

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 205
Final Reading

Introduced by Schumacher, 22.

Read first time January 15, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Securities Act of Nebraska; to amend
2 sections 8-1108.01, 8-1111, and 8-1118, Reissue Revised
3 Statutes of Nebraska; to change penalty and liability
4 provisions; to provide an exemption from registration of
5 securities; to harmonize provisions; and to repeal the
6 original sections.

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

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

3 8-1108.01 (1) Whenever it appears to the director that
4 the sale of any security is subject to registration under the
5 Securities Act of Nebraska and is being offered or has been offered
6 for sale without such registration, he or she may order the issuer or
7 offerer of such security to cease and desist from the further offer
8 or sale of such security unless and until it has been registered
9 under the act.

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

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

21 (4) The director may, after giving reasonable notice and
22 an opportunity for a hearing under this section, impose a fine not to
23 exceed twenty-five thousand dollars per violation, in addition to
24 costs of the investigation, upon a person found to have engaged in
25 any act or practice which would constitute a violation of the act or

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

1 Nebraska. Failure of the person to pay a fine and costs shall also
2 constitute a forfeiture of his or her right to do business in this
3 state under the Securities Act of Nebraska.

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

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

20 8-1111 Except as provided in this section, sections
21 8-1103 to 8-1109 shall not apply to any of the following
22 transactions:

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

25 (2)(a) Any nonissuer transaction by a registered agent of

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (C) The issuer of the security has total assets of at
24 least two million dollars based on an audited balance sheet as of a
25 date within eighteen months or, in the case of a reorganization or

1 merger when parties to the reorganization or merger had such audited
2 balance sheet, a pro forma balance sheet; or

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

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

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

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

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

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

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

16 (6) Any transaction by an executor, personal
17 representative, administrator, sheriff, marshal, receiver, guardian,
18 or conservator;

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

21 (8) Any offer or sale to a bank, savings institution,
22 trust company, insurance company, investment company as defined in
23 the Investment Company Act of 1940, pension or profit-sharing trust,
24 or other financial institution or institutional buyer, to an
25 individual accredited investor, or to a broker-dealer, whether the

1 purchaser is acting for itself or in some fiduciary capacity. For
2 purposes of this subdivision, the term "individual accredited
3 investor" means (a) any director, executive officer, or general
4 partner of the issuer of the securities being offered or sold, or any
5 director, executive officer, or general partner of a general partner
6 of that issuer, (b) any manager of a limited liability company that
7 is the issuer of the securities being offered or sold, (c) any
8 natural person whose individual net worth, or joint net worth with
9 that person's spouse, at the time of his or her purchase, exceeds one
10 million dollars, or (d) any natural person who had an individual
11 income in excess of two hundred thousand dollars in each of the two
12 most recent years or joint income with that person's spouse in excess
13 of three hundred thousand dollars in each of those years and has a
14 reasonable expectation of reaching the same income level in the
15 current year;

16 (9)(a) Any transaction pursuant to an offering in which
17 sales are made to not more than fifteen persons, other than those
18 designated in subdivisions (8), (11), and (17) of this section, in
19 this state during any period of twelve consecutive months if (i) the
20 seller reasonably believes that all the buyers are purchasing for
21 investment, (ii) no commission or other remuneration is paid or given
22 directly or indirectly for soliciting any prospective buyer except to
23 a registered agent of a registered broker-dealer, (iii) a notice
24 generally describing the terms of the transaction and containing a
25 representation that the conditions of this exemption are met is filed

1 by the seller with the director within thirty days after the first
2 sale for which this exemption is claimed, except that failure to give
3 such notice may be cured by an order issued by the director in his or
4 her discretion, and (iv) no general or public advertisements or
5 solicitations are made.

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

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

24 (11) Any transaction pursuant to an offer to existing
25 security holders of the issuer, including persons who at the time of

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

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

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

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

24 (15) Any transaction involving the issuance for cash of
25 any evidence of ownership interest or indebtedness by an agricultural

1 cooperative formed as a corporation under section 21-1301 or 21-1401
2 if the issuer has first filed a notice of intention to issue with the
3 director and the director has not by order, mailed to the issuer by
4 certified or registered mail within ten business days after receipt
5 thereof, disallowed the exemption;

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

1 investment and in which each offeree, by reason of his or her
2 knowledge about the affairs of the issuer or otherwise, does not
3 require the protections afforded by registration under sections
4 8-1104 to 8-1107 in order to make a reasonably informed judgment with
5 respect to such investment;

