a cash dividend when the stockholder can elect to
20 take a dividend in cash or stock;

21 (14) Any transaction incident to a right of conversion or a
22 statutory or judicially approved reclassification, recapitalization,
23 reorganization, quasi-reorganization, stock split, reverse stock split,
24 merger, consolidation, or sale of assets;

25 (15) Any transaction involving the issuance for cash of any evidence
26 of ownership interest or indebtedness by a cooperative formed as a
27 corporation under section 21-1301 or 21-1401 or a limited cooperative
28 association formed under the Nebraska Limited Cooperative Association Act
29 if the issuer has first filed a notice of intention to issue with the
30 director and the director has not by order, mailed to the issuer by
31 certified or registered mail within ten business days after receipt

1 thereof, disallowed the exemption;

2 (16) Any transaction in this state not involving a public offering
3 when (a) there is no general or public advertising or solicitation, (b)
4 no commission or remuneration is paid directly or indirectly for
5 soliciting any prospective buyer, except to a registered agent of a
6 registered broker-dealer or registered issuer-dealer, (c) a notice
7 generally describing the terms of the transaction and containing a
8 representation that the conditions of this exemption are met is filed by
9 the seller with the director within thirty days after the first sale for
10 which this exemption is claimed, except that failure to give such notice
11 may be cured by an order issued by the director in his or her discretion,
12 (d) a filing fee of two hundred dollars is paid at the time of filing the
13 notice, and (e) any such transaction is effected in accordance with rules
14 and regulations of the director relating to this section when the
15 director finds in adopting and promulgating such rules and regulations
16 that the applicability of sections 8-1104 to 8-1107 is not necessary or
17 appropriate in the public interest or for the protection of investors.
18 For purposes of this subdivision, not involving a public offering means
19 any offering in which the seller has reason to believe that the
20 securities purchased are taken for investment and in which each offeree,
21 by reason of his or her knowledge about the affairs of the issuer or
22 otherwise, does not require the protections afforded by registration
23 under sections 8-1104 to 8-1107 in order to make a reasonably informed
24 judgment with respect to such investment;

25 (17) Any security issued in connection with an employees' stock
26 purchase, savings, option, profit-sharing, pension, or similar employees'
27 benefit plan, including any securities, plan interests, and guarantees
28 issued under a compensatory benefit plan or compensation contract,
29 contained in a record, established by the issuer, its parents, its
30 majority-owned subsidiaries, or the majority-owned subsidiaries of the
31 issuer's parent for the participation of their employees, if no

1 commission or other remuneration is paid or given directly or indirectly
2 for soliciting any prospective buyer except to a registered agent of a
3 registered broker-dealer. This subdivision shall apply to offers and
4 sales to the following individuals:

5 (a) Directors; general partners; trustees, if the issuer is a
6 business trust; officers; consultants; and advisors;

7 (b) Family members who acquire such securities from those persons
8 through gifts or domestic relations orders;

9 (c) Former employees, directors, general partners, trustees,
10 officers, consultants, and advisors if those individuals were employed by
11 or providing services to the issuer when the securities were offered; and

12 (d) Insurance agents who are exclusive insurance agents of the
13 issuer, or the issuer's subsidiaries or parents, or who derive more than
14 fifty percent of their annual income from those organizations;

15 (18) Any interest in a common trust fund or similar fund maintained
16 by a bank or trust company organized and supervised under the laws of any
17 state or a bank organized under the laws of the United States for the
18 collective investment and reinvestment of funds contributed to such
19 common trust fund or similar fund by the bank or trust company in its
20 capacity as trustee, personal representative, administrator, or guardian
21 and any interest in a collective investment fund or similar fund
22 maintained by the bank or trust company for the collective investment of
23 funds contributed to such collective investment fund or similar fund by
24 the bank or trust company in its capacity as trustee or agent which
25 interest is issued in connection with an employee's savings, pension,
26 profit-sharing, or similar benefit plan or a self-employed person's
27 retirement plan, if a notice generally describing the terms of the
28 collective investment fund or similar fund is filed by the bank or trust
29 company with the director within thirty days after the establishment of
30 the fund. Failure to give the notice may be cured by an order issued by
31 the director in his or her discretion;

1 (19) Any transaction in which a United States Series EE Savings Bond
2 is given or delivered with or as a bonus on account of any purchase of
3 any item or thing;

4 (20) Any transaction in this state not involving a public offering
5 by a Nebraska issuer selling solely to Nebraska residents, when (a) any
6 such transaction is effected in accordance with rules and regulations of
7 the director relating to this section when the director finds in adopting
8 and promulgating such rules and regulations that the applicability of
9 sections 8-1104 to 8-1107 is not necessary or appropriate in the public
10 interest or for the protection of investors, (b) no commission or
11 remuneration is paid directly or indirectly for soliciting any
12 prospective buyer, except to a registered agent of a registered broker-
13 dealer or registered issuer-dealer, (c) a notice generally describing the
14 terms of the transaction and containing a representation that the
15 conditions of this exemption are met is filed by the seller with the
16 director no later than twenty days prior to any sales for which this
17 exemption is claimed, except that failure to give such notice may be
18 cured by an order issued by the director in his or her discretion, (d) a
19 filing fee of two hundred dollars is paid at the time of filing the
20 notice, and (e) there is no general or public advertising or
21 solicitation;

22 (21) Any transaction by a person who is an organization described in
23 section 501(c)(3) of the Internal Revenue Code as defined in section
24 49-801.01 involving an offering of interests in a fund described in
25 section 3(c)(10)(B) of the Investment Company Act of 1940 solely to
26 persons who are organizations described in section 501(c)(3) of the
27 Internal Revenue Code as defined in section 49-801.01 when (a) there is
28 no general or public advertising or solicitation, (b) a notice generally
29 describing the terms of the transaction and containing a representation
30 that the conditions of this exemption are met is filed by the seller with
31 the director within thirty days after the first sale for which this

