

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 909

FINAL READING

Introduced by Williams, 36; Blood, 3.

Read first time January 10, 2020

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to banking and finance; to amend sections
2 8-224.01, 30-3205, 45-191.02, 45-191.09, 45-601, 45-602, 45-605,
3 45-606, 45-609, 45-610, 45-611, 45-620, 45-623, 45-905, 45-906,
4 45-912, 45-915, 45-1017, 45-1033, and 59-1725.01, Reissue Revised
5 Statutes of Nebraska, sections 8-103, 8-141, 8-167, 45-901, 45-902,
6 45-910, 45-911, 52-1308, and 59-1722, Revised Statutes Cumulative
7 Supplement, 2018, sections 8-135, 8-143.01, 8-157.01, 8-183.04,
8 8-1,140, 8-318, 8-355, 8-1101, 8-1101.01, 8-1103, 8-1111, 8-1704,
9 8-1707, 21-17,115, 69-2103, 69-2104, 69-2112, 77-2398, and
10 77-23,100, Revised Statutes Supplement, 2019, section 9-513A,
11 Uniform Commercial Code, Revised Statutes Cumulative Supplement,
12 2018, and section 4A-108, Uniform Commercial Code, Revised Statutes
13 Supplement, 2019; to change financial institution loan provisions
14 relating to Department of Banking and Finance employees; to redefine
15 a term and update a federal reference relating to loan limits; to
16 update and change references to certain federal provisions under the
17 Nebraska Banking Act, building and loan association provisions, the
18 Securities Act of Nebraska, the Commodity Code, the Seller-Assisted
19 Marketing Plan Act, and the Consumer Rental Purchase Agreement Act;
20 to eliminate a bank reporting notice requirement and exemption; to
21 redefine terms under the Securities Act of Nebraska; to revise
22 powers of state-chartered banks, building and loan associations, and

1 credit unions; to authorize financial institutions to place a hold
2 on certain customer transactions in cases of financial exploitation;
3 to provide exceptions from certain prohibited investments and
4 authorize investments in certain securities, shares, and interests
5 by trust companies; to change obsolete civil penalty provisions; to
6 change the fund for remittance of loan broker filing fees; to
7 authorize licensees under the Collection Agency Act to be licensed
8 and registered through the Nationwide Mortgage Licensing System and
9 Registry, define and redefine terms, and change certain fee and
10 license renewal provisions; to update a definition, define a term,
11 add a processing fee, and change licensing provisions under the
12 Delayed Deposit Services Licensing Act; to change provisions
13 relating to examinations under the Nebraska Installment Loan Act; to
14 change provisions relating to farm product liens and actions
15 relating to termination statements; to change provisions relating to
16 secured deposits and pooled collateral and change reporting
17 requirements under the Public Funds Deposit Security Act; to
18 harmonize provisions; to provide operative dates; to repeal the
19 original sections; to outright repeal section 8-167.01, Revised
20 Statutes Supplement, 2019; and to declare an emergency.

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

1 Section 1. Section 8-103, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 8-103 (1)(a) The director shall have charge of and full supervision
4 over the examination of banks and the enforcement of compliance with the
5 statutes by banks and their holding companies in their business and
6 functions and shall constructively aid and assist banks in maintaining
7 proper banking standards and efficiency.

8 (b) The director shall also have charge of and full supervision over
9 the examination of and the enforcement of compliance with the statutes by
10 trust companies, building and loan associations, savings and loan
11 associations, and credit unions in their business and functions and shall
12 constructively aid and assist trust companies, building and loan
13 associations, savings and loan associations, and credit unions in
14 maintaining proper standards and efficiency.

15 (2) If the director is financially interested directly or indirectly
16 in any financial institution chartered by the department, the financial
17 institution shall be under the direct supervision of the Governor, and as
18 to such financial institution, the Governor shall exercise all the
19 supervisory powers otherwise vested in the director by the laws of this
20 state, and reports of examination by state bank examiners, foreign state
21 bank examiners, examiners of the Federal Reserve Board, examiners of the
22 Office of the Comptroller of the Currency, examiners of the Federal
23 Deposit Insurance Corporation, and examiners of the Consumer Financial
24 Protection Bureau shall be transmitted to the Governor.

