

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1019

Introduced by Schumacher, 22.

Read first time January 22, 2014

Committee: Appropriations

A BILL

1 FOR AN ACT relating to economic development; to amend sections
2 8-1108.01, 8-1111, 8-1118, and 84-612, Revised Statutes
3 Supplement, 2013; to adopt the Development and Venture
4 Enterprise Act; to change provisions of the Securities
5 Act of Nebraska; to transfer funds; and to repeal the
6 original sections.

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

1 Section 1. Sections 1 to 11 of this act shall be known
2 and may be cited as the Development and Venture Enterprise Act.

3 Sec. 2. The purpose of the Development and Venture
4 Enterprise Act is to create a statewide plan to support
5 entrepreneurship and job creation and to provide venture capital to
6 qualified businesses whose activities are compatible with such plan.

7 Sec. 3. For purposes of the Development and Venture
8 Enterprise Act:

9 (1) Authority means the Nebraska Venture Fund Authority
10 created under section 4 of this act;

11 (2) Department means the Department of Economic
12 Development;

13 (3) Qualified business means a business that, at the time
14 of the first qualified investment:

15 (a) Has its principal operations located in this state
16 and intends to maintain its principal operations in this state after
17 receiving the qualified investment;

18 (b) Has agreed to use the qualified investment primarily
19 to establish or expand business operations in this state; and

20 (c) Has no more than fifty employees; and

21 (4) Qualified investment means the direct or indirect
22 investment of cash by the authority or the purchase by the authority
23 of any of the following:

24 (a) A share of stock or other equity interest;

25 (b) A debt instrument that is convertible into equity; or

1 (c) An equity participation instrument, including an
2 option or warrant.

3 Sec. 4. (1) The Nebraska Venture Fund Authority is
4 created within the department. The authority shall consist of:

5 (a) Nine voting members who shall be appointed by the
6 Governor with the approval of a majority of the Legislature. The nine
7 voting members shall be residents of this state, shall represent
8 diverse geographic regions of the state, and shall include:

9 (i) At least four members who have experience in working
10 with companies that have raised investment capital or that have
11 provided professional services to the venture capital industry, at
12 least one of whom shall have experience in higher education research
13 and development and technology transfer projects;

14 (ii) At least one member who has experience as a small
15 business owner;

16 (iii) At least one member who has experience as a
17 business executive in a business that raises venture capital
18 investments; and

19 (iv) At least three members who are residents of rural
20 counties in the state; and

21 (b) Two members of the Legislature appointed by the
22 Executive Board of the Legislative Council who shall serve as ex-
23 officio, nonvoting members.

24 (2) No member of the authority shall hold a financial
25 interest in any qualified business. Each appointed member shall

1 disclose his or her financial holdings to the Governor prior to
2 appointment.

3 (3) The appointed members shall have terms of four years
4 and until their successors are appointed and qualified.

5 (4) Five voting members of the authority shall constitute
6 a quorum. The authority shall have the power to act by a majority of
7 the voting members present at any meeting at which a quorum is in
8 attendance.

9 (5) Members of the authority shall serve without
10 compensation but shall be reimbursed for their actual and necessary
11 expenses as provided in sections 81-1174 to 81-1177.

12 (6) A vacancy in the membership of the authority shall be
13 filled in the same manner as the original appointment.

14 Sec. 5. (1) The Nebraska Venture Fund is created. The
15 fund shall be administered by the authority and shall be used to make
16 qualified investments in qualified businesses pursuant to the
17 Development and Venture Enterprise Act.

18 (2) The fund shall consist of a one-time appropriation
19 from the Legislature, transfers authorized by the Legislature, and
20 funds raised from private investors. Any such private investor shall
21 receive a nonvoting equity interest in the fund. The state shall have
22 no equity, debt, or other financial interest in the fund except as
23 provided in subsection (6) of this section.

24 (3) Dividends from the fund shall be made to private
25 investors as determined by the authority.

1 (4) Investment returns resulting from the qualified
2 investments made by the authority shall be deposited into the fund
3 and used to make additional qualified investments in qualified
4 businesses.

5 (5) The assets of the Nebraska Venture Fund shall at all
6 times be preserved, invested, and expended solely and only for the
7 purposes of the Development and Venture Enterprise Act.

