

LEGISLATIVE BILL 216

Approved by the Governor May 6, 1993

Introduced by Landis, 46

AN ACT relating to the Securities Act of Nebraska; to amend sections 8-1101 to 8-1103, 8-1106, 8-1108.01, 8-1112, 8-1118, and 59-1715, Reissue Revised Statutes of Nebraska, 1943, and sections 8-1110, 8-1111, 29-110, and 45-101.04, Revised Statutes Supplement, 1992; to define and redefine terms; to change provisions relating to fraudulent and prohibited acts; to provide for investment adviser representatives, their registration, and their fees as prescribed; to change provisions relating to registration under the act as prescribed; to change provisions relating to the powers and duties of the Director of Banking and Finance; to change provisions relating to exemptions as prescribed; to provide for personal jurisdiction over investment adviser representatives; to change provisions relating to liability under the act as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 8-1101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(1) Director shall mean the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(2) Agent shall mean any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent shall not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by subdivision (8), (9), or (10) of section 8-1110, (b) effecting certain transactions exempted by section 8-1111, or (c) effecting transactions with existing employees, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer shall be an agent only if he or she otherwise comes within this definition;

(3) Broker-dealer shall mean any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer shall not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) a person who has no place of business in this state if he or she effects

transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than fifteen five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (3)(b) of this section;

(4) Guaranteed shall mean guaranteed as to payment of principal, interest, or dividends;

(5) Investment adviser shall mean any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser shall also include financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser shall not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, ~~(b)~~ (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, ~~(c)~~ (d) a broker-dealer, ~~(d)~~ (e) an issuer-dealer, ~~(e)~~ (f) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication of general, regular, and paid circulation; (f) a person whose advice, analyses, or reports relate only to securities exempted by subdivision (1) of section 8-1110 or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if his or her only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or during any period of twelve consecutive months he or she does not direct business communications into this state in any manner to more than five clients other than those specified in this subdivision (g), or (h) such other persons not within the intent of this subdivision as the director may by rule, regulation, or order designate;

(6) Investment adviser representative shall mean any partner, officer, or director or any person occupying a similar status or performing similar functions of a partner, officer, or director or other

individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(7) ~~(6)~~ Issuer shall mean any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer shall mean the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued;

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

(9) ~~(8)~~ Nonissuer shall mean not directly or indirectly for the benefit of the issuer;

(10) ~~(9)~~ Person shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(11) ~~(10)~~ Sale or sell shall include every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(12) ~~(11)~~ Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Advisers Act of 1940, and Investment Company Act of 1940 shall mean the federal statutes of those names as amended on or before ~~or after~~ August 18, 1965 ~~January 1, 1993~~;

(13) ~~(12)~~ Security shall mean any note, stock, treasury

stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security shall not include any insurance or endowment policy or annuity contract issued by an insurance company; and

(14) ~~(13)~~ State shall mean any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico.

Sec. 2. That section 8-1102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1102. (1) It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(a) To employ any device, scheme, or artifice to defraud ~~the other~~ any person; or

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon ~~the other~~ any person;

(c) To knowingly sell any security to or purchase any security from a client while acting as principal for his or her own account, act as a broker for a person other than the client, or knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client to the transaction. This subdivision shall not apply to any transaction involving a broker-dealer's client if the broker-dealer is not acting as an investment adviser in the transaction;

(d) To engage in dishonest or unethical practices as the director may define by rule, regulation, or order; or

(e) In the solicitation of advisory clients, to make any

untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(3) Except as may be permitted by rule, regulation, or order of the director, it shall be unlawful for any investment adviser or investment adviser representative to enter into, extend, or renew any investment advisory contract; unless it provides in writing:

(a) ~~That the investment adviser shall not be compensated~~ Which provides for the compensation of the investment adviser or investment adviser representative on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the any client;

(b) ~~That no~~ Unless the investment advisory contract prohibits in writing the assignment of the contract may be made by the investment adviser or investment adviser representative without the consent of the other party to the contract; and

(c) Unless the investment advisory contract provides in writing that if the investment adviser is a partnership, the other party to the contract shall be notified of any change in the membership of the partnership within a reasonable time after the change.