25 (3)(a) Neither the director nor any ~~no~~ person employed by the
26 department as a deputy director, a counsel, an attorney, or a financial
27 institution examiner shall borrow money from any financial institution
28 chartered by the department, except that ~~any~~ such person may borrow money
29 in the normal course of business from the Nebraska State Employees Credit
30 Union. If the credit union is acquired by, or merged into, a Nebraska
31 state-chartered credit union, persons employed by the department may

1 borrow money in the normal course of business from the successor credit
2 union.

3 (b) In the event a loan to a person employed by the department as a
4 deputy director, a counsel, an attorney, or a financial institution
5 examiner is sold or otherwise transferred to a financial institution
6 chartered by the department, no violation of this section occurs if (i)
7 such person did not solicit the sale or transfer of the loan and (ii)
8 such person gives notice to the director of such sale or transfer. The
9 director, in his or her discretion, may require such person to make all
10 reasonable efforts to seek another lender.

11 (4) Any person who intentionally violates this section or who aids,
12 abets, or assists in a violation of this section is guilty of a Class IV
13 felony.

14 Sec. 2. Section 8-135, Revised Statutes Supplement, 2019, is amended
15 to read:

16 8-135 (1) All persons, regardless of age, may become depositors in
17 any bank and shall be subject to the same duties and liabilities
18 respecting their deposits. Whenever a deposit is accepted by any bank in
19 the name of any person, regardless of age, the deposit may be withdrawn
20 by the depositor by any of the following methods:

21 (a) Check or other instrument in writing. The check or other
22 instrument in writing constitutes a receipt or acquittance if the check
23 or other instrument in writing is signed by the depositor and constitutes
24 a valid release and discharge to the bank for all payments so made; or

25 (b) Electronic means through:

26 (i) Preauthorized direct withdrawal;

27 (ii) An automatic teller machine;

28 (iii) A debit card;

29 (iv) A transfer by telephone;

30 (v) A network, including the Internet; or

31 (vi) Any electronic terminal, computer, magnetic tape, or other

1 electronic means.

2 (2) All persons, individually or with others and regardless of age,
3 may enter into an agreement with a bank for the lease of a safe deposit
4 box and shall be bound by the terms of the agreement.

5 (3) This section shall not be construed to affect the rights,
6 liabilities, or responsibilities of participants in an electronic fund
7 transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693
8 et seq., as such act existed on January 1, 2020 ~~2019~~, and shall not
9 affect the legal relationships between a minor and any person other than
10 the bank.

11 Sec. 3. Section 8-141, Revised Statutes Cumulative Supplement, 2018,
12 is amended to read:

13 8-141 (1) No bank shall directly or indirectly loan to any single
14 corporation, limited liability company, firm, or individual, including in
15 such loans all loans made to the several members or shareholders of such
16 corporation, limited liability company, or firm, for the use and benefit
17 of such corporation, limited liability company, firm, or individual, more
18 than twenty-five percent of the paid-up capital, surplus, and capital
19 notes and debentures or fifteen percent of the unimpaired capital and
20 unimpaired surplus of such bank, whichever is greater. Such limitations
21 shall be subject to the following exceptions:

22 (a) Obligations of any person, partnership, limited liability
23 company, association, or corporation in the form of notes or drafts
24 secured by shipping documents or instruments transferring or securing
25 title covering livestock or giving a lien on livestock, when the market
26 value of the livestock securing the obligation is not at any time less
27 than one hundred fifteen percent of the face amount of the notes covered
28 by such documents, shall be subject under this section to a limitation of
29 ten percent of such capital, surplus, and capital notes and debentures or
30 ten percent of such unimpaired capital and unimpaired surplus, whichever
31 is greater, in addition to such twenty-five percent of such capital and

1 surplus or such fifteen percent of such unimpaired capital and unimpaired
2 surplus;