8 (6) If XXX dollars of private equity in the fund have not
9 been subscribed to by January 1, 2016, all private investors with an
10 equity interest in the fund shall be refunded their investment in
11 full and the balance of the fund shall revert to the General Fund.

12 Sec. 6. (1) By January 1, 2015, the authority shall
13 develop a strategic plan for the state to identify how best to invest
14 the funds available in the Nebraska Venture Fund to support
15 entrepreneurship, job creation, and economic growth in the state.
16 After the strategic plan is developed, the authority shall offer to
17 private investors shares of the Nebraska Venture Fund and may issue
18 shares of stock in the fund under such terms and conditions as the
19 authority deems appropriate. The authority may also begin accepting
20 applications from businesses seeking funding under the Development
21 and Venture Enterprise Act.

22 (2) The authority may make a qualified investment only in
23 qualified businesses. In making investment decisions, the authority
24 shall consider the strategic plan developed under subsection (1) of
25 this section and shall also take into consideration the following:

- 1 (a) The soundness of the applicant's proposal;
2 (b) The employment opportunities that would be created;
3 (c) The applicant's commitment to the state; and
4 (d) The potential for return on investment for the
5 private investors who hold an equity interest in the fund.

6 (3) The authority may enter into contracts to carry out
7 the purposes of the Development and Venture Enterprise Act, including
8 contracts to obtain the services of an independent third party to:

9 (a) Review and evaluate the application, organizational
10 documents, and business history of applicants for funding under the
11 act;

12 (b) Evaluate whether the applicant is likely to achieve
13 the investment criteria set forth in the strategic plan; and

14 (c) Recommend to the authority which businesses should
15 receive a qualified investment.

16 Sec. 7. Any qualified business that receives a qualified
17 investment shall, within one hundred eighty days after the end of its
18 fiscal year, provide to the department an audited financial statement
19 that includes the opinion of an independent certified public
20 accountant.

21 Sec. 8. (1) For any qualified business in which the
22 authority holds more than a fifty percent ownership interest, such
23 qualified business shall not be moved from the state without the
24 consent of the authority.

25 (2) Any qualified business that has received a qualified

1 investment may merge with any other qualified business that has
2 received a qualified investment.

3 Sec. 9. The authority may spin off, split off, or
4 otherwise distribute its interest in a qualified business to the
5 private investors in the Nebraska Venture Fund in proportion to their
6 equity interests in the fund should the authority find that the
7 qualified business is sufficiently developed to function
8 independently in the financial markets and that it would be in the
9 best interest of the qualified business to end the authority's
10 involvement in the qualified business.

11 Sec. 10. Not later than sixty days after the sale or
12 other disposition of any qualified investment, the authority shall
13 provide to the department a report on the amount of interest sold or
14 disposed of and the consideration received for the sale or
15 disposition.

16 Sec. 11. Beginning January 31, 2016, and each January 31
17 thereafter, the authority shall report to the department:

18 (1) The amount of funds remaining in the Nebraska Venture
19 Fund at the end of the preceding calendar year;

20 (2) The names and locations of all qualified businesses
21 receiving qualified investments during the preceding calendar year,
22 including the number of employees of each qualified business at the
23 time the qualified investment was made and, as of December 31 of such
24 year, the cumulative amount of the qualified investment received;

25 (3) The annual performance of each qualified investment,

1 including the investment's fair market value as calculated according
2 to generally accepted accounting principles;

3 (4) The classification of the qualified businesses
4 receiving qualified investments according to the North American
5 Industry Classification System and the size of such qualified
6 businesses;

7 (5) The total number of jobs created in the state by the
8 qualified businesses receiving qualified investments and the average
9 wages paid for such jobs;

10 (6) The total number of jobs retained in the state as a
11 result of qualified investments and the average wages paid for such
12 jobs;

13 (7) How the qualified investments are supporting the
14 strategic plan created by the authority under section 6 of this act;

15 (8) For any qualified investment in which the authority
16 no longer has an interest as of the end of the calendar year, the
17 number of employees of the qualified business as of the date the
18 investment was terminated; and

19 (9) Any other information the department requires to
20 ascertain the economic impact of qualified investments made under the
21 Development and Venture Enterprise Act.

