

AMENDMENTS TO LB226

Introduced by Banking, Commerce and Insurance.

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

3           Section 1. Section 8-1111, Revised Statutes Cumulative Supplement,  
4 2014, is amended to read:

5           8-1111 Except as provided in this section, sections 8-1103 to 8-1109  
6 shall not apply to any of the following transactions:

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

9           (2)(a) Any nonissuer transaction by a registered agent of a  
10 registered broker-dealer, and any resale transaction by a sponsor of a  
11 unit investment trust registered under the Investment Company Act of  
12 1940, in a security of a class that has been outstanding in the hands of  
13 the public for at least ninety days if, at the time of the transaction:

14           (i) The issuer of the security is actually engaged in business and  
15 not in the organization stage or in bankruptcy or receivership and is not  
16 a blank check, blind pool, or shell company whose primary plan of  
17 business is to engage in a merger or combination of the business with, or  
18 an acquisition of, an unidentified person or persons;

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

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

24           (iv) A nationally recognized securities manual designated by rule  
25 and regulation or order of the director or a document filed with the  
26 Securities and Exchange Commission which is publicly available through  
27 the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR)

1 contains:

2 (A) A description of the business and operations of the issuer;

3 (B) The names of the issuer's officers and the names of the issuer's  
4 directors, if any, or, in the case of a non-United-States issuer, the  
5 corporate equivalents of such persons in the issuer's country of  
6 domicile;

7 (C) An audited balance sheet of the issuer as of a date within  
8 eighteen months or, in the case of a reorganization or merger when  
9 parties to the reorganization or merger had such audited balance sheet, a  
10 pro forma balance sheet; and

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

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

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

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

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

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

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

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

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

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

21 (5) Any transaction in a bond or other evidence of indebtedness  
22 secured by a real or chattel mortgage or deed of trust or by an agreement  
23 for the sale of real estate or chattels if the entire mortgage, deed of  
24 trust, or agreement, together with all the bonds or other evidences of  
25 indebtedness secured thereby, are offered and sold as a unit. Such  
26 exemption shall not apply to any transaction in a bond or other evidence  
27 of indebtedness secured by a real estate mortgage or deed of trust or by  
28 an agreement for the sale of real estate if the real estate securing the  
29 evidences of indebtedness are parcels of real estate the sale of which  
30 requires the subdivision in which the parcels are located to be  
31 registered under the Interstate Land Sales Full Disclosure Act, 15 U.S.C.

1 1701 et seq., as the act existed on January 1, 2015 ~~2013~~;

2 (6) Any transaction by an executor, personal representative,  
3 administrator, sheriff, marshal, receiver, guardian, or conservator;

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

6 (8) Any offer or sale to a bank, savings institution, trust company,  
7 insurance company, investment company as defined in the Investment  
8 Company Act of 1940, pension or profit-sharing trust, or other financial  
9 institution or institutional buyer, to an individual accredited investor,  
10 or to a broker-dealer, whether the purchaser is acting for itself or in  
11 some fiduciary capacity. For purposes of this subdivision, the term  
12 "individual accredited investor" means (a) any director, executive  
13 officer, or general partner of the issuer of the securities being offered  
14 or sold, or any director, executive officer, or general partner of a  
15 general partner of that issuer, (b) any manager of a limited liability  
16 company that is the issuer of the securities being offered or sold, (c)  
17 any natural person whose individual net worth, or joint net worth with  
18 that person's spouse, at the time of his or her purchase, exceeds one  
19 million dollars, excluding the value of the primary residence of such  
20 person, or (d) any natural person who had an individual income in excess  
21 of two hundred thousand dollars in each of the two most recent years or  
22 joint income with that person's spouse in excess of three hundred  
23 thousand dollars in each of those years and has a reasonable expectation  
24 of reaching the same income level in the current year;