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

12 (18) Any interest in a common trust fund or similar fund
13 maintained by a bank or trust company organized and supervised under
14 the laws of any state or a bank organized under the laws of the
15 United States for the collective investment and reinvestment of funds
16 contributed to such common trust fund or similar fund by the bank or
17 trust company in its capacity as trustee, personal representative,
18 administrator, or guardian and any interest in a collective
19 investment fund or similar fund maintained by the bank or trust
20 company for the collective investment of funds contributed to such
21 collective investment fund or similar fund by the bank or trust
22 company in its capacity as trustee or agent which interest is issued
23 in connection with an employee's savings, pension, profit-sharing, or
24 similar benefit plan or a self-employed person's retirement plan, if
25 a notice generally describing the terms of the collective investment

1 fund or similar fund is filed by the bank or trust company with the
2 director within thirty days after the establishment of the fund.
3 Failure to give the notice may be cured by an order issued by the
4 director in his or her discretion;

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

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

1 solicitation;

2 (21) Any transaction by a person who is an organization
3 described in section 501(c)(3) of the Internal Revenue Code as
4 defined in section 49-801.01 involving an offering of interests in a
5 fund described in section 3(c)(10)(B) of the Investment Company Act
6 of 1940 solely to persons who are organizations described in section
7 501(c)(3) of the Internal Revenue Code as defined in section
8 49-801.01 when (a) there is no general or public advertising or
9 solicitation, (b) a notice generally describing the terms of the
10 transaction and containing a representation that the conditions of
11 this exemption are met is filed by the seller with the director
12 within thirty days after the first sale for which this exemption is
13 claimed, except that failure to give such notice may be cured by an
14 order issued by the director in his or her discretion, and (c) any
15 such transaction is effected by a trustee, director, officer,
16 employee, or volunteer of the seller who is either a volunteer or is
17 engaged in the overall fundraising activities of a charitable
18 organization and receives no commission or other special compensation
19 based on the number or the value of interests sold in the fund; ~~or~~

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

23 (a) Sales of such securities are made only to the
24 following purchasers:

25 (i) A natural person who, either individually or jointly

1 with the person's spouse, (A) has a minimum net worth of two hundred
2 fifty thousand dollars and had taxable income in excess of one
3 hundred twenty-five thousand dollars in each of the two most recent
4 years and has a reasonable expectation of reaching the same income
5 level in the current year or (B) has a minimum net worth of five
6 hundred thousand dollars. Net worth shall be determined exclusive of
7 home, home furnishings, and automobiles;

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

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

18 (iv) An organization described in section 501(c)(3) of
19 the Internal Revenue Code as defined in section 49-801.01, or a
20 corporation, Massachusetts or similar business trust, or partnership
21 with total assets in excess of five million dollars according to its
22 most recent audited financial statements;

23 (b) The amount of the investment of any purchaser, except
24 a purchaser described in subdivision (a)(ii) of this subdivision,
25 does not exceed five percent of the net worth, as determined by this

1 subdivision, of that purchaser;

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

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

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

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

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

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

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

1 principles. If the date of the audit report is more than one hundred
2 twenty days before the date of the initial issuance of the securities
3 described in this subdivision, the issuer shall provide unaudited
4 interim financial statements;

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

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

1 estate, or lending business, or involving dishonesty, fraud, deceit,
2 embezzlement, fraudulent conversion, or misappropriation of property,
3 or (IV) holding any such person liable in a civil action involving
4 breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent
5 conversion, or misappropriation of property. This subdivision does
6 not apply to any order, judgment, or decree that has been vacated or
7 overturned or is more than ten years old;

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

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

22 (J) A statement that the purchaser should consult with
23 his or her tax advisor regarding the tax consequences of the purchase
24 of the viatical settlement contract or any fractionalized or pooled
25 interest therein; and

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

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

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

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

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

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

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

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

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

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

24 (I) The name, address, and telephone number of the person
25 who will be the insurance policyowner and the person who will be

1 responsible for paying premiums;

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

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

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

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

25 (i) The issuer's name, the issuer's type of organization,

1 the state in which the issuer is organized, the date the issuer
2 intends to begin selling securities within or from this state, and
3 the issuer's principal business;

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (A) The name, address, telephone number, and email
14 address of the issuer;

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

17 (C) The amount of the offering; and

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

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

24 (e) Prior to payment of consideration for the securities,
25 the offeree receives a written disclosure statement containing (i) a

1 description of the proposed use of the proceeds of the offering; (ii)
2 the name of each partner or limited liability company member of the
3 issuer, officer, director, or person occupying a similar status of
4 the issuer or performing similar functions for the issuer; and (iii)
5 the financial condition of the issuer;

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

8 (i) Has received the written disclosure statement;