22 Sec. 12. Section 8-1108.01, Revised Statutes Supplement,
23 2013, is amended to read:

24 8-1108.01 (1) Whenever it appears to the director that
25 the sale of any security is subject to registration under the

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

6 (2) Whenever it appears to the director that any person
7 is acting as a broker-dealer, issuer-dealer, agent, investment
8 adviser, or investment adviser representative without registration as
9 such or acting as a federal covered adviser without making a notice
10 filing under the act, he or she may order such person to cease and
11 desist from such activity unless and until he or she has been
12 registered as such or has made the required notice filing under the
13 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 cease
16 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 to
19 exceed twenty-five thousand dollars per violation, in addition to
20 costs of the investigation, upon a person found to have engaged in
21 any act or practice which would constitute a violation of the act or
22 any rule, regulation, or order issued under the act, except that the
23 director shall not impose a fine upon any person in connection with a
24 transaction made pursuant to subdivision (23) or (24) of section
25 8-1111 for any statement of a material fact made or for an omission

1 of a material fact required to be stated or necessary to make the
2 statement made not misleading unless such statement or omission was
3 made with the intent to defraud or mislead. The fine and costs shall
4 be in addition to all other penalties imposed by the laws of this
5 state. The director shall collect the fines and costs and remit them
6 to the State Treasurer. The State Treasurer shall credit the costs to
7 the Securities Act Cash Fund and distribute the fines in accordance
8 with Article VII, section 5, of the Constitution of Nebraska.
9 Imposition of any fine and payment of costs under this subsection may
10 be appealed pursuant to section 8-1119. If a person fails to pay the
11 fine or costs of the investigation referred to in this subsection, a
12 lien in the amount of the fine and costs shall be imposed upon all of
13 the assets and property of such person in this state and may be
14 recovered by suit by the director and remitted to the State
15 Treasurer. The State Treasurer shall credit the costs to the
16 Securities Act Cash Fund and distribute the fines in accordance with
17 Article VII, section 5, of the Constitution of Nebraska. Failure of
18 the person to pay a fine and costs shall also constitute a forfeiture
19 of his or her right to do business in this state under the Securities
20 Act of Nebraska.

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

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

10 Sec. 13. Section 8-1111, Revised Statutes Supplement,
11 2013, is amended to read:

12 8-1111 Except as provided in this section, sections
13 8-1103 to 8-1109 shall not apply to any of the following
14 transactions:

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

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

23 (i) The issuer of the security is actually engaged in
24 business and not in the organization stage or in bankruptcy or
25 receivership and is not a blank check, blind pool, or shell company

1 whose primary plan of business is to engage in a merger or
2 combination of the business with, or an acquisition of, an
3 unidentified person or persons;

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

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

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

14 (A) A description of the business and operations of the
15 issuer;

16 (B) The names of the issuer's officers and the names of
17 the issuer's directors, if any, or, in the case of a non-United-
18 States issuer, the corporate equivalents of such persons in the
19 issuer's country of domicile;

20 (C) An audited balance sheet of the issuer as of a date
21 within eighteen months or, in the case of a reorganization or merger
22 when parties to the reorganization or merger had such audited balance
23 sheet, a pro forma balance sheet; and

24 (D) An audited income statement for each of the issuer's
25 immediately preceding two fiscal years, or for the period of

1 existence of the issuer if in existence for less than two years, or,
2 in the case of a reorganization or merger when the parties to the
3 reorganization or merger had such audited income statement, a pro
4 forma income statement; and

5 (v) The issuer of the security has a class of equity
6 securities listed on a national securities exchange registered under
7 the Securities Exchange Act of 1934 or designated for trading on the
8 National Association of Securities Dealers Automated Quotation System
9 (NASDAQ), unless:

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

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

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

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

22 (i) The issuer of the security is actually engaged in
23 business and not in the organization stage or in bankruptcy or
24 receivership and is not a blank check, blind pool, or shell company
25 whose primary plan of business is to engage in a merger or

1 combination of the business with, or an acquisition of, an
2 unidentified person or persons; and

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

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

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

20 (5) Any transaction in a bond or other evidence of
21 indebtedness secured by a real or chattel mortgage or deed of trust
22 or by an agreement for the sale of real estate or chattels if the
23 entire mortgage, deed of trust, or agreement, together with all the
24 bonds or other evidences of indebtedness secured thereby, are offered
25 and sold as a unit. Such exemption shall not apply to any transaction