3 (b) Obligations of any person, partnership, limited liability
4 company, association, or corporation secured by not less than a like
5 amount of bonds or notes of the United States issued since April 24,
6 1917, or certificates of indebtedness of the United States, treasury
7 bills of the United States, or obligations fully guaranteed both as to
8 principal and interest by the United States shall be subject under this
9 section to a limitation of ten percent of such capital, surplus, and
10 capital notes and debentures or ten percent of such unimpaired capital
11 and unimpaired surplus, whichever is greater, in addition to such twenty-
12 five percent of such capital and surplus or such fifteen percent of such
13 unimpaired capital and unimpaired surplus;

14 (c) Obligations of any person, partnership, limited liability
15 company, association, or corporation which are secured by negotiable
16 warehouse receipts in an amount not less than one hundred fifteen percent
17 of the face amount of the note or notes secured by such documents shall
18 be subject under this section to a limitation of ten percent of such
19 capital, surplus, and capital notes and debentures or ten percent of such
20 unimpaired capital and unimpaired surplus, whichever is greater, in
21 addition to such twenty-five percent of such capital and surplus or such
22 fifteen percent of such unimpaired capital and unimpaired surplus; or

23 (d) Obligations of any person, partnership, limited liability
24 company, association, or corporation which are secured by readily
25 marketable collateral having a market value, as determined by reliable
26 and continuously available price quotations, in an amount at least equal
27 to the face amount of the note or notes secured by such collateral, shall
28 be subject under this section to a limitation of ten percent of such
29 capital, surplus, and capital notes and debentures or ten percent of such
30 unimpaired capital and unimpaired surplus, whichever is greater, in
31 addition to such twenty-five percent of such capital and surplus or such

1 fifteen percent of such unimpaired capital and unimpaired surplus.

2 (2)(a) For purposes of this section, the discounting of bills of
3 exchange, drawn in good faith against actually existing values, and the
4 discounting of commercial paper actually owned by the persons negotiating
5 the bills of exchange or commercial paper shall not be considered as the
6 lending of money.

7 (b) Loans or obligations shall not be subject to any limitation
8 under this section, based upon such capital and surplus or such
9 unimpaired capital and unimpaired surplus, to the extent that such
10 capital and surplus or such unimpaired capital and unimpaired surplus are
11 secured or covered by guaranties, or by commitments or agreements to take
12 over or to purchase such capital and surplus or such unimpaired capital
13 and unimpaired surplus, made by any federal reserve bank or by the United
14 States Government or any authorized agency thereof, including any
15 corporation wholly owned directly or indirectly by the United States, or
16 general obligations of any state of the United States or any political
17 subdivision of the state. The phrase general obligation of any state or
18 any political subdivision of the state means an obligation supported by
19 the full faith and credit of an obligor possessing general powers of
20 taxation, including property taxation, but does not include municipal
21 revenue bonds and sanitary and improvement district warrants which are
22 subject to the limitations set forth in this section.

23 (c) Any bank may subscribe to, invest in, purchase, and own single-
24 family mortgages secured by the Federal Housing Administration or the
25 United States Department of Veterans Affairs and mortgage-backed
26 certificates of the Government National Mortgage Association which are
27 guaranteed as to payment of principal and interest by the Government
28 National Mortgage Association. Such mortgages and certificates shall not
29 be subject under this section to any limitation based upon such capital
30 and surplus or such unimpaired capital and unimpaired surplus.

31 (d) Obligations representing loans to any national banking

1 association or to any banking institution organized under the laws of any
2 state, when such loans are approved by the director by rule and
3 regulation or otherwise, shall not be subject under this section to any
4 limitation based upon such capital and surplus or such unimpaired capital
5 and unimpaired surplus.

6 (e) Loans or extensions of credit secured by a segregated deposit
7 account in the lending bank shall not be subject under this section to
8 any limitation based on such capital and surplus or such unimpaired
9 capital and unimpaired surplus. The director may adopt and promulgate
10 rules and regulations governing the terms and conditions of such security
11 interest and segregated deposit account.

