

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1028

Introduced by Pankonin, 2.

Read first time January 17, 2008

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Securities Act of Nebraska; to
2 amend sections 44-708, 45-101.04, and 59-1715, Reissue
3 Revised Statutes of Nebraska, and sections 8-1101,
4 8-1103, 8-1108.01, 8-1116, and 8-1123, Revised Statutes
5 Cumulative Supplement, 2006; to define terms; to regulate
6 operations of a branch office; to prohibit certain
7 fraudulent activities; to harmonize provisions; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-1101, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

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

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

22 (2) Branch office means any location in this state of a
23 broker-dealer or investment adviser at which one or more associated
24 persons regularly conduct the business of rendering investment
25 advice or effecting any transactions in, or inducing or attempting

1 to induce the purchase or sale of, any security or any location
2 that is held out as such. The director may adopt exceptions by rule
3 and regulation to this definition for broker-dealers in order to
4 maintain consistency with the definition of a branch office used
5 by self-regulatory organizations authorized by the Securities and
6 Exchange Commission, including, but not limited to, the Financial
7 Industry Regulatory Authority or the New York Stock Exchange.
8 The director may adopt exceptions by rule and regulation to this
9 definition for investment advisers;

10 ~~(2)~~ (3) Broker-dealer means any person engaged in the
11 business of effecting transactions in securities for the account
12 of others or for his or her own account. Broker-dealer does not
13 include (a) an issuer-dealer, agent, bank, savings institution,
14 or trust company, (b) an issuer effecting a transaction in its
15 own security exempted by subdivision (5) of section 8-1110 or
16 which qualifies as a federal covered security pursuant to section
17 18(b)(1) of the Securities Act of 1933, (c) a person who has no
18 place of business in this state if he or she effects transactions
19 in this state exclusively with or through the issuers of the
20 securities involved in the transactions, other broker-dealers, or
21 banks, savings institutions, trust companies, insurance companies,
22 investment companies as defined in the Investment Company Act
23 of 1940, pension or profit-sharing trusts, or other financial
24 institutions or institutional buyers, whether acting for themselves
25 or as trustees, or (d) a person who has no place of business in

1 this state if during any period of twelve consecutive months he or
2 she does not direct more than five offers to sell or to buy into
3 this state in any manner to persons other than those specified in
4 subdivision ~~(2)(e)~~ (3)(c) of this section;

5 ~~(3)~~ (4) Director means the Director of Banking and
6 Finance of the State of Nebraska except as further provided in
7 section 8-1120;

8 ~~(4)~~ (5) Federal covered adviser means a person who is (a)
9 registered under section 203 of the Investment Advisers Act of 1940
10 or (b) is excluded from the definition of investment adviser under
11 section 202 of the Investment Advisers Act of 1940;

12 ~~(5)~~ (6) Federal covered security means any security
13 described as a covered security under section 18(b) of the
14 Securities Act of 1933 or rules and regulations promulgated
15 thereunder;

16 ~~(6)~~ (7) Guaranteed means guaranteed as to payment of
17 principal, interest, or dividends;

18 ~~(7)~~ (8) Investment adviser means any person who for
19 compensation engages in the business of advising others, either
20 directly or through publications or writings, as to the value of
21 securities or as to the advisability of investing in, purchasing,
22 or selling securities or who for compensation and as a part of
23 a regular business issues or promulgates analyses or reports
24 concerning securities. Investment adviser also includes financial
25 planners and other persons who, as an integral component of other

1 financially related services, provide the foregoing investment
2 advisory services to others for compensation and as part of a
3 business or who hold themselves out as providing the foregoing
4 investment advisory services to others for compensation. Investment
5 adviser does not include (a) an investment adviser representative,
6 (b) a bank, savings institution, or trust company, (c) a lawyer,
7 accountant, engineer, or teacher whose performance of these
8 services is solely incidental to the practice of his or her
9 profession, (d) a broker-dealer or its agent whose performance
10 of these services is solely incidental to its business as a
11 broker-dealer and who receives no special compensation for them,
12 (e) an issuer-dealer, (f) a publisher of any bona fide newspaper,
13 news column, news letter, news magazine, or business or financial
14 publication or service, whether communicated in hard copy form,
15 by electronic means, or otherwise which does not consist of
16 the rendering of advice on the basis of the specific investment
17 situation of each client, (g) a person who has no place of
18 business in this state if (i) his or her only clients in this
19 state are other investment advisers, federal covered advisers,
20 broker-dealers, banks, savings institutions, trust companies,
21 insurance companies, investment companies as defined in the
22 Investment Company Act of 1940, pension or profit-sharing trusts,
23 or other financial institutions or institutional buyers, whether
24 acting for themselves or as trustees, or (ii) during the preceding
25 twelve-month period, he or she has had five or fewer clients who