1 in a bond or other evidence of indebtedness secured by a real estate
2 mortgage or deed of trust or by an agreement for the sale of real
3 estate if the real estate securing the evidences of indebtedness are
4 parcels of real estate the sale of which requires the subdivision in
5 which the parcels are located to be registered under the Interstate
6 Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as the act
7 existed on January 1, 2013;

8 (6) Any transaction by an executor, personal
9 representative, administrator, sheriff, marshal, receiver, guardian,
10 or conservator;

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

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

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

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

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

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

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

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

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

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

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

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

23 (16) Any transaction in this state not involving a public
24 offering when (a) there is no general or public advertising or
25 solicitation, (b) no commission or remuneration is paid directly or

1 indirectly for soliciting any prospective buyer, except to a
2 registered agent of a registered broker-dealer or registered issuer-
3 dealer, (c) a notice generally describing the terms of the
4 transaction and containing a representation that the conditions of
5 this exemption are met is filed by the seller with the director
6 within thirty days after the first sale for which this exemption is
7 claimed, except that failure to give such notice may be cured by an
8 order issued by the director in his or her discretion, (d) a filing
9 fee of two hundred dollars is paid at the time of filing the notice,
10 and (e) any such transaction is effected in accordance with rules and
11 regulations adopted and promulgated by the director relating to this
12 section when the director finds in adopting and promulgating such
13 rules and regulations that the applicability of sections 8-1104 to
14 8-1107 is not necessary or appropriate in the public interest or for
15 the protection of investors. For purposes of this subdivision, not
16 involving a public offering means any offering in which the seller
17 has reason to believe that the securities purchased are taken for
18 investment and in which each offeree, by reason of his or her
19 knowledge about the affairs of the issuer or otherwise, does not
20 require the protections afforded by registration under sections
21 8-1104 to 8-1107 in order to make a reasonably informed judgment with
22 respect to such investment;

23 (17) The issuance of any investment contract issued in
24 connection with an employee's stock purchase, savings, pension,
25 profit-sharing, or similar benefit plan if no commission or other

1 remuneration is paid or given directly or indirectly for soliciting
2 any prospective buyer except to a registered agent of a registered
3 broker-dealer;

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

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

25 (20) Any transaction in this state not involving a public

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

19 (21) Any transaction by a person who is an organization
20 described in section 501(c)(3) of the Internal Revenue Code as
21 defined in section 49-801.01 involving an offering of interests in a
22 fund described in section 3(c)(10)(B) of the Investment Company Act
23 of 1940 solely to persons who are organizations described in section
24 501(c)(3) of the Internal Revenue Code as defined in section
25 49-801.01 when (a) there is no general or public advertising or

1 solicitation, (b) a notice generally describing the terms of the
2 transaction and containing a representation that the conditions of
3 this exemption are met is filed by the seller with the director
4 within thirty days after the first sale for which this exemption is
5 claimed, except that failure to give such notice may be cured by an
6 order issued by the director in his or her discretion, and (c) any
7 such transaction is effected by a trustee, director, officer,
8 employee, or volunteer of the seller who is either a volunteer or is
9 engaged in the overall fundraising activities of a charitable
10 organization and receives no commission or other special compensation
11 based on the number or the value of interests sold in the fund;

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

15 (a) Sales of such securities are made only to the
16 following purchasers:

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

25 (ii) A corporation, partnership, or other organization

1 specifically formed for the purpose of acquiring securities offered
2 by the issuer in reliance upon this exemption if each equity owner of
3 the corporation, partnership, or other organization is a person
4 described in subdivision (22)(a)(i) of this section;

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

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

15 (b) The amount of the investment of any purchaser, except
16 a purchaser described in subdivision (a)(ii) of this subdivision,
17 does not exceed five percent of the net worth, as determined by this
18 subdivision, of that purchaser;

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

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

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

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

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

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

9 (E) If the issuer retains ownership or becomes the
10 beneficiary of the insurance policy, an audit report from an
11 independent certified public accountant together with a balance sheet
12 and related statements of income, retained earnings, and cash flows
13 that reflect the issuer's financial position, the results of the
14 issuer's operations, and the issuer's cash flows as of a date within
15 fifteen months before the date of the initial issuance of the
16 securities described in this subdivision. The financial statements
17 shall be prepared in conformity with generally accepted accounting
18 principles. If the date of the audit report is more than one hundred
19 twenty days before the date of the initial issuance of the securities
20 described in this subdivision, the issuer shall provide unaudited
21 interim financial statements;