1 exemption is claimed, except that failure to give such notice may be
2 cured by an order issued by the director in his or her discretion, and
3 (c) any such transaction is effected by a trustee, director, officer,
4 employee, or volunteer of the seller who is either a volunteer or is
5 engaged in the overall fundraising activities of a charitable
6 organization and receives no commission or other special compensation
7 based on the number or the value of interests sold in the fund;

8 (22) Any offer or sale of any viatical settlement contract or any
9 fractionalized or pooled interest therein in a transaction that meets all
10 of the following criteria:

11 (a) Sales of such securities are made only to the following
12 purchasers:

13 (i) A natural person who, either individually or jointly with the
14 person's spouse, (A) has a minimum net worth of two hundred fifty
15 thousand dollars and had taxable income in excess of one hundred twenty-
16 five thousand dollars in each of the two most recent years and has a
17 reasonable expectation of reaching the same income level in the current
18 year or (B) has a minimum net worth of five hundred thousand dollars. Net
19 worth shall be determined exclusive of home, home furnishings, and
20 automobiles;

21 (ii) A corporation, partnership, or other organization specifically
22 formed for the purpose of acquiring securities offered by the issuer in
23 reliance upon this exemption if each equity owner of the corporation,
24 partnership, or other organization is a person described in subdivision
25 (22)(a)(i) of this section;

26 (iii) A pension or profit-sharing trust of the issuer, a self-
27 employed individual retirement plan, or an individual retirement account,
28 if the investment decisions made on behalf of the trust, plan, or account
29 are made solely by persons described in subdivision (22)(a)(i) of this
30 section; or

31 (iv) An organization described in section 501(c)(3) of the Internal

1 Revenue Code as defined in section 49-801.01, or a corporation,
2 Massachusetts or similar business trust, or partnership with total assets
3 in excess of five million dollars according to its most recent audited
4 financial statements;

5 (b) The amount of the investment of any purchaser, except a
6 purchaser described in subdivision (a)(ii) of this subdivision, does not
7 exceed five percent of the net worth, as determined by this subdivision,
8 of that purchaser;

9 (c) Each purchaser represents that the purchaser is purchasing for
10 the purchaser's own account or trust account, if the purchaser is a
11 trustee, and not with a view to or for sale in connection with a
12 distribution of the security;

13 (d)(i) Each purchaser receives, on or before the date the purchaser
14 remits consideration pursuant to the purchase agreement, the following
15 information in writing:

16 (A) The name, principal business and mailing addresses, and
17 telephone number of the issuer;

18 (B) The suitability standards for prospective purchasers as set
19 forth in subdivision (a) of this subdivision;

20 (C) A description of the issuer's type of business organization and
21 the state in which the issuer is organized or incorporated;

22 (D) A brief description of the business of the issuer;

23 (E) If the issuer retains ownership or becomes the beneficiary of
24 the insurance policy, an audit report from an independent certified
25 public accountant together with a balance sheet and related statements of
26 income, retained earnings, and cash flows that reflect the issuer's
27 financial position, the results of the issuer's operations, and the
28 issuer's cash flows as of a date within fifteen months before the date of
29 the initial issuance of the securities described in this subdivision. The
30 financial statements shall be prepared in conformity with generally
31 accepted accounting principles. If the date of the audit report is more

1 than one hundred twenty days before the date of the initial issuance of
2 the securities described in this subdivision, the issuer shall provide
3 unaudited interim financial statements;

4 (F) The names of all directors, officers, partners, members, or
5 trustees of the issuer;

6 (G) A description of any order, judgment, or decree that is final as
7 to the issuing entity of any state, federal, or foreign governmental
8 agency or administrator, or of any state, federal, or foreign court of
9 competent jurisdiction (I) revoking, suspending, denying, or censuring
10 for cause any license, permit, or other authority of the issuer or of any
11 director, officer, partner, member, trustee, or person owning or
12 controlling, directly or indirectly, ten percent or more of the
13 outstanding interest or equity securities of the issuer, to engage in the
14 securities, commodities, franchise, insurance, real estate, or lending
15 business or in the offer or sale of securities, commodities, franchises,
16 insurance, real estate, or loans, (II) permanently restraining,
17 enjoining, barring, suspending, or censuring any such person from
18 engaging in or continuing any conduct, practice, or employment in
19 connection with the offer or sale of securities, commodities, franchises,
20 insurance, real estate, or loans, (III) convicting any such person of, or
21 pleading nolo contendere by any such person to, any felony or misdemeanor
22 involving a security, commodity, franchise, insurance, real estate, or
23 loan, or any aspect of the securities, commodities, franchise, insurance,
24 real estate, or lending business, or involving dishonesty, fraud, deceit,
25 embezzlement, fraudulent conversion, or misappropriation of property, or
26 (IV) holding any such person liable in a civil action involving breach of
27 a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or
28 misappropriation of property. This subdivision does not apply to any
29 order, judgment, or decree that has been vacated or overturned or is more
30 than ten years old;

31 (H) Notice of the purchaser's right to rescind or cancel the

1 investment and receive a refund;

2 (I) A statement to the effect that any projected rate of return to
3 the purchaser from the purchase of a viatical settlement contract or any
4 fractionalized or pooled interest therein is based on an estimated life
5 expectancy for the person insured under the life insurance policy; that
6 the return on the purchase may vary substantially from the expected rate
7 of return based upon the actual life expectancy of the insured that may
8 be less than, may be equal to, or may greatly exceed the estimated life
9 expectancy; and that the rate of return would be higher if the actual
10 life expectancy were less than, and lower if the actual life expectancy
11 were greater than, the estimated life expectancy of the insured at the
12 time the viatical settlement contract was closed;

13 (J) A statement that the purchaser should consult with his or her
14 tax advisor regarding the tax consequences of the purchase of the
15 viatical settlement contract or any fractionalized or pooled interest
16 therein; and

17 (K) Any other information as may be prescribed by rule and
18 regulation or order of the director; and

19 (ii) The purchaser receives in writing at least five business days
20 prior to closing the transaction:

21 (A) The name, address, and telephone number of the issuing insurance
22 company and the name, address, and telephone number of the state or
23 foreign country regulator of the insurance company;