1 are residents of this state other than those persons specified in
2 subdivision (g)(i) of this subdivision, (h) any person that is a
3 federal covered adviser, or (i) such other persons not within the
4 intent of this subdivision as the director may by rule, regulation,
5 or order designate;

6 ~~(8)~~ (9) Investment adviser representative means any
7 partner, limited liability company member, officer, or director
8 or any person occupying a similar status or performing similar
9 functions of a partner, limited liability company member, officer,
10 or director or other individual, except clerical or ministerial
11 personnel, who is employed by or associated with an investment
12 adviser that is registered or required to be registered under
13 the Securities Act of Nebraska or who has a place of business
14 located in this state and is employed by or associated with a
15 federal covered adviser, and who (a) makes any recommendations or
16 otherwise renders advice regarding securities, (b) manages accounts
17 or portfolios of clients, (c) determines which recommendation
18 or advice regarding securities should be given, (d) solicits,
19 offers, or negotiates for the sale of or sells investment advisory
20 services, or (e) supervises employees who perform any of the
21 foregoing;

22 ~~(9)~~ (10) Issuer means any person who issues or proposes
23 to issue any security, except that (a) with respect to certificates
24 of deposit, voting-trust certificates, or collateral-trust
25 certificates or with respect to certificates of interest or shares

1 in an unincorporated investment trust not having a board of
2 directors, or persons performing similar functions, or of the
3 fixed, restricted management, or unit type, the term issuer means
4 the person or persons performing the acts and assuming the duties
5 of depositor or manager pursuant to the provisions of the trust or
6 other agreement or instrument under which the security is issued
7 and (b) with respect to a fractional or pooled interest in a
8 viatical settlement contract, issuer means the person who creates,
9 for the purpose of sale, the fractional or pooled interest. In the
10 case of a viatical settlement contract that is not fractionalized
11 or pooled, issuer means the person effecting a transaction with a
12 purchaser of such contract;

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

20 ~~(11)~~ (12) Nonissuer means not directly or indirectly for
21 the benefit of the issuer;

22 ~~(12)~~ (13) Person means an individual, a corporation,
23 a partnership, a limited liability company, an association, a
24 joint-stock company, a trust in which the interests of the
25 beneficiaries are evidenced by a security, an unincorporated

1 organization, a government, or a political subdivision of a
2 government;

3 ~~(13)~~ (14) Sale or sell includes every contract of sale
4 of, contract to sell, or disposition of a security or interest
5 in a security for value. Offer or offer to sell includes every
6 attempt or offer to dispose of, or solicitation of an offer to
7 buy, a security or interest in a security for value. Any security
8 given or delivered with or as a bonus on account of any purchase
9 of securities or any other thing is considered to constitute part
10 of the subject of the purchase and to have been offered and sold
11 for value. A purported gift of assessable stock shall be considered
12 to involve an offer and sale. Every sale or offer of a warrant
13 or right to purchase or subscribe to another security of the same
14 or another issuer, as well as every sale or offer of a security
15 which gives the holder a present or future right or privilege to
16 convert into another security of the same or another issuer, shall
17 be considered to include an offer of the other security;

18 ~~(14)~~ (15) Securities Act of 1933, Securities Exchange Act
19 of 1934, Public Utility Holding Company Act of 1935, Investment
20 Advisers Act of 1940, Investment Company Act of 1940, and Commodity
21 Exchange Act means the federal statutes of those names as amended
22 on or before ~~December 31, 2000~~, the effective date of this act;