(4) ~~(e) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.~~ Subdivision (3)(a) of this ~~subsection~~ section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. Assignment, as used in subdivision (3)(b) of this ~~subsection~~ section, shall include any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, except that ~~but~~; if the investment adviser is a partnership, no assignment of an investment advisory contract shall be considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(5) It shall be unlawful for any investment adviser or investment adviser representative to take or have custody of any securities or funds of any client if:

(a) The director by rule, regulation, or order prohibits the taking or custody; or

(b) In the absence of any rule, regulation, or order by the director, the investment adviser or investment adviser representative fails to notify the director that he or she has or may have custody.

(6) The director may by rule, regulation, or order adopt and promulgate exemptions from subdivisions (2)(c), (3)(a), (3)(b), and

(3)(c) of this section when the exemptions are consistent with the public interest and are within the purposes fairly intended by the Securities Act of Nebraska.

Sec. 3. That section 8-1103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1103. (1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111; unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered. ~~It shall be unlawful for any person to transact business in this state as an investment adviser unless (a) he or she is registered as an investment adviser under this section, (b) he or she is registered as a broker-dealer under this section, or (c) his or her only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies. The registration of an agent shall not be effective unless the agent is employed by a broker-dealer or issuer-dealer registered under the act. When the agent begins or terminates employment with a registered broker-dealer or issuer-dealer, the broker-dealer or issuer-dealer shall promptly notify the director.~~

(2) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless (a) he or she is registered under the act, (b) he or she is registered as a broker-dealer under the act, or (c) he or she is registered as an agent of a broker-dealer under the act and his or her investment advisory services are conducted under the supervision of and any and all compensation received for the investment advisory services is channeled through the broker-dealer. It shall be unlawful for any investment adviser required to be registered under the act to employ an investment adviser representative unless the investment adviser representative is registered under the act. The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a registered investment adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director.

(3) ~~(2)~~ A broker-dealer, issuer-dealer, agent, or investment adviser, or investment adviser representative may apply for registration by filing with the director an application together with a consent to service of process pursuant to section 8-1112 and payment of the fee prescribed in subsection ~~(5)~~ (6) of this section. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, officers, or directors of such broker-dealer or issuer-dealer as agents, except any partner, officer, or director whose registration as an agent is denied, suspended, or revoked under subsection ~~(7)~~ (9) of this section, without the filing of applications for registration as agents or the

payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

(a) The applicant's form and place of organization;
 (b) The applicant's proposed method of doing business;
 (c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, person occupying a similar status or performing similar functions of a partner, officer, or director, or person directly or indirectly controlling the broker-dealer or investment adviser;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; ~~and~~

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

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

~~(4)(a) (3)(a)~~ If no denial order is in effect and no proceeding is pending under subsection ~~(7)~~ (9) of this section, registration shall become effective at noon of the thirtieth day after an application is filed, complete with all amendments. The director may specify an earlier effective date, ~~and he or she may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.~~

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

(i) That the applicant, except for renewal, and, in the case of a corporation or partnership, the officers, directors, or partners pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

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

(iii) That a broker-dealer, investment adviser, or issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require a broker-dealer, investment adviser, or issuer-dealer to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought

within two years after the sale or other act upon which it is based the time periods specified by section 8-1118. In addition, the director may establish other minimum financial requirements for investment advisers, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities than may be required for investment advisers who do not maintain custody of or authority over clients' funds or securities.

(c) ~~The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer, issuer-dealer, and agent, or investment adviser shall be effective for a period of not more than one year and may be renewed as provided in this section shall expire on December 31 unless renewed. The registration of an agent shall not be effective during any period when he or she is not associated with a registered broker-dealer or issuer-dealer specified in his or her application or a notice filed with the director. When an agent begins or terminates a connection with a registered broker-dealer or issuer-dealer, the agent and the broker-dealer or issuer-dealer shall promptly notify the director. Registration of an issuer-dealer, investment adviser, or investment adviser representative shall be effective for a period of not more than one year and may be renewed as provided in this section.~~

(d) The director may restrict or limit an applicant as to any function or activity in this state for which registration is required under the act.

