

AMENDMENTS TO LB 205

Introduced by Banking, Commerce and Insurance

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Section 8-1108.01, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           8-1108.01 (1) Whenever it appears to the director that  
6 the sale of any security is subject to registration under the  
7 Securities Act of Nebraska and is being offered or has been offered  
8 for sale without such registration, he or she may order the issuer  
9 or offerer of such security to cease and desist from the further  
10 offer or sale of such security unless and until it has been  
11 registered under the act.

12           (2) Whenever it appears to the director that any person  
13 is acting as a broker-dealer, issuer-dealer, agent, investment  
14 adviser, or investment adviser representative without registration  
15 as such or acting as a federal covered adviser without making a  
16 notice filing under the act, he or she may order such person to  
17 cease and desist from such activity unless and until he or she  
18 has been registered as such or has made the required notice filing  
19 under the act.

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

23           (4) The director may, after giving reasonable notice and

1 an opportunity for a hearing under this section, impose a fine not  
2 to exceed twenty-five thousand dollars per violation, in addition  
3 to costs of the investigation, upon a person found to have engaged  
4 in any act or practice which would constitute a violation of the  
5 act or any rule, regulation, or order issued under the act, except  
6 that the director shall not impose a fine upon any person in  
7 connection with a transaction made pursuant to subdivision (23) of  
8 section 8-1111 for any statement of a material fact made or for  
9 an omission of a material fact required to be stated or necessary  
10 to make the statement made not misleading unless such statement or  
11 omission was made with the intent to defraud or mislead. The fine  
12 and costs shall be in addition to all other penalties imposed by  
13 the laws of this state. The director shall collect the fines and  
14 costs and remit them, ~~shall be collected by the director, and~~  
15 ~~shall be remitted to the State Treasurer. Costs shall be credited~~  
16 ~~to the Securities Act Cash Fund,~~ and fines shall be credited to  
17 ~~the permanent school fund.~~ The State Treasurer shall credit the  
18 costs to the Securities Act Cash Fund and distribute the fines  
19 in accordance with Article VII, section 5, of the Constitution of  
20 Nebraska. Imposition of any fine and payment of costs under this  
21 subsection may be appealed pursuant to section 8-1119. If a person  
22 fails to pay the fine or costs of the investigation referred to  
23 in this subsection, a lien in the amount of the fine and costs  
24 shall be imposed upon all of the assets and property of such  
25 person in this state and may be recovered by suit by the director  
26 and remitted to the State Treasurer. ~~Costs shall be credited to~~  
27 ~~the Securities Act Cash Fund, and fines shall be credited to~~

1 ~~the permanent school fund.~~ The State Treasurer shall credit the  
2 costs to the Securities Act Cash Fund and distribute the fines  
3 in accordance with Article VII, section 5, of the Constitution of  
4 Nebraska. Failure of the person to pay a fine and costs shall also  
5 constitute a forfeiture of his or her right to do business in this  
6 state under the Securities Act of Nebraska.

7 (5) After such an order has been made under subsection  
8 (1), (2), (3), or (4) of this section, if a request for a hearing  
9 is filed in writing within fifteen business days of the issuance of  
10 the order by the person to whom such order was directed, a hearing  
11 shall be held by the director within thirty business days after  
12 receipt of the request, unless both parties consent to a later date  
13 or the hearing officer sets a later date for good cause. If no  
14 hearing is requested within fifteen business days of the issuance  
15 of the order and none is ordered by the director, the order shall  
16 automatically become a final order and shall remain in effect  
17 until it is modified or vacated by the director. If a hearing is  
18 requested or ordered, the director, after notice of and opportunity  
19 for hearing, shall enter his or her written findings of fact and  
20 conclusions of law and may affirm, modify, or vacate the order.