23 ~~(15)~~ (16) Security means any note, stock, treasury
24 stock, bond, debenture, units of beneficial interest in a
25 real estate trust, evidence of indebtedness, certificate of

1 interest or participation in any profit-sharing agreement,
2 collateral-trust certificate, preorganization certificate or
3 subscription, transferable share, investment contract, viatical
4 settlement contract or any fractional or pooled interest in such
5 contract, membership interest in any limited liability company
6 organized under Nebraska law or any other jurisdiction unless
7 otherwise excluded from this definition, voting-trust certificate,
8 certificate of deposit for a security, certificate of interest
9 or participation in an oil, gas, or mining title or lease or in
10 payments out of production under such a title or lease, in general
11 any interest or instrument commonly known as a security, or any
12 certificate of interest or participation in, temporary or interim
13 certificate for, guarantee of, or warrant or right to subscribe
14 to or purchase any of the foregoing. Security does not include
15 any insurance or endowment policy or annuity contract issued by
16 an insurance company. Security also does not include a membership
17 interest in a limited liability company when all of the following
18 exist: (a) The member enters into a written commitment to be
19 engaged actively and directly in the management of the limited
20 liability company; and (b) all members of the limited liability
21 company are actively engaged in the management of the limited
22 liability company;

23 ~~(16)~~ (17) State means any state, territory, or possession
24 of the United States as well as the District of Columbia and Puerto
25 Rico; and

1 ~~(17)~~ (18) Viatical settlement contract means an agreement
2 for the purchase, sale, assignment, transfer, devise, or bequest
3 of all or any portion of the death benefit or ownership of a
4 life insurance policy or contract for consideration which is less
5 than the expected death benefit of the life insurance policy or
6 contract. Viatical settlement contract does not include (a) the
7 assignment, transfer, sale, devise, or bequest of a death benefit
8 of a life insurance policy or contract made by the viator to
9 an insurance company or to a viatical settlement provider or
10 broker licensed pursuant to the Viatical Settlements Act, (b) the
11 assignment of a life insurance policy or contract to a bank,
12 savings bank, savings and loan association, credit union, or other
13 licensed lending institution as collateral for a loan, or (c) the
14 exercise of accelerated benefits pursuant to the terms of a life
15 insurance policy or contract and consistent with applicable law.

16 Sec. 2. Section 8-1103, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 8-1103 (1) It shall be unlawful for any person to
19 transact business in this state as a broker-dealer, issuer-dealer,
20 or agent, except in certain transactions exempt under section
21 8-1111, unless he or she is registered under the Securities
22 Act of Nebraska. It shall be unlawful for any broker-dealer to
23 employ an agent for purposes of effecting or attempting to effect
24 transactions in this state unless the agent is registered. It shall
25 be unlawful for an issuer to employ an agent unless the issuer is

1 registered as an issuer-dealer and unless the agent is registered.
2 The registration of an agent shall not be effective unless the
3 agent is employed by a broker-dealer or issuer-dealer registered
4 under the act. When the agent begins or terminates employment with
5 a registered broker-dealer or issuer-dealer, the broker-dealer or
6 issuer-dealer shall promptly notify the director.

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

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

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

24 (ii) It shall be unlawful for any federal covered adviser
25 to employ, supervise, or associate with an investment adviser

1 representative having a place of business located in this state
2 unless such investment adviser representative is registered under
3 the Securities Act of Nebraska or is exempt from registration.

4 (d) The registration of an investment adviser
5 representative shall not be effective unless the investment
6 adviser representative is employed by a registered investment
7 adviser or a federal covered adviser. When an investment adviser
8 representative begins or terminates employment with an investment
9 adviser, the investment adviser shall promptly notify the director.
10 When an investment adviser representative begins or terminates
11 employment with a federal covered adviser, the investment adviser
12 representative shall promptly notify the director.

13 (3) No broker-dealer or investment adviser shall conduct
14 business from a branch office within this state unless the branch
15 office is registered with the director pursuant to the provisions
16 of this section. Each broker-dealer or investment adviser shall
17 designate in writing a manager for each branch office the
18 broker-dealer or investment adviser has in this state.