24 (B) The total face value of the insurance policy and the percentage
25 of the insurance policy the purchaser will own;

26 (C) The insurance policy number, issue date, and type;

27 (D) If a group insurance policy, the name, address, and telephone
28 number of the group and, if applicable, the material terms and conditions
29 of converting the policy to an individual policy, including the amount of
30 increased premiums;

31 (E) If a term insurance policy, the term and the name, address, and

1 telephone number of the person who will be responsible for renewing the
2 policy if necessary;

3 (F) That the insurance policy is beyond the state statute for
4 contestability and the reason therefor;

5 (G) The insurance policy premiums and terms of premium payments;

6 (H) The amount of the purchaser's money that will be set aside to
7 pay premiums;

8 (I) The name, address, and telephone number of the person who will
9 be the insurance policyowner and the person who will be responsible for
10 paying premiums;

11 (J) The date on which the purchaser will be required to pay premiums
12 and the amount of the premium, if known; and

13 (K) Any other information as may be prescribed by rule and
14 regulation or order of the director;

15 (e) The purchaser may rescind or cancel the purchase for any reason
16 by giving written notice of rescission or cancellation to the issuer or
17 the issuer's agent within (i) fifteen calendar days after the date the
18 purchaser remits the required consideration or receives the disclosure
19 required under subdivision (d)(i) of this subdivision and (ii) five
20 business days after the date the purchaser receives the disclosure
21 required by subdivision (d)(ii) of this subdivision. No specific form is
22 required for the rescission or cancellation. The notice is effective when
23 personally delivered, deposited in the United States mail, or deposited
24 with a commercial courier or delivery service. The issuer shall refund
25 all the purchaser's money within seven calendar days after receiving the
26 notice of rescission or cancellation;

27 (f) A notice of the issuer's intent to sell securities pursuant to
28 this subdivision, signed by a duly authorized officer of the issuer and
29 notarized, together with a filing fee of two hundred dollars, is filed
30 with the department before any offers or sales of securities are made
31 under this subdivision. Such notice shall include:

1 (i) The issuer's name, the issuer's type of organization, the state
2 in which the issuer is organized, the date the issuer intends to begin
3 selling securities within or from this state, and the issuer's principal
4 business;

5 (ii) A consent to service of process; and

6 (iii) An audit report of an independent certified public accountant
7 together with a balance sheet and related statements of income, retained
8 earnings and cash flows that reflect the issuer's financial position, the
9 results of the issuer's operations, and the issuer's cash flows as of a
10 date within fifteen months before the date of the notice prescribed in
11 this subdivision. The financial statements shall be prepared in
12 conformity with generally accepted accounting principles and shall be
13 examined according to generally accepted auditing standards. If the date
14 of the audit report is more than one hundred twenty days before the date
15 of the notice prescribed in this subdivision, the issuer shall provide
16 unaudited interim financial statements;

17 (g) No commission or remuneration is paid directly or indirectly for
18 soliciting any prospective purchaser, except to a registered agent of a
19 registered broker-dealer or registered issuer-dealer; and

20 (h) At least ten days before use within this state, the issuer files
21 with the department all advertising and sales materials that will be
22 published, exhibited, broadcast, or otherwise used, directly or
23 indirectly, in the offer or sale of a viatical settlement contract in
24 this state;

25 (23) Any transaction in this state not involving a public offering
26 by a Nebraska issuer selling solely to Nebraska residents when:

27 (a) The proceeds from all sales of securities by the issuer in any
28 two-year period do not exceed seven hundred fifty thousand dollars or
29 such greater amount as from time to time may be set in accordance with
30 rules and regulations adopted and promulgated by the director to adjust
31 the amount to reflect changes in the Consumer Price Index for All Urban

1 Consumers as prepared by the United States Department of Labor, Bureau of
2 Labor Statistics, and at least eighty percent of the proceeds are used in
3 Nebraska;

4 (b) No commission or other remuneration is paid or given directly or
5 indirectly for soliciting any prospective buyer except to a registered
6 agent of a registered broker-dealer;

7 (c) The issuer, any partner or limited liability company member of
8 the issuer, any officer, director, or any person occupying a similar
9 status of the issuer, any person performing similar functions for the
10 issuer, or any person holding a direct or indirect ownership interest in
11 the issuer or in any way a beneficial interest in such sale of securities
12 of the issuer, has not been:

13 (i) Found by a final order of any state or federal administrative
14 agency or a court of competent jurisdiction to have violated any
15 provision of the Securities Act of Nebraska or a similar act of any other
16 state or of the United States;

17 (ii) Convicted of any felony or misdemeanor in connection with the
18 offer, purchase, or sale of any security or any felony involving fraud or
19 deceit, including, but not limited to, forgery, embezzlement, obtaining
20 money under false pretenses, larceny, or conspiracy to defraud;

21 (iii) Found by any state or federal administrative agency or court
22 of competent jurisdiction to have engaged in fraud or deceit, including,
23 but not limited to, making an untrue statement of a material fact or
24 omitting to state a material fact; or

25 (iv) Temporarily or preliminarily restrained or enjoined by a court
26 of competent jurisdiction from engaging in or continuing any conduct or
27 practice in connection with the purchase or sale of any security or
28 involving the making of any false filing with any state or with the
29 Securities and Exchange Commission;

30 (d)(i) At least fifteen business days prior to the offer or sale,
31 the issuer files a notice with the director, which notice shall include:

1 (A) The name, address, telephone number, and email address of the
2 issuer;

3 (B) The name and address of each person holding direct or indirect
4 ownership or beneficial interest in the issuer;

5 (C) The amount of the offering; and

6 (D) The type of security being offered, the manner in which
7 purchasers will be solicited, and a statement made upon oath or
8 affirmation that the conditions of this exemption have been or will be
9 met.