25 (9)(a) Any transaction pursuant to an offering in which sales are  
26 made to not more than fifteen persons, other than those designated in  
27 subdivisions (8), (11), and (17) of this section, in this state during  
28 any period of twelve consecutive months if (i) the seller reasonably  
29 believes that all the buyers are purchasing for investment, (ii) no  
30 commission or other remuneration is paid or given directly or indirectly  
31 for soliciting any prospective buyer except to a registered agent of a

1 registered broker-dealer, (iii) a notice generally describing the terms  
2 of the transaction and containing a representation that the conditions of  
3 this exemption are met is filed by the seller with the director within  
4 thirty days after the first sale for which this exemption is claimed,  
5 except that failure to give such notice may be cured by an order issued  
6 by the director in his or her discretion, and (iv) no general or public  
7 advertisements or solicitations are made.

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

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

26 (11) Any transaction pursuant to an offer to existing security  
27 holders of the issuer, including persons who at the time of the  
28 transaction are holders of convertible securities, nontransferable  
29 warrants, or transferable warrants exercisable within not more than  
30 ninety days of their issuance, if (a) no commission or other  
31 remuneration, other than a standby commission, is paid or given directly

1 or indirectly for soliciting any security holder in this state or (b) the  
2 issuer first files a notice specifying the terms of the offer and the  
3 director does not by order disallow the exemption within the next five  
4 full business days;

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

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

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

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

27 (16) Any transaction in this state not involving a public offering  
28 when (a) there is no general or public advertising or solicitation, (b)  
29 no commission or remuneration is paid directly or indirectly for  
30 soliciting any prospective buyer, except to a registered agent of a  
31 registered broker-dealer or registered issuer-dealer, (c) a notice

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

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

24 (18) Any interest in a common trust fund or similar fund maintained  
25 by a bank or trust company organized and supervised under the laws of any  
26 state or a bank organized under the laws of the United States for the  
27 collective investment and reinvestment of funds contributed to such  
28 common trust fund or similar fund by the bank or trust company in its  
29 capacity as trustee, personal representative, administrator, or guardian  
30 and any interest in a collective investment fund or similar fund  
31 maintained by the bank or trust company for the collective investment of

1 funds contributed to such collective investment fund or similar fund by  
2 the bank or trust company in its capacity as trustee or agent which  
3 interest is issued in connection with an employee's savings, pension,  
4 profit-sharing, or similar benefit plan or a self-employed person's  
5 retirement plan, if a notice generally describing the terms of the  
6 collective investment fund or similar fund is filed by the bank or trust  
7 company with the director within thirty days after the establishment of  
8 the fund. Failure to give the notice may be cured by an order issued by  
9 the director in his or her discretion;

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

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

31 (21) Any transaction by a person who is an organization described in

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

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

20 (a) Sales of such securities are made only to the following  
21 purchasers:

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

30 (ii) A corporation, partnership, or other organization specifically  
31 formed for the purpose of acquiring securities offered by the issuer in

1 reliance upon this exemption if each equity owner of the corporation,  
2 partnership, or other organization is a person described in subdivision  
3 (22)(a)(i) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (K) Any other information as may be prescribed by rule and  
27 regulation of the director; and

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

30 (A) The name, address, and telephone number of the issuing insurance  
31 company and the name, address, and telephone number of the state or

1 foreign country regulator of the insurance company;

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

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

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

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

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

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

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

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

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

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

24 (e) The purchaser may rescind or cancel the purchase for any reason  
25 by giving written notice of rescission or cancellation to the issuer or  
26 the issuer's agent within (i) fifteen calendar days after the date the  
27 purchaser remits the required consideration or receives the disclosure  
28 required under subdivision (d)(i) of this subdivision and (ii) five  
29 business days after the date the purchaser receives the disclosure  
30 required by subdivision (d)(ii) of this subdivision. No specific form is  
31 required for the rescission or cancellation. The notice is effective when