(5) ~~(4)~~ Registration of a broker-dealer, issuer-dealer, agent, ~~or~~ investment adviser, ~~or investment adviser representative~~ may be renewed by filing with the director prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, ~~or~~ investment adviser, ~~or investment adviser representative~~ filed with the director by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, ~~or~~ issuer-dealer, ~~or investment adviser~~, a financial statement showing the financial condition of such broker-dealer, ~~or~~ issuer-dealer, ~~or investment adviser~~ as of a date within ninety days.

(6) ~~(5)~~ The fee for initial or renewal registration shall be two hundred fifty dollars for a broker-dealer, two hundred dollars for an investment adviser, one hundred dollars for an issuer-dealer, ~~and~~ forty dollars for an agent, ~~and forty dollars for an investment adviser representative~~. When an application is denied or withdrawn, the director shall retain all of the fee.

(7) ~~(6)~~ Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts and other records; ~~except with respect to securities exempt under subdivision (1) of section 8-1110;~~ as the director prescribes. All records so required shall be

preserved for three years unless the director prescribes otherwise for particular types of records. All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors and advisory clients. Costs of such reasonable examinations shall be borne by the registrant.

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

(9)(a) (7)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, or investment adviser, or investment adviser representative or bar or censure any registrant or any partner, officer, director, or person occupying a similar status or performing similar functions of a partner, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, officer, or director, person occupying a similar status or performing similar functions of a partner, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

(i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or a predecessor act or any rule, regulation, or order adopted and promulgated pursuant to the act or a predecessor act;

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

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

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

~~(vi) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities~~

~~and Exchange Commission denying or revoking registration as a broker-dealer or agent or the substantial equivalent of those terms as defined in section 8-1101, is the subject of an order of the Securities and Exchange Commission suspending or expelling him or her from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order. The director may not institute a revocation or suspension proceeding under this subdivision more than one year from the date of the order relied on, and he or she may not enter any order under this subdivision on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section~~ Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

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

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

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

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

~~(xi) Has been denied the right to do business or his or her respective authority to do business has been revoked by any other governmental agency for cause~~ Has failed to reasonably supervise his or her agents or employees, if he or she is a broker-dealer or issuer-dealer, or his or her investment adviser representatives or employees, if he or she is an investment adviser, to assure their compliance with the Securities Act of Nebraska; or

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

(b) The director may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him or her when registration became effective. The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, and opportunity for hearing.

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

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

Sec. 4. That section 8-1106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1106. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) Three copies of the prospectus filed under the Securities

Act of 1933 together with all amendments thereto;

(b) The amount of securities to be offered in this state;

(c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(e) If the director by rule or otherwise requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the director requests, any other information or copies of any other documents filed under the Securities Act of 1933; and

(g) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(3) A registration statement under this section shall automatically become effective at the moment the federal registration statement or qualification becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under the Securities Act of 1933, as amended, or under section 8-1109;

(b) The registration statement has been on file with the director for at least ten days; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been filed and the offering is made within those limitations. The registrant shall promptly notify the director by telephone facsimile transmission or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. Price amendment shall mean the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there has been compliance with this subsection, if he or she promptly notifies the registrant by telephone or telegram and promptly confirms by letter or telegram when he or she notifies by telephone of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order shall be void as of the time of its entry. The director may by rule or

otherwise waive either or both of the conditions specified in subsections (2) and (3) of this section. If the federal registration statement or qualification becomes effective before all these conditions have been satisfied and they are not waived, the registration statement shall automatically become effective as soon as all the conditions have been satisfied. ~~If the registrant advises the director of the date when the federal registration statement or qualification is expected to become effective the director shall promptly advise the registrant by telephone or telegram, at the registrant's expense; whether all the conditions have been satisfied; and if such advice is by telephone it shall be confirmed by telegram at the registrant's expense.~~

Sec. 5. That section 8-1108.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1108.01. (1) Whenever it appears to the director that the sale of any security is subject to registration under the Securities Act of Nebraska and is being offered or has been offered for sale without such registration, he or she may order the issuer or offerer of such security to cease and desist from the further offer or sale of such security unless and until it has been registered under the act.

(2) Whenever it appears to the director that any person is acting as a broker-dealer, issuer-dealer, agent, investment adviser, or agent investment adviser representative without registration as such, he or she may order such person to cease and desist from such activity unless and until he or she has been registered as such under the Securities Act of Nebraska act.