10 (ii) Failure to give such notice may be cured by an order issued by
11 the director in his or her discretion;

12 (e) Prior to payment of consideration for the securities, the
13 offeree receives a written disclosure statement containing (i) a
14 description of the proposed use of the proceeds of the offering; (ii) the
15 name of each partner or limited liability company member of the issuer,
16 officer, director, or person occupying a similar status of the issuer or
17 performing similar functions for the issuer; and (iii) the financial
18 condition of the issuer;

19 (f) The purchaser signs a subscription agreement in which the
20 purchaser acknowledges that he or she:

21 (i) Has received the written disclosure statement;

22 (ii) Understands the investment involves a high level of risk; and

23 (iii) Has the financial resources to withstand the total loss of the
24 money invested; and

25 (g) The issuer, within thirty days after the completion of the
26 offering, files with the department a statement indicating the number of
27 investors, the total dollar amount raised, and the use of the offering
28 proceeds; or

29 (24)(a) An offer or a sale of a security made after August 30, 2015,
30 by an issuer if the offer or sale is conducted in accordance with all the
31 following requirements:

1 (i) The issuer of the security is a business entity organized under
2 the laws of Nebraska and authorized to do business in Nebraska;

3 (ii) The transaction meets the requirements of the federal exemption
4 for intrastate offerings in section 3(a)(11) of the Securities Act of
5 1933 and Rule 147 adopted under the Securities Act of 1933, or complies
6 with Rule 147A adopted under the Securities Act of 1933;

7 (iii) Except as provided in subdivision (c) of this subdivision, the
8 sum of all cash and other consideration to be received for all sales of
9 the security in reliance on the exemption under this subdivision,
10 excluding sales to any accredited investor, does not exceed the following
11 amount:

12 (A) If the issuer has not undergone, and made available to each
13 prospective investor and the director the documentation resulting from, a
14 financial audit of its most recently completed fiscal year that complies
15 with generally accepted accounting principles, one million dollars, less
16 the aggregate amount received for all sales of securities by the issuer
17 within the twelve months before the first offer or sale made in reliance
18 on the exemption under this subdivision; or

19 (B) If the issuer has undergone, and made available to each
20 prospective investor and the director the documentation resulting from, a
21 financial audit of its most recently completed fiscal year that complies
22 with generally accepted accounting principles, two million dollars, less
23 the aggregate amount received for all sales of securities by the issuer
24 within the twelve months before the first offer or sale made in reliance
25 on the exemption under this subdivision;

26 (iv) The issuer does not accept more than five thousand dollars from
27 any single purchaser except that such limitation shall not apply to an
28 accredited investor;

29 (v) Unless waived by written consent by the director, not less than
30 ten days before the commencement of an offering of securities in reliance
31 on the exemption under this subdivision, the issuer must do all the

1 following:

2 (A) Make a notice filing with the department on a form prescribed by
3 the director;

4 (B) Pay a filing fee of two hundred dollars. However, no filing fee
5 is required to file amendments to the form;

6 (C) Provide the director a copy of the disclosure document to be
7 provided to prospective investors under subdivision (a)(xi) of this
8 subdivision;

9 (D) Provide the director a copy of an escrow agreement with a bank,
10 regulated trust company, savings bank, savings and loan association, or
11 credit union authorized to do business in Nebraska in which the issuer
12 will deposit the investor funds or cause the investor funds to be
13 deposited. The bank, regulated trust company, savings bank, savings and
14 loan association, or credit union in which the investor funds are
15 deposited is only responsible to act at the direction of the party
16 establishing the escrow agreement and does not have any duty or
17 liability, contractual or otherwise, to any investor or other person;

18 (E) The issuer shall not access the escrow funds until the aggregate
19 funds raised from all investors equals or exceeds the minimum amount
20 specified in the escrow agreement; and

21 (F) An investor may cancel the investor's commitment to invest if
22 the target offering amount is not raised before the time stated in the
23 escrow agreement;

24 (vi) The issuer is not, either before or as a result of the
25 offering, an investment company, as defined in section 3 of the
26 Investment Company Act of 1940, an entity that would be an investment
27 company but for the exclusions provided in section 3(c) of the Investment
28 Company Act of 1940, or subject to the reporting requirements of section
29 13 or 15(d) of the Securities Exchange Act of 1934;

30 (vii) The issuer informs all prospective purchasers of securities
31 offered under an exemption under this subdivision that the securities

1 have not been registered under federal or state securities law and that
2 the securities are subject to limitations on resale. The issuer shall
3 display the following legend conspicuously on the cover page of the
4 disclosure document:

5 IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN
6 EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE
7 MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY
8 ANY FEDERAL OR STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR
9 OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE
10 NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT.
11 ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE
12 SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND
13 MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF
14 SEC RULE 147 OR SUBSECTION (e) OF RULE 147A ADOPTED UNDER THE SECURITIES
15 ACT OF 1933 AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO
16 REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY
17 WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN
18 INDEFINITE PERIOD OF TIME.;

19 (viii) The issuer requires each purchaser to certify in writing or
20 electronically as follows:

21 I understand and acknowledge that I am investing in a high-risk,
22 speculative business venture. I may lose all of my investment, or under
23 some circumstances more than my investment, and I can afford this loss.
24 This offering has not been reviewed or approved by any state or federal
25 securities commission, department, or division or other regulatory
26 authority and no such person or authority has confirmed the accuracy or
27 determined the adequacy of any disclosure made to me relating to this
28 offering. The securities I am acquiring in this offering are illiquid,
29 there is no ready market for the sale of such securities, it may be
30 difficult or impossible for me to sell or otherwise dispose of this
31 investment, and, accordingly, I may be required to hold this investment

1 indefinitely. I may be subject to tax on my share of the taxable income
2 and losses of the company, whether or not I have sold or otherwise
3 disposed of my investment or received any dividends or other
4 distributions from the company.;

5 (ix) The issuer obtains from each purchaser of a security offered
6 under an exemption under this subdivision evidence that the purchaser is
7 a resident of Nebraska and, if applicable, is an individual accredited
8 investor;

9 (x) All payments for purchase of securities offered under an
10 exemption under this subdivision are directed to and held by the
11 financial institution specified in subdivision (a)(v)(D) of this
12 subdivision. The director may request from the financial institutions
13 information necessary to ensure compliance with this section. This
14 information is not a public record and is not available for public
15 inspection;