19 ~~(3)~~ (4) A broker-dealer, issuer-dealer, agent, investment
20 adviser, ~~or~~ investment adviser representative, or branch office may
21 apply for registration by filing with the director an application
22 and payment of the fee prescribed in subsection ~~(6)~~ (7) of this
23 section. If the applicant is an individual, the application shall
24 include the applicant's social security number. Registration of
25 a broker-dealer or issuer-dealer shall automatically constitute

1 registration of all partners, limited liability company members,
2 officers, or directors of such broker-dealer or issuer-dealer
3 as agents, except any partner, limited liability company member,
4 officer, or director whose registration as an agent is denied,
5 suspended, or revoked under subsection ~~(9)~~ (10) of this section,
6 without the filing of applications for registration as agents or
7 the payment of fees for registration as agents. The application
8 shall contain whatever information the director requires concerning
9 such matters as:

- 10 (a) The applicant's form and place of organization;
- 11 (b) The applicant's proposed method of doing business;
- 12 (c) The qualifications and business history of the
13 applicant and, in the case of a broker-dealer or investment
14 adviser, the qualifications and business history of any partner,
15 limited liability company member, officer, director, person
16 occupying a similar status or performing similar functions of a
17 partner, limited liability company member, officer, or director,
18 or person directly or indirectly controlling the broker-dealer or
19 investment adviser;
- 20 (d) Any injunction or administrative order or conviction
21 of a misdemeanor involving a security or any aspect of the
22 securities business and any conviction of a felony;
- 23 (e) The applicant's financial condition and history; and
- 24 (f) Information to be furnished or disseminated to any
25 client or prospective client if the applicant is an investment

1 adviser.

2 ~~(4)(a)~~ (5)(a) If no denial order is in effect and no
3 proceeding is pending under subsection ~~(9)~~ (10) of this section,
4 registration shall become effective at noon of the thirtieth day
5 after an application is filed, complete with all amendments. The
6 director may specify an earlier effective date.

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

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

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

22 (iii) That an issuer-dealer have a minimum net capital
23 of twenty-five thousand dollars. In lieu of a minimum net capital
24 requirement of twenty-five thousand dollars, the director may
25 require an issuer-dealer to post a corporate surety bond with

1 surety licensed to do business in Nebraska in an amount equal to
2 such capital requirements. When the director finds that a surety
3 bond with a surety company would cause an undue burden on an
4 issuer-dealer, the director may require the issuer-dealer to post
5 a signature bond. Every such surety bond shall run in favor of
6 Nebraska, shall provide for suit thereon by any person who has a
7 cause of action under section 8-1118, and shall provide that no
8 suit may be maintained to enforce any liability on the bond unless
9 brought within the time periods specified by section 8-1118;

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

24 (v) That an investment adviser have such minimum net
25 capital as the director may by rule and regulation or order

1 require, subject to the limitations of section 222 of the
2 Investment Advisers Act of 1940, which may include different
3 requirements for those investment advisers who maintain custody of
4 clients' funds or securities or who have discretionary authority
5 over such funds or securities and those investment advisers who
6 do not. In lieu of any such minimum net capital requirement, the
7 director may require by rule and regulation or order an investment
8 adviser to post a corporate surety bond with surety licensed
9 to do business in Nebraska in an amount equal to such capital
10 requirement, subject to the limitations of section 222 of the
11 Investment Advisers Act of 1940. Every such surety bond shall run
12 in favor of Nebraska, shall provide for suit thereon by any person
13 who has a cause of action under section 8-1118, and shall provide
14 that no suit may be maintained to enforce any liability on the bond
15 unless brought within the time periods specified by section 8-1118.

16 (c) The director may waive the requirement of an
17 examination for any applicant who by reason of prior experience
18 can demonstrate his or her knowledge of the securities business.
19 Registration of a broker-dealer, agent, investment adviser, and
20 investment adviser representative shall be effective for a period
21 of not more than one year and shall expire on December 31 unless
22 renewed. Registration of an issuer-dealer shall be effective for a
23 period of not more than one year and may be renewed as provided in
24 this section. Notice filings by a federal covered adviser shall be
25 effective for a period of not more than one year and shall expire

1 on December 31 unless renewed.