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

24 (G) A description of any order, judgment, or decree that
25 is final as to the issuing entity of any state, federal, or foreign

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

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

1 the investment and receive a refund;

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

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

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

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

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

25 (B) The total face value of the insurance policy and the

1 percentage of the insurance policy the purchaser will own;

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

3 (D) If a group insurance policy, the name, address, and
4 telephone number of the group and, if applicable, the material terms
5 and conditions of converting the policy to an individual policy,
6 including the amount of increased premiums;

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

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

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

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

16 (I) The name, address, and telephone number of the person
17 who will be the insurance policyowner and the person who will be
18 responsible for paying premiums;

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

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

23 (e) The purchaser may rescind or cancel the purchase for
24 any reason by giving written notice of rescission or cancellation to
25 the issuer or the issuer's agent within (i) fifteen calendar days

1 after the date the purchaser remits the required consideration or
2 receives the disclosure required under subdivision (d)(i) of this
3 subdivision and (ii) five business days after the date the purchaser
4 receives the disclosure required by subdivision (d)(ii) of this
5 subdivision. No specific form is required for the rescission or
6 cancellation. The notice is effective when personally delivered,
7 deposited in the United States mail, or deposited with a commercial
8 courier or delivery service. The issuer shall refund all the
9 purchaser's money within seven calendar days after receiving the
10 notice of rescission or cancellation;

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

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

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

22 (iii) An audit report of an independent certified public
23 accountant together with a balance sheet and related statements of
24 income, retained earnings and cash flows that reflect the issuer's
25 financial position, the results of the issuer's operations, and the

1 issuer's cash flows as of a date within fifteen months before the
2 date of the notice prescribed in this subdivision. The financial
3 statements shall be prepared in conformity with generally accepted
4 accounting principles and shall be examined according to generally
5 accepted auditing standards. If the date of the audit report is more
6 than one hundred twenty days before the date of the notice prescribed
7 in this subdivision, the issuer shall provide unaudited interim
8 financial statements;

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

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

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

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

25 (b) No commission or other remuneration is paid or given

1 directly or indirectly for soliciting any prospective buyer except to
2 a registered agent of a registered broker-dealer;

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

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

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

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

22 (iv) Temporarily or preliminarily restrained or enjoined
23 by a court of competent jurisdiction from engaging in or continuing
24 any conduct or practice in connection with the purchase or sale of
25 any security or involving the making of any false filing with any

1 state or with the Securities and Exchange Commission;

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

5 (A) The name, address, telephone number, and email
6 address of the issuer;

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

9 (C) The amount of the offering; and

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

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

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

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

25 (i) Has received the written disclosure statement;

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

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

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

9 (24) Any offer or sale of an interest in the Nebraska
10 Venture Fund created under section 5 of this act or any security
11 issued or distributed pursuant to section 9 of this act.

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

1 No person may be considered to have violated the provisions of the
2 Securities Act of Nebraska by reason of any offer or sale effected
3 after the entry of any such order if he or she sustains the burden of
4 proof that he or she did not know and in the exercise of reasonable
5 care could not have known of the order. In any proceeding under the
6 act, the burden of proving an exemption from a definition shall be
7 upon the person claiming it.

8 Sec. 14. Section 8-1118, Revised Statutes Supplement,
9 2013, is amended to read:

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

1 (24) of section 8-1111, no person shall be liable for any statement
2 of a material fact made or for an omission of a material fact
3 required to be stated or necessary to make the statement made not
4 misleading unless such statement or omission was made with the intent
5 to defraud or mislead, with the burden of proof in such cases being
6 on the claimant. Damages shall be the amount that would be
7 recoverable upon a tender less (a) the value of the security when the
8 buyer disposed of it and (b) interest at six percent per annum from
9 the date of disposition.

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

24 (3) Every person who directly or indirectly controls a
25 person liable under subsections (1) and (2) of this section,

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

14 (4) Any tender specified in this section may be made at
15 any time before entry of judgment. Every cause of action under the
16 Securities Act of Nebraska shall survive the death of any person who
17 might have been a plaintiff or defendant. No person may sue under
18 this section more than three years after the contract of sale or the
19 rendering of investment advice. No person may sue under this section
20 (a) if the buyer received a written offer, before suit and at a time
21 when he or she owned the security, to refund the consideration paid
22 together with interest at six percent per annum from the date of
23 payment, less the amount of any income received on the security, and
24 the buyer failed to accept the offer within thirty days of its
25 receipt, or (b) if the buyer received such an offer before suit and

1 at a time when he or she did not own the security, unless the buyer
2 rejected the offer in writing within thirty days of its receipt.