1 personally delivered, deposited in the United States mail, or deposited  
2 with a commercial courier or delivery service. The issuer shall refund  
3 all the purchaser's money within seven calendar days after receiving the  
4 notice of rescission or cancellation;

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

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

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

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

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

29 (h) At least ten days before use within this state, the issuer files  
30 with the department all advertising and sales materials that will be  
31 published, exhibited, broadcast, or otherwise used, directly or

1 indirectly, in the offer or sale of a viatical settlement contract in  
2 this state;~~or~~

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

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

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

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

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

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

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

29 (iv) Temporarily or preliminarily restrained or enjoined by a court  
30 of competent jurisdiction from engaging in or continuing any conduct or  
31 practice in connection with the purchase or sale of any security or

1 involving the making of any false filing with any state or with the  
2 Securities and Exchange Commission;

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

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

7 (B) The name and address of each person holding direct or indirect  
8 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 which  
11 purchasers will be solicited, and a statement made upon oath or  
12 affirmation that the conditions of this exemption have been or will be  
13 met.

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

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

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

25 (i) Has received the written disclosure statement;

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

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

29 (g) The issuer, within thirty days after the completion of the  
30 offering, files with the Department of Banking and Finance a statement  
31 indicating the number of investors, the total dollar amount raised, and

1 the use of the offering proceeds; or -

2 (24)(a) An offer or a sale of a security made after the effective  
3 date of this act by an issuer if the offer or sale is conducted in  
4 accordance with all the following requirements:

5 (i) The issuer of the security is a business entity organized under  
6 the laws of Nebraska and authorized to do business in Nebraska;

7 (ii) The transaction meets the requirements of the federal exemption  
8 for intrastate offerings in section 3(a)(11) of the Securities Act of  
9 1933, 15 U.S.C. 77c(a)(11), and Rule 147 adopted under the Securities Act  
10 of 1933, 17 C.F.R. 230.147;

11 (iii) Except as provided in subdivision (c) of this subdivision, the  
12 sum of all cash and other consideration to be received for all sales of  
13 the security in reliance on the exemption under this subdivision,  
14 excluding sales to any accredited investor, does not exceed the following  
15 amount:

16 (A) If the issuer has not undergone, and made available to each  
17 prospective investor and the director the documentation resulting from, a  
18 financial audit of its most recently completed fiscal year that complies  
19 with generally accepted accounting principles, one million dollars, less  
20 the aggregate amount received for all sales of securities by the issuer  
21 within the twelve months before the first offer or sale made in reliance  
22 on the exemption under this subdivision; or

23 (B) If the issuer has undergone, and made available to each  
24 prospective investor and the director the documentation resulting from, a  
25 financial audit of its most recently completed fiscal year that complies  
26 with generally accepted accounting principles, two million dollars, less  
27 the aggregate amount received for all sales of securities by the issuer  
28 within the twelve months before the first offer or sale made in reliance  
29 on the exemption under this subdivision;

30 (iv) The issuer does not accept more than five thousand dollars from  
31 any single purchaser except that such limitation shall not apply to an

1 accredited investor;

2 (v) Unless waived by written consent by the director, not less than  
3 ten days before the commencement of an offering of securities in reliance  
4 on the exemption under this subdivision, the issuer must do all the  
5 following:

6 (A) Make a notice filing with the Department of Banking and Finance  
7 on a form prescribed by the director;

8 (B) Pay a filing fee of two hundred dollars. However, no filing fee  
9 is required to file amendments to the form;

10 (C) Provide the director a copy of the disclosure document to be  
11 provided to prospective investors under subdivision (a)(xi) of this  
12 subdivision;

13 (D) Provide the director a copy of an escrow agreement with a bank,  
14 regulated trust company, savings bank, savings and loan association, or  
15 credit union authorized to do business in Nebraska in which the issuer  
16 will deposit the investor funds or cause the investor funds to be  
17 deposited. The bank, regulated trust company, savings bank, savings and  
18 loan association, or credit union in which the investor funds are  
19 deposited is only responsible to act at the direction of the party  
20 establishing the escrow agreement and does not have any duty or  
21 liability, contractual or otherwise, to any investor or other person;