16 (xi) The issuer of securities offered under an exemption under this
17 subdivision provides a disclosure document to each prospective investor
18 at the time the offer of securities is made to the prospective investor
19 that contains all the following:

20 (A) A description of the company, its type of entity, the address
21 and telephone number of its principal office, its history, its business
22 plan, and the intended use of the offering proceeds, including any
23 amounts to be paid, as compensation or otherwise, to any owner, executive
24 officer, director, managing member, or other person occupying a similar
25 status or performing similar functions on behalf of the issuer;

26 (B) The identity of all persons owning more than twenty percent of
27 the ownership interests of any class of securities of the company;

28 (C) The identity of the executive officers, directors, managing
29 members, and other persons occupying a similar status or performing
30 similar functions in the name of and on behalf of the issuer, including
31 their titles and their prior experience;

1 (D) The terms and conditions of the securities being offered and of
2 any outstanding securities of the company; the minimum and maximum amount
3 of securities being offered, if any; either the percentage ownership of
4 the company represented by the offered securities or the valuation of the
5 company implied by the price of the offered securities; the price per
6 share, unit, or interest of the securities being offered; any
7 restrictions on transfer of the securities being offered; and a
8 disclosure of any anticipated future issuance of securities that might
9 dilute the value of securities being offered;

10 (E) The identity of any person who has been or will be retained by
11 the issuer to assist the issuer in conducting the offering and sale of
12 the securities, including any portal operator but excluding persons
13 acting solely as accountants or attorneys and employees whose primary job
14 responsibilities involve the operating business of the issuer rather than
15 assisting the issuer in raising capital;

16 (F) For each person identified as required in subdivision (a)(xi)(E)
17 of this subdivision, a description of the consideration being paid to the
18 person for such assistance;

19 (G) A description of any litigation, legal proceedings, or pending
20 regulatory action involving the company or its management;

21 (H) The names and addresses of each portal operator that will be
22 offering or selling the issuer's securities under an exemption under this
23 subdivision;

24 (I) The Uniform Resource Locator for each funding portal that will
25 be used by the portal operator to offer or sell the issuer's securities
26 under an exemption under this subdivision; and

27 (J) Any additional information material to the offering, including,
28 if appropriate, a discussion of significant factors that make the
29 offering speculative or risky. This discussion must be concise and
30 organized logically and may not be limited to risks that could apply to
31 any issuer or any offering;

1 (xii) The offering or sale exempted under this subdivision is made
2 exclusively through one or more funding portals and each funding portal
3 is subject to the following:

4 (A) Before any offer or sale of securities, the issuer must provide
5 to the portal operator evidence that the issuer is organized under the
6 laws of Nebraska and is authorized to do business in Nebraska;

7 (B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision,
8 the portal operator must register with the department by filing a
9 statement, accompanied by a two-hundred-dollar filing fee, that includes
10 the following information:

11 (I) Documentation which demonstrates that the portal operator is a
12 business entity and authorized to do business in Nebraska;

13 (II) A representation that the funding portal is being used to offer
14 and sell securities pursuant to the exemption under this subdivision; and

15 (III) The identity and location of, and contact information for, the
16 portal operator;

17 (C) The portal operator is not required to register as a broker-
18 dealer if all of the following apply with respect to the funding portal
19 and its portal operator:

20 (I) It does not offer investment advice or recommendations;

21 (II) It does not solicit purchases, sales, or offers to buy the
22 securities offered or displayed on the funding portal;

23 (III) It does not compensate employees, agents, or other persons for
24 the solicitation or based on the sale of securities displayed or
25 referenced on the funding portal;

26 (IV) It is not compensated based on the amount of securities sold,
27 and it does not hold, manage, possess, or otherwise handle investor funds
28 or securities;

29 (V) The fee it charges an issuer for an offering of securities on
30 the funding portal is a fixed amount for each offering, a variable amount
31 based on the length of time that the securities are offered on the

1 funding portal, or a combination of the fixed and variable amounts;

2 (VI) It does not identify, promote, or otherwise refer to any
3 individual security offered on the funding portal in any advertising for
4 the funding portal;

5 (VII) It does not engage in any other activities that the director,
6 by rule and regulation or order, determines are prohibited of the funding
7 portal; and

8 (VIII) Neither the portal operator, nor any director, executive
9 officer, general partner, managing member, or other person with
10 management authority over the portal operator, has been subject to any
11 conviction, order, judgment, decree, or other action specified in Rule
12 506(d)(1) adopted under the Securities Act of 1933, that would disqualify
13 an issuer under Rule 506(d) adopted under the Securities Act of 1933,
14 from claiming an exemption specified in Rule 506(a) to Rule 506(c)
15 adopted under the Securities Act of 1933. However, this subdivision does
16 not apply if both of the following are met:

17 (1) On a showing of good cause and without prejudice to any other
18 action by the Director of Banking and Finance, the director determines
19 that it is not necessary under the circumstances that an exemption is
20 denied; and

21 (2) The portal operator establishes that it made a factual inquiry
22 into whether any disqualification existed under this subdivision but did
23 not know, and in the exercise of reasonable care, could not have known,
24 that a disqualification existed under this subdivision. The nature and
25 scope of the requisite inquiry will vary based on the circumstances of
26 the issuer and the other offering participants;

27 (D) If any change occurs that affects the funding portal's
28 registration exemption, the portal operator must notify the department
29 within thirty days after the change occurs;

30 (E) A registered broker-dealer who also serves as a portal operator
31 must register with the department as a portal operator pursuant to

1 subdivision (a)(xii)(B) of this subdivision, except that the fee for
2 registration shall be waived;

3 (F) The issuer and the portal operator must maintain records of all
4 offers and sales of securities effected through the funding portal and
5 must provide ready access to the records to the department, upon request.
6 The records of a portal operator under this subdivision are subject to
7 the reasonable periodic, special, or other audits or inspections by a
8 representative of the director, in or outside Nebraska, as the director
9 considers necessary or appropriate in the public interest and for the
10 protection of investors. An audit or inspection may be made at any time
11 and without prior notice. The director may copy, and remove for audit or
12 inspection copies of, all records the director reasonably considers
13 necessary or appropriate to conduct the audit or inspection. The director
14 may assess a reasonable charge for conducting an audit or inspection
15 under this subdivision;

16 (G) The portal operator shall limit web site access to the offer or
17 sale of securities to only Nebraska residents;

18 (H) The portal operator shall not hold, manage, possess, or handle
19 investor funds or securities; and

20 (I) The portal operator may not be an investor in any Nebraska
21 offering under this subdivision.