21 Sec. 2. Section 8-1111, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 8-1111 Except as provided in this section, sections  
24 8-1103 to 8-1109 shall not apply to any of the following  
25 transactions:

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

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

7           (i) The issuer of the security is actually engaged in  
8 business and not in the organization stage or in bankruptcy or  
9 receivership and is not a blank check, blind pool, or shell  
10 company whose primary plan of business is to engage in a merger  
11 or combination of the business with, or an acquisition of, an  
12 unidentified person or persons;

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

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

18           (iv) A nationally recognized securities manual designated  
19 by rule and regulation or order of the director or a document  
20 filed with the Securities and Exchange Commission which is publicly  
21 available through the Electronic Data Gathering and Retrieval  
22 System (EDGAR) contains:

23           (A) A description of the business and operations of the  
24 issuer;

25           (B) The names of the issuer's officers and the names  
26 of the issuer's directors, if any, or, in the case of a  
27 non-United-States issuer, the corporate equivalents of such persons

1 in the issuer's country of domicile;

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

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

12 (v) The issuer of the security has a class of equity  
13 securities listed on a national securities exchange registered  
14 under the Securities Exchange Act of 1934 or designated for  
15 trading on the National Association of Securities Dealers Automated  
16 Quotation System (NASDAQ), unless:

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

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

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

27 (b) Any nonissuer transaction in a security by a

1 registered agent of a registered broker-dealer if:

2 (i) The issuer of the security is actually engaged in  
3 business and not in the organization stage or in bankruptcy or  
4 receivership and is not a blank check, blind pool, or shell  
5 company whose primary plan of business is to engage in a merger  
6 or combination of the business with, or an acquisition of, an  
7 unidentified person or persons; and

8 (ii) The security is senior in rank to the common stock  
9 of the issuer both as to payment of dividends or interest and upon  
10 dissolution or liquidation of the issuer and such security has been  
11 outstanding at least three years and the issuer or any predecessor  
12 has not defaulted within the current fiscal year or the three  
13 immediately preceding fiscal years in the payment of any dividend,  
14 interest, principal, or sinking fund installment on the security  
15 when due and payable;

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

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

25 (5) Any transaction in a bond or other evidence of  
26 indebtedness secured by a real or chattel mortgage or deed of trust  
27 or by an agreement for the sale of real estate or chattels if the

1 entire mortgage, deed of trust, or agreement, together with all  
2 the bonds or other evidences of indebtedness secured thereby, are  
3 offered and sold as a unit. Such exemption shall not apply to any  
4 transaction in a bond or other evidence of indebtedness secured by  
5 a real estate mortgage or deed of trust or by an agreement for the  
6 sale of real estate if the real estate securing the evidences of  
7 indebtedness are parcels of real estate the sale of which requires  
8 the subdivision in which the parcels are located to be registered  
9 under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701  
10 et seq., as the act existed on January 1, 2011;

11 (6) Any transaction by an executor, personal  
12 representative, administrator, sheriff, marshal, receiver,  
13 guardian, or conservator;

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

16 (8) Any offer or sale to a bank, savings institution,  
17 trust company, insurance company, investment company as defined  
18 in the Investment Company Act of 1940, pension or profit-sharing  
19 trust, or other financial institution or institutional buyer, to  
20 an individual accredited investor, or to a broker-dealer, whether  
21 the purchaser is acting for itself or in some fiduciary capacity.  
22 For purposes of this subdivision, the term "individual accredited  
23 investor" means (a) any director, executive officer, or general  
24 partner of the issuer of the securities being offered or sold, or  
25 any director, executive officer, or general partner of a general  
26 partner of that issuer, (b) any manager of a limited liability  
27 company that is the issuer of the securities being offered or

1 sold, (c) any natural person whose individual net worth, or joint  
2 net worth with that person's spouse, at the time of his or her  
3 purchase, exceeds one million dollars, or (d) any natural person  
4 who had an individual income in excess of two hundred thousand  
5 dollars in each of the two most recent years or joint income with  
6 that person's spouse in excess of three hundred thousand dollars in  
7 each of those years and has a reasonable expectation of reaching  
8 the same income level in the current year;

9 (9) (a) Any transaction pursuant to an offering in which  
10 sales are made to not more than fifteen persons, other than those  
11 designated in subdivisions (8), (11), and (17) of this section, in  
12 this state during any period of twelve consecutive months if (i)  
13 the seller reasonably believes that all the buyers are purchasing  
14 for investment, (ii) no commission or other remuneration is paid or  
15 given directly or indirectly for soliciting any prospective buyer  
16 except to a registered agent of a registered broker-dealer, (iii)  
17 a notice generally describing the terms of the transaction and  
18 containing a representation that the conditions of this exemption  
19 are met is filed by the seller with the director within thirty days  
20 after the first sale for which this exemption is claimed, except  
21 that failure to give such notice may be cured by an order issued  
22 by the director in his or her discretion, and (iv) no general or  
23 public advertisements or solicitations are made.