22 (E) The issuer shall not access the escrow funds until the aggregate  
23 funds raised from all investors equals or exceeds the minimum amount  
24 specified in the escrow agreement; and

25 (F) An investor may cancel the investor's commitment to invest if  
26 the target offering amount is not raised before the time stated in the  
27 escrow agreement;

28 (vi) The issuer is not, either before or as a result of the  
29 offering, an investment company, as defined in section 3 of the  
30 Investment Company Act of 1940, 15 U.S.C. 80a-3, an entity that would be  
31 an investment company but for the exclusions provided in section 3(c) of

1 the Investment Company Act of 1940, 15 U.S.C. 80a-3(c), or subject to the  
2 reporting requirements of section 13 or 15(d) of the Securities Exchange  
3 Act of 1934, 15 U.S.C. 78m or 15 U.S.C. 78o(d);

4 (vii) The issuer informs all prospective purchasers of securities  
5 offered under an exemption under this subdivision that the securities  
6 have not been registered under federal or state securities law and that  
7 the securities are subject to limitations on resale. The issuer shall  
8 display the following legend conspicuously on the cover page of the  
9 disclosure document:

10 IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN  
11 EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE  
12 MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY  
13 ANY FEDERAL OR STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR  
14 OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE  
15 NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT.  
16 ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE  
17 SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND  
18 MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION(e) OF  
19 SEC RULE 147 (17 C.F.R. 230.147(e)) AS PROMULGATED UNDER THE SECURITIES  
20 ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS,  
21 PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE  
22 AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS  
23 INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.;

24 (viii) The issuer requires each purchaser to certify in writing or  
25 electronically as follows:

26 I understand and acknowledge that I am investing in a high-risk,  
27 speculative business venture. I may lose all of my investment, or under  
28 some circumstances more than my investment, and I can afford this loss.  
29 This offering has not been reviewed or approved by any state or federal  
30 securities commission, department, or division or other regulatory  
31 authority and no such person or authority has confirmed the accuracy or

1 determined the adequacy of any disclosure made to me relating to this  
2 offering. The securities I am acquiring in this offering are illiquid,  
3 there is no ready market for the sale of such securities, it may be  
4 difficult or impossible for me to sell or otherwise dispose of this  
5 investment, and, accordingly, I may be required to hold this investment  
6 indefinitely. I may be subject to tax on my share of the taxable income  
7 and losses of the company, whether or not I have sold or otherwise  
8 disposed of my investment or received any dividends or other  
9 distributions from the company.;

10 (ix) The issuer obtains from each purchaser of a security offered  
11 under an exemption under this subdivision evidence that the purchaser is  
12 a resident of Nebraska and, if applicable, is an individual accredited  
13 investor;

14 (x) All payments for purchase of securities offered under an  
15 exemption under this subdivision are directed to and held by the  
16 financial institution specified in subdivision (a)(v)(D) of this  
17 subdivision. The director may request from the financial institutions  
18 information necessary to ensure compliance with this section. This  
19 information is not a public record and is not available for public  
20 inspection;

21 (xi) The issuer of securities offered under an exemption under this  
22 subdivision provides a disclosure document to each prospective investor  
23 at the time the offer of securities is made to the prospective investor  
24 that contains all the following:

25 (A) A description of the company, its type of entity, the address  
26 and telephone number of its principal office, its history, its business  
27 plan, and the intended use of the offering proceeds, including any  
28 amounts to be paid, as compensation or otherwise, to any owner, executive  
29 officer, director, managing member, or other person occupying a similar  
30 status or performing similar functions on behalf of the issuer;

31 (B) The identity of all persons owning more than twenty percent of

1 the ownership interests of any class of securities of the company;