22 (b) An issuer of a security, the offer and sale of which is exempt
23 under this subdivision, shall provide, free of charge, a quarterly report
24 to the issuer's investors until no securities issued under an exemption
25 under this subdivision are outstanding. An issuer may satisfy the
26 reporting requirement of this subdivision by making the information
27 available on a funding portal if the information is made available within
28 forty-five days after the end of each fiscal quarter and remains
29 available until the succeeding quarterly report is issued. An issuer
30 shall file each quarterly report under this subdivision with the
31 department and, if the quarterly report is made available on a funding

1 portal, the issuer shall also provide a written copy of the report to any
2 investor upon request. The report must contain all the following:

3 (i) Compensation received by each director and executive officer,
4 including cash compensation earned since the previous report and on an
5 annual basis and any bonuses, stock options, other rights to receive
6 securities of the issuer or any affiliate of the issuer, or other
7 compensation received; and

8 (ii) An analysis by management of the issuer of the business
9 operations and financial condition of the issuer.

10 (c) An offer or a sale under this subdivision to an officer,
11 director, partner, trustee, or individual occupying similar status or
12 performing similar functions with respect to the issuer or to a person
13 owning ten percent or more of the outstanding shares of any class or
14 classes of securities of the issuer does not count toward the monetary
15 limitations in subdivision (a)(iii) of this subdivision.

16 (d) The exemption under this subdivision may not be used in
17 conjunction with any other exemption under the Securities Act of
18 Nebraska, except for offers and sales to individuals identified in the
19 disclosure document, during the immediately preceding twelve-month
20 period.

21 (e) The exemption under this subdivision does not apply if an issuer
22 or any director, executive officer, general partner, managing member, or
23 other person with management authority over the issuer, has been subject
24 to any conviction, order, judgment, decree, or other action specified in
25 Rule 506(d)(1) adopted under the Securities Act of 1933, that would
26 disqualify an issuer under Rule 506(d) adopted under the Securities Act
27 of 1933, from claiming an exemption specified in Rule 506(a) to Rule
28 506(c) adopted under the Securities Act of 1933. However, this
29 subdivision does not apply if both of the following are met:

30 (i) On a showing of good cause and without prejudice to any other
31 action by the Director of Banking and Finance, the director determines

1 that it is not necessary under the circumstances that an exemption is
2 denied; and

3 (ii) The issuer establishes that it made a factual inquiry into
4 whether any disqualification existed under this subdivision but did not
5 know, and in the exercise of reasonable care, could not have known, that
6 a disqualification existed under this subdivision. The nature and scope
7 of the requisite inquiry will vary based on the circumstances of the
8 issuer and the other offering participants.

9 (f) For purposes of this subdivision:

10 (i) Accredited investor means a bank, a savings institution, a trust
11 company, an insurance company, an investment company as defined in the
12 Investment Company Act of 1940, a pension or profit-sharing trust or
13 other financial institution or institutional buyer, an individual
14 accredited investor, or a broker-dealer, whether the purchaser is acting
15 for itself or in some fiduciary capacity;

16 (ii) Funding portal means an Internet web site that is operated by a
17 portal operator for the offer and sale of securities pursuant to this
18 subdivision;

19 (iii) Individual accredited investor means (A) any director,
20 executive officer, or general partner of the issuer of the securities
21 being offered or sold, or any director, executive officer, or general
22 partner of a general partner of that issuer, (B) any manager of a limited
23 liability company that is the issuer of the securities being offered or
24 sold, (C) any natural person whose individual net worth, or joint net
25 worth with that person's spouse, at the time of his or her purchase,
26 exceeds one million dollars, excluding the value of the primary residence
27 of such person, or (D) any natural person who had an individual income in
28 excess of two hundred thousand dollars in each of the two most recent
29 years or joint income with that person's spouse in excess of three
30 hundred thousand dollars in each of those years and has a reasonable
31 expectation of reaching the same income level in the current year; and

1 (iv) Portal operator means an entity authorized to do business in
2 this state which operates a funding portal and has registered with the
3 department as required by this subdivision.

4 Sec. 6. Section 8-1704, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 8-1704 CFTC rule shall mean any rule, regulation, or order of the
7 Commodity Futures Trading Commission in effect on January 1, 2019 ~~2011~~.

8 Sec. 7. Section 8-1707, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 8-1707 Commodity Exchange Act shall mean the act of Congress known
11 as the Commodity Exchange Act, 7 U.S.C. 1, as amended on January 1, 2019
12 ~~2011~~.

13 Sec. 8. Section 8-1726, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 8-1726 (1) If the director believes, whether or not based upon an
16 investigation conducted under section 8-1725, that any person has engaged
17 or is about to engage in any act or practice constituting a violation of
18 any provision of the Commodity Code or any rule, regulation, or order
19 under the code, the director may:

20 (a) Issue a cease and desist order;

21 (b) Issue an order imposing a civil penalty in an amount which may
22 not exceed twenty-five thousand dollars for any single violation or one
23 hundred thousand dollars for multiple violations in a single proceeding
24 or a series of related proceedings; or

25 (c) Initiate any of the actions specified in subsection (2) of this
26 section.

27 (2) The director may institute any of the following actions in the
28 appropriate district court of this state or in the appropriate courts of
29 another state in addition to any legal or equitable remedies otherwise
30 available:

31 (a) An action for a declaratory judgment;

1 (b) An action for a prohibitory or mandatory injunction to enjoin
2 the violation and to ensure compliance with the Commodity Code or any
3 rule, regulation, or order of the director;

4 (c) An action for disgorgement or restitution; or

5 (d) An action for appointment of a receiver or conservator for the
6 defendant or the defendant's assets.