(3) Whenever it appears to the director that any person is violating section 8-1102, he or she may order the person to cease and desist from such activity.

(4) (3) The director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the Securities Act of Nebraska act or any rule, regulation, or order issued under the act. The fine and costs shall be in addition to all other penalties imposed by the laws of this state, shall be collected by the director, on behalf of the State of Nebraska; and shall be remitted to the state treasury and State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund. Imposition of any fine and payment of costs under this subsection may be appealed pursuant to section 8-1119. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director and remitted to the State Treasurer. Costs shall be credited for credit to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund. Failure of the person to pay a fine and costs shall also constitute a forfeiture of his or her right to do business in this state under the Securities Act of Nebraska.

(5) (4) After such an order has been made under subsection (1), (2), ~~or (3), or (4)~~ of this section, if a request for a hearing is filed in writing within fifteen business days of the issuance of the order by the person to whom such order was directed, a hearing shall be held by the director within fifteen business days after receipt of the request. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

Sec. 6. That section 8-1110, Revised Statutes Supplement, 1992, be amended to read as follows:

8-1110. Sections 8-1104 to 8-1109 shall not apply to any of the following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States or any bank, savings institutions, or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan and investment company, or similar association organized and supervised under the laws of this state;

(6) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is: (a) Subject to the jurisdiction of the Interstate Commerce Commission; (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(7) Any security listed or approved for listing upon notice

of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, any other stock exchange approved by the director, the National Association of Securities Dealers Automated Quotation National Market System, or any other market system approved by the director, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing. A notice of intent to rely upon this exemption shall be filed with the director within thirty days of the first sale made in reliance upon this exemption along with a filing fee of two hundred dollars. ~~The~~ ~~except that~~ the director may adopt and promulgate rules and regulations which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from this exemption if the director finds that the listing requirements or market surveillance of such exchange or market system is such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(8) Any security which meets all of the following conditions:

(a) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the three years immediately preceding the offering date;

(c) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or during the issuer's existence if such existence is less than seven years, in the payment of (i) principal, interest, dividends, or sinking-fund installments on preferred stock or indebtedness for borrowed money or (ii) rentals under leases with terms of three or more years;

(d) Except as provided in subdivision (8)(g) of this section, the issuer has had consolidated net income, without taking into account extraordinary items and the cumulative effect of accounting changes, of at least one million dollars in four of its last five fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities the issuer has had for its last fiscal year net income before deduction for income taxes and depreciation of at least one and one-half times the issuer's annual interest expense, taking into account the proposed offering and the intended use of the proceeds. For purposes of this subdivision, last fiscal year shall mean the most recent year for which audited financial statements are available, if such statements cover a fiscal period ending not more than fifteen months from the commencement of the offering;

(e) If the offering is of stock or shares other than preferred stock or shares, such securities have voting rights which include (i) the right to have at least as many votes per share and (ii) the right to vote on

at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) If the offering is of stock or shares other than preferred stock or shares, such securities are owned beneficially or of record on any date within six months prior to the commencement of the offering by at least one thousand two hundred persons, and on such date there are at least seven hundred fifty thousand such shares outstanding with an aggregate market value of at least three million seven hundred fifty thousand dollars based on the average bid price for such day. When determining the number of persons who are beneficial owners of the stock or shares of an issuer, for purposes of this subdivision, the issuer or broker-dealer may rely in good faith upon written information furnished by the record owners;

(g) If the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and surplus, at the end of its last five fiscal years, the net income requirement of subdivision (8)(d) of this section before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision, (i) finance company shall mean a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring and (ii) liquid assets shall mean (A) cash receivables payable on demand or not more than twelve years following the close of the company's last fiscal year less applicable reserves and unearned income and (B) readily marketable securities less applicable reserves and unearned income; and

(h) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member shall be exempt from registration under this section;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, as a chamber of commerce, or as a trade or professional association; or

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, any renewal of such paper which is likewise limited, or any guarantee of such paper or such renewal.