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

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

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

17 The director may by order deny or revoke the exemption
18 specified in subdivision (2) of this section with respect to a
19 specific security. Upon the entry of such an order, the director
20 shall promptly notify all registered broker-dealers that it has been
21 entered and of the reasons therefor and that within fifteen business
22 days of the receipt of a written request the matter will be set down
23 for hearing. If no hearing is requested within fifteen business days
24 of the issuance of the order and none is ordered by the director, the
25 order shall automatically become a final order and shall remain in

1 effect until it is modified or vacated by the director. If a hearing
2 is requested or ordered, the director, after notice of and
3 opportunity for hearing to all interested persons, shall enter his or
4 her written findings of fact and conclusions of law and may affirm,
5 modify, or vacate the order. No such order may operate retroactively.
6 No person may be considered to have violated the provisions of the
7 Securities Act of Nebraska by reason of any offer or sale effected
8 after the entry of any such order if he or she sustains the burden of
9 proof that he or she did not know and in the exercise of reasonable
10 care could not have known of the order. In any proceeding under the
11 act, the burden of proving an exemption from a definition shall be
12 upon the person claiming it.

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

15 8-1118 (1) Any person who offers or sells a security in
16 violation of section 8-1104 or offers or sells a security by means of
17 any untrue statement of a material fact or any omission to state a
18 material fact necessary in order to make the statements made in the
19 light of the circumstances under which they are made not misleading,
20 the buyer not knowing of the untruth or omission, and who does not
21 sustain the burden of proof that he or she did not know and in the
22 exercise of reasonable care could not have known of the untruth or
23 omission, shall be liable to the person buying the security from him
24 or her, who may sue either at law or in equity to recover the
25 consideration paid for the security, together with interest at six

1 percent per annum from the date of payment, costs, and reasonable
2 attorney's fees, less the amount of any income received on the
3 security, upon the tender of the security, or for damages if he or
4 she no longer owns the security, except that in actions brought based
5 on a transaction exempt from registration under subdivision (23) of
6 section 8-1111, no person shall be liable for any statement of a
7 material fact made or for an omission of a material fact required to
8 be stated or necessary to make the statement made not misleading
9 unless such statement or omission was made with the intent to defraud
10 or mislead, with the burden of proof in such cases being on the
11 claimant. Damages shall be the amount that would be recoverable upon
12 a tender less (a) the value of the security when the buyer disposed
13 of it and (b) interest at six percent per annum from the date of
14 disposition.

15 (2) Any investment adviser who provides investment
16 adviser services to another person which results in a willful
17 violation of subsection (2), (3), or (4) of section 8-1102,
18 subsection (2) of section 8-1103, or section 8-1114 or any investment
19 adviser who employs any device, scheme, or artifice to defraud such
20 person or engages in any act, practice, or course of business which
21 operates or would operate as a fraud or deceit on such person shall
22 be liable to such person. Such person may sue either at law or in
23 equity to recover the consideration paid for the investment adviser
24 services and any loss due to such investment adviser services,
25 together with interest at six percent per annum from the date of

1 payment of the consideration plus costs and reasonable attorney's
2 fees, less the amount of any income received from such investment
3 adviser services and any other economic benefit.

4 (3) Every person who directly or indirectly controls a
5 person liable under subsections (1) and (2) of this section,
6 including every partner, limited liability company member, officer,
7 director, or person occupying a similar status or performing similar
8 functions of a partner, limited liability company member, officer, or
9 director, or employee of such person who materially aids in the
10 conduct giving rise to liability, and every broker-dealer, issuer-
11 dealer, agent, investment adviser, or investment adviser
12 representative who materially aids in such conduct shall be liable
13 jointly and severally with and to the same extent as such person,
14 unless able to sustain the burden of proof that he or she did not
15 know, and in the exercise of reasonable care could not have known, of
16 the existence of the facts by reason of which the liability is
17 alleged to exist. There shall be contribution as in cases of contract
18 among the several persons so liable.

19 (4) Any tender specified in this section may be made at
20 any time before entry of judgment. Every cause of action under the
21 Securities Act of Nebraska shall survive the death of any person who
22 might have been a plaintiff or defendant. No person may sue under
23 this section more than three years after the contract of sale or the
24 rendering of investment advice. No person may sue under this section
25 (a) if the buyer received a written offer, before suit and at a time

1 when he or she owned the security, to refund the consideration paid
2 together with interest at six percent per annum from the date of
3 payment, less the amount of any income received on the security, and
4 the buyer failed to accept the offer within thirty days of its
5 receipt, or (b) if the buyer received such an offer before suit and
6 at a time when he or she did not own the security, unless the buyer
7 rejected the offer in writing within thirty days of its receipt.

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

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