2 (C) The identity of the executive officers, directors, managing  
3 members, and other persons occupying a similar status or performing  
4 similar functions in the name of and on behalf of the issuer, including  
5 their titles and their prior experience;

6 (D) The terms and conditions of the securities being offered and of  
7 any outstanding securities of the company; the minimum and maximum amount  
8 of securities being offered, if any; either the percentage ownership of  
9 the company represented by the offered securities or the valuation of the  
10 company implied by the price of the offered securities; the price per  
11 share, unit, or interest of the securities being offered; any  
12 restrictions on transfer of the securities being offered; and a  
13 disclosure of any anticipated future issuance of securities that might  
14 dilute the value of securities being offered;

15 (E) The identity of any person who has been or will be retained by  
16 the issuer to assist the issuer in conducting the offering and sale of  
17 the securities, including any portal operator but excluding persons  
18 acting solely as accountants or attorneys and employees whose primary job  
19 responsibilities involve the operating business of the issuer rather than  
20 assisting the issuer in raising capital;

21 (F) For each person identified as required in subdivision (a)(xi)(E)  
22 of this subdivision, a description of the consideration being paid to the  
23 person for such assistance;

24 (G) A description of any litigation, legal proceedings, or pending  
25 regulatory action involving the company or its management;

26 (H) The names and addresses of each portal operator that will be  
27 offering or selling the issuer's securities under an exemption under this  
28 subdivision;

29 (I) The Uniform Resource Locator for each funding portal that will  
30 be used by the portal operator to offer or sell the issuer's securities  
31 under an exemption under this subdivision; and

1       (J) Any additional information material to the offering, including,  
2 if appropriate, a discussion of significant factors that make the  
3 offering speculative or risky. This discussion must be concise and  
4 organized logically and may not be limited to risks that could apply to  
5 any issuer or any offering;

6       (xii) The offering or sale exempted under this subdivision is made  
7 exclusively through one or more funding portals and each funding portal  
8 is subject to the following:

9       (A) Before any offer or sale of securities, the issuer must provide  
10 to the portal operator evidence that the issuer is organized under the  
11 laws of Nebraska and is authorized to do business in Nebraska;

12       (B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision,  
13 the portal operator must register with the Department of Banking and  
14 Finance by filing a statement, accompanied by a two hundred dollar filing  
15 fee, that includes the following information:

16       (I) Documentation which demonstrates that the portal operator is a  
17 business entity and authorized to do business in Nebraska;

18       (II) A representation that the funding portal is being used to offer  
19 and sell securities pursuant to the exemption under this subdivision; and

20       (III) The identity and location of, and contact information for, the  
21 portal operator;

22       (C) The portal operator is not required to register as a broker-  
23 dealer if all of the following apply with respect to the funding portal  
24 and its portal operator;

25       (I) It does not offer investment advice or recommendations;

26       (II) It does not solicit purchases, sales, or offers to buy the  
27 securities offered or displayed on the funding portal;

28       (III) It does not compensate employees, agents, or other persons for  
29 the solicitation or based on the sale of securities displayed or  
30 referenced on the funding portal;

31       (IV) It is not compensated based on the amount of securities sold,

1 and it does not hold, manage, possess, or otherwise handle investor funds  
2 or securities;

3 (V) The fee it charges an issuer for an offering of securities on  
4 the funding portal is a fixed amount for each offering, a variable amount  
5 based on the length of time that the securities are offered on the  
6 funding portal, or a combination of the fixed and variable amounts;

7 (VI) It does not identify, promote, or otherwise refer to any  
8 individual security offered on the funding portal in any advertising for  
9 the funding portal;

10 (VII) It does not engage in any other activities that the Department  
11 of Banking and Finance, by rule, regulation, or order, determines are  
12 prohibited of the funding portal; and