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

5 ~~(5)~~ (6) Registration of a broker-dealer, issuer-dealer,
6 agent, investment adviser, ~~or~~ investment adviser representative,
7 or branch office may be renewed by filing with the director
8 or with a registration depository designated by the director
9 prior to the expiration date such information as the director by
10 rule, regulation, or order may require to indicate any material
11 change in the information contained in the original application
12 or any renewal application for registration as a broker-dealer,
13 issuer-dealer, agent, investment adviser, ~~or~~ investment adviser
14 representative, or branch office previously filed with the director
15 by the applicant, and payment of the prescribed fee. A federal
16 covered adviser may renew its notice filing by filing with the
17 director prior to the expiration thereof the documents filed with
18 the Securities and Exchange Commission, as the director by rule or
19 regulation may require, a consent to service of process, and the
20 prescribed fee.

21 ~~(6)~~ (7) The fee for initial or renewal registration
22 shall be two hundred fifty dollars for a broker-dealer, two
23 hundred dollars for an investment adviser, one hundred dollars
24 for each branch office in this state, one hundred dollars for an
25 issuer-dealer, forty dollars for an agent, and forty dollars for an

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

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

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

1 national securities exchange or national securities association
2 registered under the Securities Exchange Act of 1934. Costs of such
3 examinations shall be borne by the registrant.

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

9 (d) If any information contained in any document filed
10 with the director is or becomes inaccurate or incomplete in any
11 material respect, a broker-dealer, issuer-dealer, agent, investment
12 adviser, or investment adviser representative shall promptly file
13 a correcting amendment or a federal covered adviser shall file a
14 correcting amendment when such amendment is required to be filed
15 with the Securities and Exchange Commission.

16 ~~(8)~~ (9) With respect to investment advisers, the director
17 may require that certain information be furnished or disseminated
18 to clients as necessary or appropriate in the public interest or
19 for the protection of investors and advisory clients. To the extent
20 determined by the director in his or her discretion, information
21 furnished to clients of an investment adviser that would be in
22 compliance with the Investment Advisers Act of 1940 and the rules
23 and regulations under such act may be used in whole or in part to
24 satisfy the information requirement prescribed in this subsection.

25 ~~(9)(a)~~ (10)(a) The director may by order deny, suspend,

1 or revoke registration of any broker-dealer, issuer-dealer,
2 agent, investment adviser, or investment adviser representative
3 or bar, censure, or impose a fine pursuant to subsection (4)
4 of section 8-1108.01 on any registrant or any partner, limited
5 liability company member, officer, director, or person occupying
6 a similar status or performing similar functions of a partner,
7 limited liability company member, officer, or director for a
8 registrant from employment with any broker-dealer, issuer-dealer,
9 or investment adviser if he or she finds that the order is in
10 the public interest and that the applicant or registrant or,
11 in the case of a broker-dealer, issuer-dealer, or investment
12 adviser, any partner, limited liability company member, officer,
13 director, person occupying a similar status or performing similar
14 functions of a partner, limited liability company member, officer,
15 or director, or person directly or indirectly controlling the
16 broker-dealer, issuer-dealer, or investment adviser:

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

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

1 promulgated pursuant to the act or a predecessor act;

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

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

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

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

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

23 (viii) Is insolvent, either in the sense that his or her
24 liabilities exceed his or her assets or in the sense that he or she
25 cannot meet his or her obligations as they mature, but the director

1 may not enter an order against a broker-dealer, issuer-dealer,
2 or investment adviser under this subdivision without a finding of
3 insolvency as to the broker-dealer, issuer-dealer, or investment
4 adviser;

5 (ix) Has not complied with a condition imposed by the
6 director under subsection ~~(4)~~ (5) of this section or is not
7 qualified on the basis of such factors as training, experience, or
8 knowledge of the securities business;

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

13 (xi) Has failed to reasonably supervise his or her agents
14 or employees, if he or she is a broker-dealer or issuer-dealer, or
15 his or her investment adviser representatives or employees, if he
16 or she is an investment adviser, to assure their compliance with
17 the Securities Act of Nebraska; or

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

1 foreign governmental unit.