7 (3)(a) The fines and costs shall be in addition to all other
8 penalties imposed by the laws of this state. The director shall collect
9 the fines and costs and remit them to the State Treasurer. The State
10 Treasurer shall credit the costs to the Securities Act Cash Fund and
11 distribute the fines in accordance with Article VII, section 5, of the
12 Constitution of Nebraska ~~Any fine and costs imposed under this section~~
13 ~~shall be in addition to all other penalties imposed by the laws of this~~
14 ~~state and shall be collected by the director and remitted to the State~~
15 ~~Treasurer. Costs shall be credited to the Securities Act Cash Fund, and~~
16 ~~fines shall be credited to the permanent school fund.~~

17 (b) If a person fails to pay the administrative fine or
18 investigation costs referred to in this section, a lien in the amount of
19 such fine and costs may be imposed upon all assets and property of such
20 person in this state and may be recovered by suit by the director.
21 Failure of the person to pay such fine and costs shall constitute a
22 separate violation of the code.

23 Sec. 9. Section 69-2103, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 69-2103 For purposes of the Consumer Rental Purchase Agreement Act:

26 (1) Advertisement means a commercial message in any medium that
27 aids, promotes, or assists directly or indirectly a consumer rental
28 purchase agreement but does not include in-store merchandising aids such
29 as window signs and ceiling banners;

30 (2) Cash price means the price at which the lessor would have sold
31 the property to the consumer for cash on the date of the consumer rental

1 purchase agreement for the property;

2 (3) Consumer means a natural person who rents property under a
3 consumer rental purchase agreement;

4 (4) Consumer rental purchase agreement means an agreement which is
5 for the use of property by a consumer primarily for personal, family, or
6 household purposes, which is for an initial period of four months or
7 less, whether or not there is any obligation beyond the initial period,
8 which is automatically renewable with each payment, and which permits the
9 consumer to become the owner of the property. A consumer rental purchase
10 agreement in compliance with the act shall not be construed to be a lease
11 or agreement which constitutes a credit sale as defined in 12 C.F.R.
12 1026.2(a)(16), as such regulation existed on January 1, 2019 ~~2016~~, and 15
13 U.S.C. 1602(h), as such section existed on January 1, 2019 ~~2016~~, or a
14 lease which constitutes a consumer lease as defined in 12 C.F.R. 1013.2,
15 as such regulation existed on January 1, 2019 ~~2016~~. Consumer rental
16 purchase agreement does not include:

17 (a) Any lease for agricultural, business, or commercial purposes;

18 (b) Any lease made to an organization;

19 (c) A lease or agreement which constitutes an installment sale or
20 installment contract as defined in section 45-335;

21 (d) A security interest as defined in subdivision (35) of section
22 1-201, Uniform Commercial Code; and

23 (e) A home solicitation sale as defined in section 69-1601;

24 (5) Consummation means the occurrence of an event which causes a
25 consumer to become contractually obligated on a consumer rental purchase
26 agreement;

27 (6) Department means the Department of Banking and Finance;

28 (7) Lease payment means a payment to be made by the consumer for the
29 right of possession and use of the property for a specific lease period
30 but does not include taxes imposed on such payment;

31 (8) Lease period means a week, month, or other specific period of

1 time, during which the consumer has the right to possess and use the
2 property after paying the lease payment and applicable taxes for such
3 period;

4 (9) Lessor means a person who in the ordinary course of business
5 operates a commercial outlet which regularly leases, offers to lease, or
6 arranges for the leasing of property under a consumer rental purchase
7 agreement;

8 (10) Property means any property that is not real property under the
9 laws of this state when made available for a consumer rental purchase
10 agreement; and

11 (11) Total of payments to acquire ownership means the total of all
12 charges imposed by the lessor and payable by the consumer as a condition
13 of acquiring ownership of the property. Total of payments to acquire
14 ownership includes lease payments and any initial nonrefundable
15 administrative fee or required delivery charge but does not include
16 taxes, late charges, reinstatement fees, or charges for optional products
17 or services.

18 Sec. 10. Section 69-2104, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 69-2104 (1) Before entering into any consumer rental purchase
21 agreement, the lessor shall disclose to the consumer the following items
22 as applicable:

23 (a) A brief description of the leased property sufficient to
24 identify the property to the consumer and lessor;

25 (b) The number, amount, and timing of all payments included in the
26 total of payments to acquire ownership;

27 (c) The total of payments to acquire ownership;

28 (d) A statement that the consumer will not own the property until
29 the consumer has paid the total of payments to acquire ownership plus
30 applicable taxes;

31 (e) A statement that the total of payments to acquire ownership does

1 not include other charges such as taxes, late charges, reinstatement
2 fees, or charges for optional products or services the consumer may have
3 elected to purchase and that the consumer should see the rental purchase
4 agreement for an explanation of these charges;

5 (f) A statement that the consumer is responsible for the fair market
6 value, remaining rent, early purchase option amount, or cost of repair of
7 the property, whichever is less, if it is lost, stolen, damaged, or
8 destroyed;

9 (g) A statement indicating whether the property is new or used. A
10 statement that indicates that new property is used shall not be a
11 violation of the Consumer Rental Purchase Agreement Act;

12 (h) A statement of the cash price of the property. When the
13 agreement involves a lease for two or more items, a statement of the
14 aggregate cash price of all items shall satisfy the requirement of this
15 subdivision;

16 (i) The total amount of the initial payments required to be paid
17 before consummation of the agreement or delivery of the property,
18 whichever occurs later, and an itemization of the components of the
19 initial payment, including any initial nonrefundable administrative fee
20 or delivery charge, lease payment, taxes, or fee or charge for optional
21 products or services;

22 (j) A statement clearly summarizing the terms of the consumer's
23 options to purchase, including a statement that at any time after the
24 first periodic payment is made the consumer may acquire ownership of the
25 property by tendering an amount which may not exceed fifty-five percent
26 of the difference between the total of payments to acquire ownership and
27 the total of lease payments the consumer has paid on the property at that
28 time;

29 (k) A statement identifying the party responsible for maintaining or
30 servicing the property while it is being leased, together with a
31 description of that responsibility and a statement that if any part of a

1 manufacturer's warranty covers the leased property at the time the
2 consumer acquires ownership of the property, such warranty shall be
3 transferred to the consumer if allowed by the terms of the warranty; and

4 (1) The date of the transaction and the names of the lessor and the
5 consumer.