13 (VIII) Neither the portal operator, nor any director, executive  
14 officer, general partner, managing member, or other person with  
15 management authority over the portal operator, has been subject to any  
16 conviction, order, judgment, decree, or other action specified in Rule  
17 506(d)(1) adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d)  
18 (1), that would disqualify an issuer under Rule 506(d) adopted under the  
19 Securities Act of 1933, 17 C.F.R. 230.506(d), from claiming an exemption  
20 specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act  
21 of 1933, 17 C.F.R. 230.506(a) to 17 C.F.R. 230.506(c). However, this  
22 subdivision does not apply if both of the following are met:

23 (1) On a showing of good cause and without prejudice to any other  
24 action by the director, the director determines that it is not necessary  
25 under the circumstances that an exemption is denied; and

26 (2) The portal operator establishes that it made a factual inquiry  
27 into whether any disqualification existed under this subdivision but did  
28 not know, and in the exercise of reasonable care, could not have known,  
29 that a disqualification existed under this subdivision. The nature and  
30 scope of the requisite inquiry will vary based on the circumstances of  
31 the issuer and the other offering participants;

1       (D) If any change occurs that affects the funding portal's  
2 registration exemption, the portal operator must notify the Department of  
3 Banking and Finance within thirty days after the change occurs;

4       (E) A registered broker-dealer who also serves as a portal operator  
5 must register with the Department of Banking and Finance as a portal  
6 operator pursuant to subdivision (a)(xii)(B) of this subdivision, except  
7 that the fee for registration shall be waived;

8       (F) The issuer and the portal operator must maintain records of all  
9 offers and sales of securities effected through the funding portal and  
10 must provide ready access to the records to the Department of Banking and  
11 Finance, upon request. The records of a portal operator under this  
12 subdivision are subject to the reasonable periodic, special, or other  
13 audits or inspections by a representative of the director, in or outside  
14 Nebraska, as the director considers necessary or appropriate in the  
15 public interest and for the protection of investors. An audit or  
16 inspection may be made at any time and without prior notice. The director  
17 may copy, and remove for audit or inspection copies of, all records the  
18 director reasonably considers necessary or appropriate to conduct the  
19 audit or inspection. The director may assess a reasonable charge for  
20 conducting an audit or inspection under this subdivision;

21       (G) The portal operator shall limit web site access to the offer or  
22 sale of securities to only Nebraska residents;

23       (H) The portal operator shall not hold, manage, possess, or handle  
24 investor funds or securities; and

25       (I) The portal operator may not be an investor in any Nebraska  
26 offering under this subdivision.

27       (b) An issuer of a security, the offer and sale of which is exempt  
28 under this subdivision, shall provide, free of charge, a quarterly report  
29 to the issuer's investors until no securities issued under an exemption  
30 under this subdivision are outstanding. An issuer may satisfy the  
31 reporting requirement of this subdivision by making the information

1 available on a funding portal if the information is made available within  
2 forty-five days after the end of each fiscal quarter and remains  
3 available until the succeeding quarterly report is issued. An issuer  
4 shall file each quarterly report under this subdivision with the  
5 Department of Banking and Finance and, if the quarterly report is made  
6 available on a funding portal, the issuer shall also provide a written  
7 copy of the report to any investor upon request. The report must contain  
8 all the following:

9 (i) Compensation received by each director and executive officer,  
10 including cash compensation earned since the previous report and on an  
11 annual basis and any bonuses, stock options, other rights to receive  
12 securities of the issuer or any affiliate of the issuer, or other  
13 compensation received; and

14 (ii) An analysis by management of the issuer of the business  
15 operations and financial condition of the issuer.

16 (c) An offer or a sale under this subdivision to an officer,  
17 director, partner, trustee, or individual occupying similar status or  
18 performing similar functions with respect to the issuer or to a person  
19 owning ten percent or more of the outstanding shares of any class or  
20 classes of securities of the issuer does not count toward the monetary  
21 limitations in subdivision (a)(iii) of this subdivision.