24 (b) If a seller (i) makes sales pursuant to this  
25 subdivision for five consecutive twelve-month periods or (ii)  
26 makes sales of at least one million dollars from an offering or  
27 offerings pursuant to this subdivision, the seller shall, within



1 ninety days after the earlier of either such occurrence, file  
2 with the director audited financial statements and a sales report  
3 which lists the names and addresses of all purchasers and holders  
4 of the seller's securities and the amount of securities held by  
5 such persons. Subsequent thereto, such seller shall file audited  
6 financial statements and sales reports with the director each time  
7 an additional one million dollars in securities is sold pursuant to  
8 this subdivision or after the elapse of each additional sixty-month  
9 period during which sales are made pursuant to this subdivision;

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

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

26 (12) Any offer, but not a sale, of a security for which  
27 registration statements have been filed under both the Securities

1 Act of Nebraska and the Securities Act of 1933 if no stop order or  
2 refusal order is in effect and no public proceeding or examination  
3 looking toward such an order is pending under either the Securities  
4 Act of Nebraska or the Securities Act of 1933;

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

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

15 (15) Any transaction involving the issuance for cash  
16 of any evidence of ownership interest or indebtedness by an  
17 agricultural cooperative formed as a corporation under section  
18 21-1301 or 21-1401 if the issuer has first filed a notice of  
19 intention to issue with the director and the director has not by  
20 order, mailed to the issuer by certified or registered mail within  
21 ten business days after receipt thereof, disallowed the exemption;

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

1 transaction and containing a representation that the conditions of  
2 this exemption are met is filed by the seller with the director  
3 within thirty days after the first sale for which this exemption  
4 is claimed, except that failure to give such notice may be cured  
5 by an order issued by the director in his or her discretion, (d)  
6 a filing fee of two hundred dollars is paid at the time of filing  
7 the notice, and (e) any such transaction is effected in accordance  
8 with rules and regulations adopted and promulgated by the director  
9 relating to this section when the director finds in adopting and  
10 promulgating such rules and regulations that the applicability of  
11 sections 8-1104 to 8-1107 is not necessary or appropriate in the  
12 public interest or for the protection of investors. For purposes  
13 of this subdivision, not involving a public offering means any  
14 offering in which the seller has reason to believe that the  
15 securities purchased are taken for investment and in which each  
16 offeree, by reason of his or her knowledge about the affairs of  
17 the issuer or otherwise, does not require the protections afforded  
18 by registration under sections 8-1104 to 8-1107 in order to make a  
19 reasonably informed judgment with respect to such investment;

20 (17) The issuance of any investment contract issued in  
21 connection with an employee's stock purchase, savings, pension,  
22 profit-sharing, or similar benefit plan if no commission or other  
23 remuneration is paid or given directly or indirectly for soliciting  
24 any prospective buyer except to a registered agent of a registered  
25 broker-dealer;

26 (18) Any interest in a common trust fund or similar fund  
27 maintained by a bank or trust company organized and supervised

1 under the laws of any state or a bank organized under the laws of  
2 the United States for the collective investment and reinvestment  
3 of funds contributed to such common trust fund or similar fund  
4 by the bank or trust company in its capacity as trustee, personal  
5 representative, administrator, or guardian and any interest in a  
6 collective investment fund or similar fund maintained by the bank  
7 or trust company for the collective investment of funds contributed  
8 to such collective investment fund or similar fund by the bank or  
9 trust company in its capacity as trustee or agent which interest  
10 is issued in connection with an employee's savings, pension,  
11 profit-sharing, or similar benefit plan or a self-employed person's  
12 retirement plan, if a notice generally describing the terms of the  
13 collective investment fund or similar fund is filed by the bank  
14 or trust company with the director within thirty days after the  
15 establishment of the fund. Failure to give the notice may be cured  
16 by an order issued by the director in his or her discretion;

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

20 (20) Any transaction in this state not involving a  
21 public offering by a Nebraska issuer selling solely to Nebraska  
22 residents, when (a) any such transaction is effected in accordance  
23 with rules and regulations adopted and promulgated by the director  
24 relating to this section when the director finds in adopting and  
25 promulgating such rules and regulations that the applicability  
26 of sections 8-1104 to 8-1107 is not necessary or appropriate in  
27 the public interest or for the protection of investors, (b) no