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

6 (i) Willfully violated or willfully failed to comply with
7 any provision of the Securities Act of Nebraska or a predecessor
8 act or any rule, regulation, or order adopted and promulgated
9 pursuant to the act or a predecessor act; or

10 (ii) Engaged in dishonest or unethical practices in the
11 securities business, which activity at the time was subject to
12 regulation by the Securities Act of Nebraska.

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

22 (ii) The director may by order summarily postpone or
23 suspend registration pending final determination of any proceeding
24 under this subsection. Upon the entry of the order, the director
25 shall promptly notify the applicant or registrant, as well as the

1 employer or prospective employer if the applicant or registrant
2 is an agent or investment adviser representative, that it has
3 been entered and of the reasons therefor and that within fifteen
4 business days after the receipt of a written request the matter
5 will be set down for hearing. If no hearing is requested within
6 fifteen business days of the issuance of the order and none is
7 ordered by the director, the order shall automatically become a
8 final order and shall remain in effect until it is modified or
9 vacated by the director. If a hearing is requested or ordered,
10 the director, after notice of and opportunity for hearing, shall
11 enter his or her written findings of fact and conclusions of law
12 and may affirm, modify, or vacate the order. No order may be
13 entered under this section denying or revoking registration without
14 appropriate prior notice to the applicant or registrant, as well as
15 the employer or prospective employer if the applicant or registrant
16 is an agent or investment adviser representative, and opportunity
17 for hearing.

18 (d) If the director finds that any registrant or
19 applicant for registration is no longer in existence or has
20 ceased to do business as a broker-dealer, issuer-dealer, agent,
21 investment adviser, or investment adviser representative or as
22 a branch office of a broker-dealer or investment adviser, is
23 subject to an adjudication of mental incompetence or to the control
24 of a committee, conservator, or guardian, or cannot be located
25 after reasonable search, the director may by order cancel the

1 registration or application.

2 (e) Withdrawal from registration as a broker-dealer,
3 issuer-dealer, agent, investment adviser, ~~or~~ investment adviser
4 representative, or branch office shall become effective thirty days
5 after receipt of an application to withdraw or within a shorter
6 period of time as the director may determine unless a revocation or
7 suspension proceeding is pending when the application is filed or
8 a proceeding to revoke or suspend or to impose conditions upon the
9 withdrawal is instituted within thirty days after the application
10 is filed. If a revocation or suspension proceeding is pending or
11 instituted, withdrawal shall become effective at such time and upon
12 such conditions as the director shall order.

13 Sec. 3. It is a violation of the Securities Act of
14 Nebraska for any person, in any investigation or other proceeding
15 under the act, to alter, destroy, mutilate, or conceal; to make
16 a false entry in or by any means falsify; or to remove from any
17 place or withhold any record, document, or electronic or physical
18 evidence with the intent to impede, obstruct, avoid, evade, or
19 influence the official investigation or administration of any other
20 proceeding under the act.

21 Sec. 4. Section 8-1108.01, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 8-1108.01 (1) Whenever it appears to the director that
24 the sale of any security is subject to registration under the
25 Securities Act of Nebraska and is being offered or has been offered

1 for sale without such registration, he or she may order the issuer
2 or offerer of such security to cease and desist from the further
3 offer or sale of such security unless and until it has been
4 registered under the act.

5 (2) Whenever it appears to the director that any person
6 is acting as a broker-dealer, issuer-dealer, agent, investment
7 adviser, ~~or~~ investment adviser representative without registration
8 as such, conducting business from an office in this state which is
9 not registered as a branch office, or acting as a federal covered
10 adviser without making a notice filing under the act, he or she
11 may order such person to cease and desist from such activity unless
12 and until he or she has been registered as such or has made the
13 required notice filing under the act.