22 (d) The exemption under this subdivision may not be used in  
23 conjunction with any other exemption under the Securities Act of  
24 Nebraska, except for offers and sales to individuals identified in the  
25 disclosure document, during the immediately preceding twelve-month  
26 period.

27 (e) The exemption under this subdivision does not apply if an issuer  
28 or any director, executive officer, general partner, managing member, or  
29 other person with management authority over the issuer, has been subject  
30 to any conviction, order, judgment, decree, or other action specified in  
31 Rule 506(d)(1) adopted under the Securities Act of 1933, 17 C.F.R.

1 230.506(d)(1), that would disqualify an issuer under Rule 506(d) adopted  
2 under the Securities Act of 1933, 17 C.F.R. 230.506(d), from claiming an  
3 exemption specified in Rule 506(a) to Rule 506(c) adopted under the  
4 Securities Act of 1933, 17 C.F.R. 230.506(a) to 17 C.F.R. 230.506(c).  
5 However, this subdivision does not apply if both of the following are  
6 met:

7 (i) On a showing of good cause and without prejudice to any other  
8 action by the director, the director determines that it is not necessary  
9 under the circumstances that an exemption is denied; and

10 (ii) The issuer establishes that it made a factual inquiry into  
11 whether any disqualification existed under this subdivision but did not  
12 know, and in the exercise of reasonable care, could not have known, that  
13 a disqualification existed under this subdivision. The nature and scope  
14 of the requisite inquiry will vary based on the circumstances of the  
15 issuer and the other offering participants.

16 (f) For purposes of this subdivision:

17 (i) Accredited investor means a bank, a savings institution, a trust  
18 company, an insurance company, an investment company as defined in the  
19 Investment Company Act of 1940, a pension or profit-sharing trust or  
20 other financial institution or institutional buyer, an individual  
21 accredited investor, or a broker-dealer, whether the purchaser is acting  
22 for itself or in some fiduciary capacity;

23 (ii) Funding portal means an Internet web site that is operated by a  
24 portal operator for the offer and sale of securities pursuant to this  
25 subdivision;

26 (iii) Individual accredited investor means (A) any director,  
27 executive officer, or general partner of the issuer of the securities  
28 being offered or sold, or any director, executive officer, or general  
29 partner of a general partner of that issuer, (B) any manager of a limited  
30 liability company that is the issuer of the securities being offered or  
31 sold, (C) any natural person whose individual net worth, or joint net

1 worth with that person's spouse, at the time of his or her purchase,  
2 exceeds one million dollars, excluding the value of the primary residence  
3 of such 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; and

8 (iv) Portal operator means an entity authorized to do business in  
9 this state which operates a funding portal and has registered with the  
10 Department of Banking and Finance as required by this subdivision.

11 The director may by order deny or revoke the exemption specified in  
12 subdivision (2) of this section with respect to a specific security. Upon  
13 the entry of such an order, the director shall promptly notify all  
14 registered broker-dealers that it has been entered and of the reasons  
15 therefor and that within fifteen business days of the receipt of a  
16 written request the matter will be set down for hearing. If no hearing is  
17 requested within fifteen business days of the issuance of the order and  
18 none is ordered by the director, the order shall automatically become a  
19 final order and shall remain in effect until it is modified or vacated by  
20 the director. If a hearing is requested or ordered, the director, after  
21 notice of and opportunity for hearing to all interested persons, shall  
22 enter his or her written findings of fact and conclusions of law and may  
23 affirm, modify, or vacate the order. No such order may operate  
24 retroactively. No person may be considered to have violated the  
25 provisions of the Securities Act of Nebraska by reason of any offer or  
26 sale effected after the entry of any such order if he or she sustains the  
27 burden of proof that he or she did not know and in the exercise of  
28 reasonable care could not have known of the order. In any proceeding  
29 under the act, the burden of proving an exemption from a definition shall  
30 be upon the person claiming it.

31 Sec. 2. Original section 8-1111, Revised Statutes Cumulative

1 Supplement, 2014, is repealed.