1 commission or remuneration is paid directly or indirectly for  
2 soliciting any prospective buyer, except to a registered agent of a  
3 registered broker-dealer or registered issuer-dealer, (c) a notice  
4 generally describing the terms of the transaction and containing  
5 a representation that the conditions of this exemption are met is  
6 filed by the seller with the director no later than twenty days  
7 prior to any sales for which this exemption is claimed, except that  
8 failure to give such notice may be cured by an order issued by the  
9 director in his or her discretion, (d) a filing fee of two hundred  
10 dollars is paid at the time of filing the notice, and (e) there is  
11 no general or public advertising or solicitation;

12 (21) Any transaction by a person who is an organization  
13 described in section 501(c)(3) of the Internal Revenue Code as  
14 defined in section 49-801.01 involving an offering of interests in  
15 a fund described in section 3(c)(10)(B) of the Investment Company  
16 Act of 1940 solely to persons who are organizations described  
17 in section 501(c)(3) of the Internal Revenue Code as defined  
18 in section 49-801.01 when (a) there is no general or public  
19 advertising or solicitation, (b) a notice generally describing  
20 the terms of the transaction and containing a representation that  
21 the conditions of this exemption are met is filed by the seller  
22 with the director within thirty days after the first sale for  
23 which this exemption is claimed, except that failure to give such  
24 notice may be cured by an order issued by the director in his  
25 or her discretion, and (c) any such transaction is effected by a  
26 trustee, director, officer, employee, or volunteer of the seller  
27 who is either a volunteer or is engaged in the overall fundraising

1 activities of a charitable organization and receives no commission  
2 or other special compensation based on the number or the value of  
3 interests sold in the fund; ~~ex~~

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

7 (a) Sales of such securities are made only to the  
8 following purchasers:

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

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

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

27 (iv) An organization described in section 501(c)(3)

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

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

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

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

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

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

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

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

24 (E) If the issuer retains ownership or becomes the  
25 beneficiary of the insurance policy, an audit report from an  
26 independent certified public accountant together with a balance  
27 sheet and related statements of income, retained earnings, and cash

1 flows that reflect the issuer's financial position, the results  
2 of the issuer's operations, and the issuer's cash flows as of a  
3 date within fifteen months before the date of the initial issuance  
4 of the securities described in this subdivision. The financial  
5 statements shall be prepared in conformity with generally accepted  
6 accounting principles. If the date of the audit report is more than  
7 one hundred twenty days before the date of the initial issuance  
8 of the securities described in this subdivision, the issuer shall  
9 provide unaudited interim financial statements;

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

12 (G) A description of any order, judgment, or decree  
13 that is final as to the issuing entity of any state, federal, or  
14 foreign governmental agency or administrator, or of any state,  
15 federal, or foreign court of competent jurisdiction (I) revoking,  
16 suspending, denying, or censuring for cause any license, permit,  
17 or other authority of the issuer or of any director, officer,  
18 partner, member, trustee, or person owning or controlling, directly  
19 or indirectly, ten percent or more of the outstanding interest  
20 or equity securities of the issuer, to engage in the securities,  
21 commodities, franchise, insurance, real estate, or lending business  
22 or in the offer or sale of securities, commodities, franchises,  
23 insurance, real estate, or loans, (II) permanently restraining,  
24 enjoining, barring, suspending, or censuring any such person from  
25 engaging in or continuing any conduct, practice, or employment  
26 in connection with the offer or sale of securities, commodities,  
27 franchises, insurance, real estate, or loans, (III) convicting



1 any such person of, or pleading nolo contendere by any such  
2 person to, any felony or misdemeanor involving a security,  
3 commodity, franchise, insurance, real estate, or loan, or any  
4 aspect of the securities, commodities, franchise, insurance, real  
5 estate, or lending business, or involving dishonesty, fraud,  
6 deceit, embezzlement, fraudulent conversion, or misappropriation of  
7 property, or (IV) holding any such person liable in a civil action  
8 involving breach of a fiduciary duty, fraud, deceit, embezzlement,  
9 fraudulent conversion, or misappropriation of property. This  
10 subdivision does not apply to any order, judgment, or decree that  
11 has been vacated or overturned or is more than ten years old;