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

17 (4) The director may, after giving reasonable notice and
18 an opportunity for a hearing under this section, impose a fine not
19 to exceed twenty-five thousand dollars per violation, in addition
20 to costs of the investigation, upon a person found to have engaged
21 in any act or practice which would constitute a violation of the
22 act or any rule, regulation, or order issued under the act. ~~The~~
23 ~~fine and costs shall be in addition to all other penalties imposed~~
24 ~~by the laws of this state, shall be collected by the director, and~~
25 ~~shall be remitted to the State Treasurer. Costs shall be credited~~

1 ~~to the Securities Act Cash Fund,~~ and fines shall be credited to
2 ~~the permanent school fund.~~ The fines and costs shall be in addition
3 to all other penalties imposed by the laws of this state. The
4 director shall collect the fines and costs and remit them to the
5 State Treasurer. The State Treasurer shall credit the costs to the
6 Securities Act Cash Fund and distribute the fines in accordance
7 with Article VII, section 5, of the Constitution of Nebraska.
8 Imposition of any fine and payment of costs under this subsection
9 may be appealed pursuant to section 8-1119. If a person fails to
10 pay the fine or costs of the investigation referred to in this
11 subsection, a lien in the amount of the fine and costs shall be
12 imposed upon all of the assets and property of such person in this
13 state and may be recovered by suit by the director and remitted
14 to the State Treasurer. ~~Costs shall be credited to the Securities~~
15 ~~Act Cash Fund,~~ and fines shall be credited to the permanent school
16 ~~fund.~~ The State Treasurer shall credit the costs to the Securities
17 Act Cash Fund and distribute the fines in accordance with Article
18 VII, section 5, of the Constitution of Nebraska. Failure of the
19 person to pay a fine and costs shall also constitute a forfeiture
20 of his or her right to do business in this state under the
21 Securities Act of Nebraska.

22 (5) After such an order has been made under subsection
23 (1), (2), (3), or (4) of this section, if a request for a hearing
24 is filed in writing within fifteen business days of the issuance of
25 the order by the person to whom such order was directed, a hearing

1 shall be held by the director within thirty business days after
2 receipt of the request, unless both parties consent to a later date
3 or the hearing officer sets a later date for good cause. If no
4 hearing is requested within fifteen business days of the issuance
5 of the order and none is ordered by the director, the order shall
6 automatically become a final order and shall remain in effect
7 until it is modified or vacated by the director. If a hearing is
8 requested or ordered, the director, after notice of and opportunity
9 for hearing, shall enter his or her written findings of fact and
10 conclusions of law and may affirm, modify, or vacate the order.

11 Sec. 5. Section 8-1116, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 8-1116 Whenever it appears to the director that any
14 person has engaged or is about to engage in any act or practice
15 constituting a violation of any provision of the Securities Act
16 of Nebraska or any rule or order under the act, the director
17 may in his or her discretion bring an action in any court of
18 competent jurisdiction to enjoin any such acts or practices and
19 to enforce compliance with the Securities Act of Nebraska or any
20 rule or order under the act. Upon a proper showing, a permanent
21 or temporary injunction, restraining order, or writ of mandamus
22 shall be granted and a receiver or conservator may be appointed for
23 the defendant's assets. In addition, upon a proper showing by the
24 director, the court may enter an order of rescission, restitution,
25 or disgorgement directed to any person who has engaged in any act

1 constituting a violation of any provision of the act, any rule and
2 regulation adopted and promulgated thereunder, or any order of the
3 director issued thereunder. The director may not be required to
4 post a bond.

5 Sec. 6. Section 8-1123, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 8-1123 Sections 8-1101 to 8-1123 and section 3 of this
8 act shall be known and may be cited as the Securities Act of
9 Nebraska.

10 Sec. 7. Section 44-708, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-708 (1) Insurers authorized to deliver or issue for
13 delivery life insurance policies in this state may deliver or issue
14 for delivery one or more funding agreements, but the delivery or
15 issuance for delivery of funding agreements shall not be deemed the
16 business of insurance, life insurance or an annuity or other line
17 of business as set forth in section 44-201, a security as defined
18 in ~~subdivision (15) of~~ section 8-1101, or receipt of gross premiums
19 as set forth in section 77-908. The delivery or issuance for
20 delivery of a funding agreement by an admitted life insurer in this
21 state shall constitute a lawful activity of that insurer that is
22 reasonably related to and incidental to its insurance activities as
23 provided in this section. However, this section shall not authorize
24 any insurer to transact, under the guise of funding agreements, any
25 line of insurance not authorized by its certificate of authority.