6 (2) With respect to matters specifically governed by the Consumer
7 Credit Protection Act, 15 U.S.C. 1601 et seq., as such act existed on
8 January 1, 2019 ~~2016~~, compliance with such act shall satisfy the
9 requirements of this section.

10 (3) Subsection (1) of this section shall not apply to a lessor who
11 complies with the disclosure requirements of the Consumer Credit
12 Protection Act, 15 U.S.C. 1667a, as such section existed on January 1,
13 2019 ~~2016~~, with respect to a consumer rental purchase agreement entered
14 into with a consumer.

15 Sec. 11. Section 69-2112, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 69-2112 (1) Any advertisement for a consumer rental purchase
18 agreement which refers to or states the amount of any payment or the
19 right to acquire ownership for any specific item shall also state clearly
20 and conspicuously the following if applicable:

21 (a) That the transaction advertised is a consumer rental purchase
22 agreement;

23 (b) The total of payments to acquire ownership; and

24 (c) That the consumer acquires no ownership rights until the total
25 of payments to acquire ownership is paid.

26 (2) Any owner or employee of any medium in which an advertisement
27 appears or through which it is disseminated shall not be liable under
28 this section.

29 (3) Subsection (1) of this section shall not apply to an
30 advertisement which does not refer to a specific item of property, which
31 does not refer to or state the amount of any payment, or which is

1 published in the yellow pages of a telephone directory or any similar
2 directory of business.

3 (4) With respect to matters specifically governed by the Consumer
4 Credit Protection Act, 15 U.S.C. 1601 et seq., as such act existed on
5 January 1, 2019 ~~2016~~, compliance with such act shall satisfy the
6 requirements of this section.

7 Sec. 12. Section 69-2117, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 69-2117 (1) The Director of Banking and Finance may summarily order
10 a lessor to cease and desist from the use of certain forms or practices
11 relating to consumer rental purchase agreements if he or she finds that
12 (a) there has been a substantial failure to comply with any of the
13 provisions of the Consumer Rental Purchase Agreement Act or (b) the
14 continued use of certain forms or practices relating to consumer rental
15 purchase agreements would constitute misrepresentation to or deceit or
16 fraud on the consumer.

17 (2) If the director believes, whether or not based upon an
18 investigation conducted under section 69-2116, that any person or lessor
19 has engaged in or is about to engage in any act or practice constituting
20 a violation of any provision of the Consumer Rental Purchase Agreement
21 Act or any rule, regulation, or order under the act, the director may:

22 (a) Issue a cease and desist order;

23 (b) Impose a fine of not to exceed one thousand dollars per
24 violation, in addition to costs of the investigation; or

25 (c) Initiate an action in any court of competent jurisdiction to
26 enjoin such acts or practices and to enforce compliance with the act or
27 any order under the act.

28 (3) Upon a proper showing a permanent or temporary injunction,
29 restraining order, or writ of mandamus shall be granted. The director
30 shall not be required to post a bond.

31 (4) The fines and costs imposed pursuant to this section shall be in

1 ~~addition to all other penalties imposed by the laws of this state. The~~
2 ~~director shall collect the fines and costs and remit them to the State~~
3 ~~Treasurer. The State Treasurer shall credit the costs to the Securities~~
4 ~~Act Cash Fund and distribute the fines in accordance with Article VII,~~
5 ~~section 5, of the Constitution of Nebraska Any fine and costs imposed~~
6 ~~pursuant to this section shall be in addition to all other penalties~~
7 ~~imposed by the laws of this state and shall be collected by the director~~
8 ~~and remitted to the State Treasurer. Costs shall be credited to the~~
9 ~~Securities Act Cash Fund, and fines shall be credited to the permanent~~
10 ~~school fund. If a person fails to pay the fine or costs of the~~
11 ~~investigation referred to in this subsection, a lien in the amount of the~~
12 ~~fine and costs shall be imposed upon all of the assets and property of~~
13 ~~such person in this state and may be recovered by suit by the director.~~
14 ~~Failure of the person to pay a fine and costs shall constitute a separate~~
15 ~~violation of the act.~~

16 (5) Upon entry of an order pursuant to this section, the director
17 shall promptly notify all persons to whom such order is directed that it
18 has been entered and of the reasons for such order and that any person to
19 whom the order is directed may request a hearing in writing within
20 fifteen business days of the issuance of the order. Upon a receipt of a
21 written request, the matter shall be set down for hearing to commence
22 within thirty business days after the receipt unless the parties consent
23 to a later date or the hearing officer sets a later date for good cause.
24 If a hearing is not requested within fifteen business days and none is
25 ordered by the director, the order shall automatically become final and
26 shall remain in effect until it is modified or vacated by the director.
27 If a hearing is requested or ordered, the director after notice and
28 hearing shall enter his or her written findings of fact and conclusions
29 of law and may affirm, modify, or vacate the order.

30 (6) The director may vacate or modify a cease and desist order if he
31 or she finds that the conditions which caused its entry have changed or

1 that it is otherwise in the public interest to do so.

2 (7) Any person aggrieved by a final order of the director may appeal
3 the order. The appeal shall be in accordance with the Administrative
4 Procedure Act.

5 Sec. 13. Original sections 8-1704, 8-1707, 8-1726, 69-2103,
6 69-2104, 69-2112, and 69-2117, Reissue Revised Statutes of Nebraska, and
7 sections 8-1101, 8-1101.01, 8-1103, 8-1108.02, and 8-1111, Revised
8 Statutes Cumulative Supplement, 2018, are repealed.

9 Sec. 14. Since an emergency exists, this act takes effect when
10 passed and approved according to law.