12 (H) Notice of the purchaser's right to rescind or cancel  
13 the investment and receive a refund;

14 (I) A statement to the effect that any projected rate of  
15 return to the purchaser from the purchase of a viatical settlement  
16 contract or any fractionalized or pooled interest therein is based  
17 on an estimated life expectancy for the person insured under the  
18 life insurance policy; that the return on the purchase may vary  
19 substantially from the expected rate of return based upon the  
20 actual life expectancy of the insured that may be less than, may  
21 be equal to, or may greatly exceed the estimated life expectancy;  
22 and that the rate of return would be higher if the actual life  
23 expectancy were less than, and lower if the actual life expectancy  
24 were greater than, the estimated life expectancy of the insured at  
25 the time the viatical settlement contract was closed;

26 (J) A statement that the purchaser should consult with  
27 his or her tax advisor regarding the tax consequences of the

1 purchase of the viatical settlement contract or any fractionalized  
2 or pooled interest therein; and

3 (K) Any other information as may be prescribed by rule of  
4 the director; and

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

7 (A) The name, address, and telephone number of the  
8 issuing insurance company and the name, address, and telephone  
9 number of the state or foreign country regulator of the insurance  
10 company;

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

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

14 (D) If a group insurance policy, the name, address, and  
15 telephone number of the group and, if applicable, the material  
16 terms and conditions of converting the policy to an individual  
17 policy, including the amount of increased premiums;

18 (E) If a term insurance policy, the term and the name,  
19 address, and telephone number of the person who will be responsible  
20 for renewing the policy if necessary;

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

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

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

27 (I) The name, address, and telephone number of the person

1 who will be the insurance policyowner and the person who will be  
2 responsible for paying premiums;

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

5 (K) Any other information as may be prescribed by rule of  
6 the director;

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

20 (f) A notice of the issuer's intent to sell securities  
21 pursuant to this subdivision, signed by a duly authorized officer  
22 of the issuer and notarized, together with a filing fee of two  
23 hundred dollars, is filed with the Department of Banking and  
24 Finance before any offers or sales of securities are made under  
25 this subdivision. Such notice shall include:

26 (i) The issuer's name, the issuer's type of organization,  
27 the state in which the issuer is organized, the date the issuer

1 intends to begin selling securities within or from this state, and  
2 the issuer's principal business;

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

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

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

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

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

1           (a) The proceeds from all sales of securities by the  
2 issuer in any two-year period do not exceed two hundred fifty  
3 thousand dollars and at least eighty percent of the proceeds are  
4 used in Nebraska;

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

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

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

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

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

1           (iv) Temporarily or preliminarily restrained or enjoined  
2 by a court of competent jurisdiction from engaging in or continuing  
3 any conduct or practice in connection with the purchase or sale of  
4 any security or involving the making of any false filing with any  
5 state or with the Securities and Exchange Commission;

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

9           (A) The name, address, telephone number, and email  
10 address of the issuer;

11           (B) The name and address of all persons holding direct or  
12 indirect ownership or beneficial interest in the issuer;

13           (C) The amount of the offering; and

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

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

20           (e) Prior to payment of consideration for the securities,  
21 the offeree receives a written disclosure statement containing (i)  
22 a description of the proposed use of the proceeds of the offering;  
23 (ii) the name of each partner or limited liability company member  
24 of the issuer, officer, director, or person occupying a similar  
25 status of the issuer, or performing similar functions for the  
26 issuer; and (iii) the financial condition of the issuer;

27           (f) The purchaser signs a subscription agreement in which

1 the purchaser acknowledges that he or she:

2 (i) Has received the written disclosure statement;

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

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

7 (g) The issuer, within thirty days after the completion  
8 of the offering, files with the Department of Banking and Finance  
9 a statement indicating the number of investors, the total dollar  
10 amount raised, and the use of the offering proceeds.