Sec. 7. That section 8-1111, Revised Statutes Supplement, 1992, be amended to read as follows:

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

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

(2) Any nonissuer distribution of an outstanding security by

a registered agent of a registered broker-dealer if (a) a recognized securities manual contains the name of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

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

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 et seq., 15 U.S.C. 1701 et seq.;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

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

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to ~~a sale~~ an offering in which sales are made to not more than ten persons, other than those designated in subdivisions (8), ~~and~~ (11), and (17) of this section, in this state during any period of twelve consecutive months if (a) the seller reasonably believes that all the buyers are purchasing for investment, (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (c) a notice generally describing the terms of

the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (d) no solicitations are made by newspaper, radio, or television;

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

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

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

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

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

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by an agricultural cooperative formed as a corporation under section 21-1301 or 21-1401 if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the

conditions of this exemption are met is filed by the seller with the director ~~within thirty days after the first sale~~ no later than ten days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. For purposes of this subdivision, not involving a public offering shall mean any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment; ~~or~~

(17) The issuance of any investment contract issued in connection with an employees stock purchase, savings, pension, profit-sharing, or similar benefit plan if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer and if the director is notified in writing within thirty days after the inception of the plan or, with respect to plans which were in effect prior to August 18, 1965, but closed on that date, within thirty days after they are reopened; or

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

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen business days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested

within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order may operate retroactively. No person may be considered to have violated the provisions of the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under the ~~Securities Act of Nebraska act~~, the burden of proving an exemption from a definition shall be upon the person claiming it.

Sec. 8. That section 8-1112, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1112. Registering as a broker-dealer, issuer-dealer, ~~or agent, investment adviser, or investment adviser representative~~ under ~~sections 8-1101 to 8-1124~~ the Securities Act of Nebraska or directly or indirectly offering a security ~~or investment adviser services~~ in this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such a person in any action which arises under ~~sections 8-1101 to 8-1124~~ the act.

Sec. 9. That section 8-1118, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1118. (1) Any person who offers or sells a security in violation of section 8-1104 or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he ~~or she~~ did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person buying the security from him ~~or her~~, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per annum from the date of payment, costs, and reasonable ~~attorneys'~~ attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he ~~or she~~ no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent per annum from the date of disposition.

(2) Any investment adviser who provides investment adviser services to another person which results in a willful violation of subsection (2), (3), or (4) of section 8-1102, subsection (2) of section 8-1103, or section 8-1114 or any investment adviser who employs any device, scheme, or artifice to defraud such person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit

on such person shall be liable to such person. Such person may sue either at law or in equity to recover the consideration paid for the investment adviser services and any loss due to such investment adviser services, together with interest at six percent per annum from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such investment adviser services and any other economic benefit.

(3) (2) Every person who directly or indirectly controls a seller person liable under ~~subsection (1)~~ subsections (1) and (2) of this section, including every partner, officer, ~~or~~ director, or person occupying a similar status or performing similar functions of a partner, officer, or director, or employee of such ~~a seller person~~ who materially aids in the sale conduct giving rise to liability, and every broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or agent who materially aids in the sale such conduct shall ~~also~~ be liable jointly and severally with and to the same extent as ~~the seller such person~~, unless ~~the nonseller who is so liable sustains~~ able to sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(4) (3) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under ~~sections 8-1101 to 8-1124~~ the Securities Act of Nebraska shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than ~~two~~ three years after the contract of sale or the rendering of investment advice. No person may sue under this section (a) if the buyer received a written offer, before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and ~~he~~ the buyer failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before suit and at a time when he or she did not own the security, unless ~~he~~ the buyer rejected the offer in writing within thirty days of its receipt.

(5) (4) No person who has made or engaged in the performance of any contract in violation of any provision of ~~sections 8-1101 to 8-1124~~ the act or any rule or order under ~~sections 8-1101 to 8-1124~~ the act, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of ~~sections 8-1101 to 8-1124~~ the act or any rule or order under ~~sections 8-1101 to 8-1124~~ the act shall be void.

Sec. 10. That section 29-110, Revised Statutes Supplement, 1992, be amended to read as follows:

29-110. (1) Except as provided in ~~subsection (2)~~

subsections (2) and (3) of this section, no person or persons shall be prosecuted for any felony, excepting only treason, murder, arson, and forgery, unless the indictment for the same shall be found by a grand jury within three years next after the offense shall have been done or committed or unless a complaint for the same shall be filed before the magistrate within three years next after the offense shall have been done or committed and a warrant for the arrest of the defendant shall have been issued nor shall any person be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the indictment, information, or action for the same shall be found or instituted within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months. This section shall not extend to any person fleeing from justice. When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the same shall be brought or exhibited within the time limited by such statute. If any indictment, information, or suit is quashed or the proceedings in the same set aside or reversed on writ of error, the time during the pendency of such indictment, information, or suit so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new indictment, information, or suit for the same offense.