1 (2) No amounts shall be guaranteed or credited under
2 any funding agreement except upon reasonable assumptions as to
3 investment income and expenses and on a basis equitable to all
4 holders of funding agreements of a given class.

5 (3) Amounts paid to the insurer, and proceeds applied
6 under optional modes of settlement, under funding agreements may be
7 allocated by the insurer to one or more separate accounts.

8 (4) The Director of Insurance may adopt and promulgate
9 rules and regulations to implement this section, including rules
10 and regulations setting forth the terms and conditions under which
11 an insurer may issue funding agreements.

12 (5) Notwithstanding any other provision of law, the
13 director shall have sole authority to regulate the issuance and
14 sale of funding agreements, including the persons selling funding
15 agreements on behalf of insurers.

16 (6) Nothing in this section is intended to affect the
17 order in which allowed claims shall be given preference under
18 section 44-4842. Holders of funding agreements shall retain the
19 priority in allowance of claims described in subdivision (2) of
20 section 44-4842.

21 (7) For purposes of this section, funding agreement means
22 an agreement that authorizes an admitted life insurer to accept
23 funds and that provides for an accumulation of those funds for the
24 purpose of making one or more payments at future dates in amounts
25 that are not based on mortality or morbidity contingencies. Funding

1 agreement does not include any agreement in connection with the
2 funding of one or more payments that are excludable from the gross
3 income of the recipient under section 104(a)(2) of the Internal
4 Revenue Code.

5 Sec. 8. Section 45-101.04, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 45-101.04 The limitation on the rate of interest provided
8 in section 45-101.03 shall not apply to:

9 (1) Other rates of interest authorized for loans made by
10 any licensee or permittee operating under a license or permit duly
11 issued by the Department of Banking and Finance pursuant to the
12 Credit Union Act, the Nebraska Installment Loan Act, subsection (4)
13 of section 8-319, or sections 8-815 to 8-829;

14 (2) Loans made to any corporation, partnership, limited
15 liability company, or trust;

16 (3) The guarantor or surety of any loan to a corporation,
17 partnership, limited liability company, or trust;

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

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

24 (6) Loans or advances of money, repayable on demand,
25 which are made solely upon securities, as defined in ~~subdivision~~

1 ~~(15)~~ of section 8-1101, pledged as collateral for such repayment
2 and in which such loans or advances are used by the borrower only
3 for the purchase of securities as so defined. It shall be lawful to
4 contract for and receive any rate of interest on such transaction
5 as the parties thereto may expressly agree;

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

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

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

16 (10) Loans made primarily for business or agricultural
17 purposes or secured by real property when such loans are made (a)
18 by a licensee, registrant, or permittee operating under a license,
19 registration, or permit duly issued by the Department of Banking
20 and Finance except for licensees operating under the Nebraska
21 Installment Loan Act, (b) by any financial institution insured by
22 the Federal Deposit Insurance Corporation or the National Credit
23 Union Administration, or (c) by any insurance company organized
24 under the laws of this state and subject to regulation by the
25 Department of Insurance;

1 (11) Loans secured solely by real property when such
2 loans are (a) made by licensees operating under the Nebraska
3 Installment Loan Act and (b) made to finance or refinance the
4 purchase of the property or construction on or improvements to
5 the property, if the Department of Banking and Finance has the
6 authority to examine such loans for compliance with sections
7 45-101.02 and 45-101.03. A licensee making a loan pursuant to this
8 subdivision may obtain an interest in any fixtures attached to such
9 real property and any insurance proceeds payable in connection with
10 such real property or the loan;

11 (12) Loans secured by a reverse mortgage pursuant to
12 section 45-1068;

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

18 (14) Fees which may be charged by a licensee for services
19 pursuant to the Delayed Deposit Services Licensing Act.

20 Sec. 9. Section 59-1715, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 59-1715 A seller-assisted marketing plan shall not
23 include a security as defined by ~~subdivision (15)~~ of section
24 8-1101.

25 Sec. 10. Original sections 44-708, 45-101.04, and

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1 59-1715, Reissue Revised Statutes of Nebraska, and sections 8-1101,
2 8-1103, 8-1108.01, 8-1116, and 8-1123, Revised Statutes Cumulative
3 Supplement, 2006, are repealed.