11 The director may by order deny or revoke the exemption  
12 specified in subdivision (2) of this section with respect to a  
13 specific security. Upon the entry of such an order, the director  
14 shall promptly notify all registered broker-dealers that it has  
15 been entered and of the reasons therefor and that within fifteen  
16 business days of the receipt of a written request the matter will  
17 be set down for hearing. If no hearing is requested within fifteen  
18 business days of the issuance of the order and none is ordered by  
19 the director, the order shall automatically become a final order  
20 and shall remain in effect until it is modified or vacated by the  
21 director. If a hearing is requested or ordered, the director, after  
22 notice of and opportunity for hearing to all interested persons,  
23 shall enter his or her written findings of fact and conclusions of  
24 law and may affirm, modify, or vacate the order. No such order may  
25 operate retroactively. No person may be considered to have violated  
26 the provisions of the Securities Act of Nebraska by reason of any  
27 offer or sale effected after the entry of any such order if he or

1 she sustains the burden of proof that he or she did not know and in  
2 the exercise of reasonable care could not have known of the order.  
3 In any proceeding under the act, the burden of proving an exemption  
4 from a definition shall be upon the person claiming it.

5           Sec. 3. Section 8-1118, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           8-1118 (1) Any person who offers or sells a security  
8 in violation of section 8-1104 or offers or sells a security by  
9 means of any untrue statement of a material fact or any omission  
10 to state a material fact necessary in order to make the statements  
11 made in the light of the circumstances under which they are made  
12 not misleading, the buyer not knowing of the untruth or omission,  
13 and who does not sustain the burden of proof that he or she did  
14 not know and in the exercise of reasonable care could not have  
15 known of the untruth or omission, shall be liable to the person  
16 buying the security from him or her, who may sue either at law  
17 or in equity to recover the consideration paid for the security,  
18 together with interest at six percent per annum from the date of  
19 payment, costs, and reasonable attorney's fees, less the amount  
20 of any income received on the security, upon the tender of the  
21 security, or for damages if he or she no longer owns the security,  
22 except that, in actions brought based on a transaction exempt from  
23 registration under subdivision (23) of section 8-1111, no person  
24 shall be liable for any statement of a material fact made or for  
25 an omission of a material fact required to be stated or necessary  
26 to make the statement made not misleading unless such statement  
27 or omission was made with the intent to defraud or mislead, with



1 the burden of proof in such cases being on the claimant. Damages  
2 shall be the amount that would be recoverable upon a tender less  
3 (a) the value of the security when the buyer disposed of it and (b)  
4 interest at six percent per annum from the date of disposition.

5 (2) Any investment adviser who provides investment  
6 adviser services to another person which results in a willful  
7 violation of subsection (2), (3), or (4) of section 8-1102,  
8 subsection (2) of section 8-1103, or section 8-1114 or any  
9 investment adviser who employs any device, scheme, or artifice to  
10 defraud such person or engages in any act, practice, or course of  
11 business which operates or would operate as a fraud or deceit on  
12 such person shall be liable to such person. Such person may sue  
13 either at law or in equity to recover the consideration paid for  
14 the investment adviser services and any loss due to such investment  
15 adviser services, together with interest at six percent per annum  
16 from the date of payment of the consideration plus costs and  
17 reasonable attorney's fees, less the amount of any income received  
18 from such investment adviser services and any other economic  
19 benefit.

20 (3) Every person who directly or indirectly controls  
21 a person liable under subsections (1) and (2) of this section,  
22 including every partner, limited liability company member, officer,  
23 director, or person occupying a similar status or performing  
24 similar functions of a partner, limited liability company  
25 member, officer, or director, or employee of such person who  
26 materially aids in the conduct giving rise to liability, and  
27 every broker-dealer, issuer-dealer, agent, investment adviser,

1 or investment adviser representative who materially aids in such  
2 conduct shall be liable jointly and severally with and to the same  
3 extent as such person, unless able to sustain the burden of proof  
4 that he or she did not know, and in the exercise of reasonable  
5 care could not have known, of the existence of the facts by  
6 reason of which the liability is alleged to exist. There shall be  
7 contribution as in cases of contract among the several persons so  
8 liable.

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

24 (5) No person who has made or engaged in the performance  
25 of any contract in violation of any provision of the act or any  
26 rule or order under the act, or who has acquired any purported  
27 right under any such contract with knowledge of the facts by

1 reason of which its making or performance was in violation, may  
2 base any suit on the contract. Any condition, stipulation, or  
3 provision binding any person acquiring any security or receiving  
4 any investment advice to waive compliance with any provision of the  
5 act or any rule or order under the act shall be void.

6           Sec. 4. Original sections 8-1108.01, 8-1111, and 8-1118,  
7 Reissue Revised Statutes of Nebraska, are repealed.