(2) No person or persons shall be prosecuted for sexual assault in the first degree, second degree, or third degree pursuant to section 28-319 or 28-320, sexual assault of a child pursuant to section 28-320.01, kidnapping pursuant to section 28-313, false imprisonment pursuant to section 28-314 or 28-315, child abuse pursuant to section 28-707, pandering pursuant to section 28-802, debauching a minor pursuant to section 28-805, or an offense pursuant to section 28-813, 28-813.01, or 28-1463.03 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for the same shall be found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for the same shall be filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant shall have been issued. The limitations prescribed in this subsection shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(3) No person or persons shall be prosecuted for a violation of the Securities Act of Nebraska pursuant to section 8-1117 unless the indictment for the same shall be found by a grand jury within five years next after the offense shall have been done or committed or unless a complaint for the same shall be filed before the magistrate within five years next after the offense shall have been done or committed and a

warrant for the arrest of the defendant shall have been issued.

~~(3)~~ (4) The changes made to this section by Laws 1990, LB 1246, shall apply to offenses which occurred prior to April 15, 1990, or which occur on or after such date.

(5) The changes made to this section by this legislative bill shall apply to offenses which occurred prior to the effective date of this act, or which occur on or after such date.

Sec. 11. That section 45-101.04, Revised Statutes Supplement, 1992, be amended to read as follows:

45-101.04. The limitation on the rate of interest provided in section 45-101.03 shall not apply to:

(1) Other rates of interest authorized for loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance pursuant to the Credit Union Act, subsection (4) of section 8-319, or sections 8-401 to 8-417, 8-815 to 8-829, or 45-114 to 45-155;

(2) Loans made to any corporation, partnership, or trust;

(3) The guarantor or surety of any loan to a corporation, partnership, or trust;

(4) Loans made when the aggregate principal amount of the indebtedness is twenty-five thousand dollars or more of the borrower to any one financial institution, licensee, or permittee;

(5) Loans insured, guaranteed, sponsored, or participated in, either in whole or part, by any agency, department, or program of the United States or state government;

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision ~~(12)~~ (13) of section 8-1101, pledged as collateral for such repayment and in which such loans or advances are used by the borrower only for the purchase of securities as so defined. It shall be lawful to contract for and receive any rate of interest on such transaction as the parties thereto may expressly agree;

(7) Interest charges made on open credit accounts by a person who sells goods or services on credit when the interest charges do not exceed one and one-third percent per month for any charges which remain unpaid for more than thirty days following rendition of the statement of account;

(8) A minimum charge of ten dollars per loan which may be charged by the lender in lieu of all interest charges;

(9) Loans described in subsection (4) of section 8-319 made by a state or federal savings and loan association at a rate not to exceed nineteen percent per annum;

(10) Loans made primarily for business or agricultural purposes or loans secured by real estate when such loans are made (a) by a licensee, registrant, or permittee operating under a license, registration, or permit duly issued by the Department of Banking and Finance, (b) by any bank or savings and loan association chartered by the United States, or (c) by any insurance company organized under the laws of this state

and subject to regulation by the Department of Insurance; or

(11) Interest charges made on any goods or services sold under an installment contract pursuant to the Nebraska Installment Sales Act. Subject to section 45-338, it shall be lawful to contract for and receive any rate of interest on such contract as the parties may expressly agree to in writing.

Sec. 12. That section 59-1715, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1715. A seller-assisted marketing plan shall not include a security as defined by subdivision ~~(12)~~ (13) of section 8-1101.

Sec. 13. That original sections 8-1101 to 8-1103, 8-1106, 8-1108.01, 8-1112, 8-1118, and 59-1715, Reissue Revised Statutes of Nebraska, 1943, and sections 8-1110, 8-1111, 29-110, and 45-101.04, Revised Statutes Supplement, 1992, are repealed.