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

12 Sec. 15. Section 84-612, Revised Statutes Supplement,
13 2013, is amended to read:

14 84-612 (1) There is hereby created within the state
15 treasury a fund known as the Cash Reserve Fund which shall be under
16 the direction of the State Treasurer. The fund shall only be used
17 pursuant to this section.

18 (2) The State Treasurer shall transfer funds from the
19 Cash Reserve Fund to the General Fund upon certification by the
20 Director of Administrative Services that the current cash balance in
21 the General Fund is inadequate to meet current obligations. Such
22 certification shall include the dollar amount to be transferred. Any
23 transfers made pursuant to this subsection shall be reversed upon
24 notification by the Director of Administrative Services that
25 sufficient funds are available.

1 (3) In addition to receiving transfers from other funds,
2 the Cash Reserve Fund shall receive federal funds received by the
3 State of Nebraska for undesignated general government purposes,
4 federal revenue sharing, or general fiscal relief of the state.

5 (4) On July 7, 2009, the State Treasurer shall transfer
6 five million dollars from the Cash Reserve Fund to the Roads
7 Operations Cash Fund. The Department of Roads shall use such funds to
8 provide the required state match for federal funding made available
9 to the state through congressional earmarks.

10 (5) The State Treasurer shall transfer a total of thirty-
11 seven million dollars from the Cash Reserve Fund to the General Fund
12 on or before June 30, 2012, on such dates and in such amounts as
13 directed by the budget administrator of the budget division of the
14 Department of Administrative Services.

15 (6) The State Treasurer shall transfer a total of sixty-
16 eight million dollars from the Cash Reserve Fund to the General Fund
17 on or before June 30, 2013, on such dates and in such amounts as
18 directed by the budget administrator of the budget division of the
19 Department of Administrative Services.

20 (7) The State Treasurer, at the direction of the budget
21 administrator of the budget division of the Department of
22 Administrative Services, shall transfer not to exceed twelve million
23 dollars in total between July 1, 2011, and November 30, 2012, from
24 the Cash Reserve Fund to the Ethanol Production Incentive Cash Fund,
25 for ethanol production incentive credits, on such dates and in such

1 amounts as certified by the Tax Commissioner.

2 (8) The State Treasurer, at the direction of the budget
3 administrator of the budget division of the Department of
4 Administrative Services, shall transfer an amount equal to the total
5 amount transferred pursuant to subsection (7) of this section from
6 the Ethanol Production Incentive Cash Fund to the Cash Reserve Fund
7 in such amounts as certified by the Tax Commissioner on or before
8 November 30, 2012.

9 (9) The State Treasurer, at the direction of the budget
10 administrator of the budget division of the Department of
11 Administrative Services, shall transfer eighty million dollars from
12 the Cash Reserve Fund to the Nebraska Capital Construction Fund on or
13 before August 15, 2012.

14 (10) The State Treasurer, at the direction of the budget
15 administrator of the budget division of the Department of
16 Administrative Services, shall transfer one million dollars from the
17 Cash Reserve Fund to the Affordable Housing Trust Fund on or before
18 August 15, 2012.

19 (11) The State Treasurer shall transfer ten million
20 dollars from the Cash Reserve Fund to the General Fund on or before
21 June 30, 2013, on such date as directed by the budget administrator
22 of the budget division of the Department of Administrative Services.

23 (12) The State Treasurer, at the direction of the budget
24 administrator of the budget division of the Department of
25 Administrative Services, shall transfer not to exceed forty-three

1 million fifteen thousand four hundred fifty-nine dollars in total
2 from the Cash Reserve Fund to the Nebraska Capital Construction Fund
3 between July 1, 2013, and June 30, 2017.

4 (13) The State Treasurer shall transfer XXX million
5 dollars from the Cash Reserve Fund to the Nebraska Venture Fund on or
6 before December 15, 2014, on such date as directed by the budget
7 administrator of the budget division of the Department of
8 Administrative Services.

9 Sec. 16. Original sections 8-1108.01, 8-1111, 8-1118, and
10 84-612, Revised Statutes Supplement, 2013, are repealed.