12 (f) For the purpose of determining lending limits, partnerships
13 shall not be treated as separate entities. Each individual shall be
14 charged with his or her personal debt plus the debt of every partnership
15 in which he or she is a partner, except that for purposes of this section
16 (a) an individual shall only be charged with the debt of any limited
17 partnership in which he or she is a partner to the extent that the terms
18 of the limited partnership agreement provide that such individual is to
19 be held liable for the debts or actions of such limited partnership and
20 (b) no individual shall be charged with the debt of any general
21 partnership in which he or she is a partner beyond the extent to which
22 (i) his or her liability for such partnership debt is limited by the
23 terms of a contract or other written agreement between the bank and such
24 individual and (ii) any personal debt of such individual is incurred for
25 the use and benefit of such general partnership.

26 (3) A loan made within lending limits at the initial time the loan
27 was made may be renewed, extended, or serviced without regard to changes
28 in the lending limit of a bank following the initial extension of the
29 loan if (a) the renewal, extension, or servicing of the loan does not
30 result in the extension of funds beyond the initial amount of the loan or
31 (b) the accrued interest on the loan is not added to the original amount

1 of the loan in the process of renewal, extension, or servicing.

2 (4) Any bank may purchase or take an interest in life insurance
3 contracts for any purpose incidental to the business of banking. A bank's
4 purchase of any life insurance contract, as measured by its cash
5 surrender value, from any one life insurance company shall not at any
6 time exceed twenty-five percent of the paid-up capital, surplus, and
7 capital notes and debentures of such bank or fifteen percent of the
8 unimpaired capital and unimpaired surplus of such bank, whichever is
9 greater. A bank's purchase of life insurance contracts, as measured by
10 their cash surrender values, in the aggregate from all life insurance
11 companies shall not at any time exceed thirty-five percent of the paid-up
12 capital, surplus, undivided profits, and capital notes and debentures of
13 such bank. The limitations under this subsection on a bank's purchase of
14 life insurance contracts, in the aggregate from all life insurance
15 companies, shall not apply to any contract purchased prior to April 5,
16 1994.

17 (5) On and after January 21, 2013, the director has the authority to
18 determine the manner and extent to which credit exposure resulting from
19 derivative transactions, repurchase agreements, reverse repurchase
20 agreements, securities lending transactions, and securities borrowing
21 transactions shall be taken into account for purposes of determining
22 compliance with this section. In making such determinations, the director
23 may, but is not required to, act by rule and regulation or order.

24 (6) For purposes of this section:

25 (a) Derivative transaction means any transaction that is a contract,
26 agreement, swap, warrant, note, or option that is based, in whole or in
27 part, on the value of, any interest in, or any quantitative measure or
28 the occurrence of any event relating to, one or more commodities,
29 securities, currencies, interest or other rates, indices, or other
30 assets;

31 (b) Loan includes:

1 (i) All direct and indirect advances of funds to a person made on
2 the basis of any obligation of that person to repay the funds or
3 repayable from specific property pledged by or on behalf of that person;

4 (ii) To the extent specified by rule and regulation or order of the
5 director, any liability of a state bank to advance funds to or on behalf
6 of a person pursuant to a contractual commitment; and

7 (iii) Any credit exposure to a person arising from a derivative
8 transaction, repurchase agreement, reverse repurchase agreement,
9 securities lending transaction, or securities borrowing transaction
10 between the bank and the person; and

11 (c) Unimpaired capital and unimpaired surplus means:

12 (i) For qualifying banks that have elected to use the community bank
13 leverage ratio framework, as set forth under the Capital Adequacy
14 Standards of the appropriate federal banking agency:

15 (A) The bank's tier 1 capital as reported according to the capital
16 guidelines of the appropriate federal banking agency; and

17 (B) The bank's allowance for loan and lease losses or allowance for
18 credit losses, as applicable, as reported in the most recent consolidated
19 report of condition filed under 12 U.S.C. 1817(a)(3), as such section
20 existed on January 1, 2020; and

21 (ii) For all other banks:

22 (A) The ~~the~~ bank's tier 1 and tier 2 capital included in the bank's
23 risk-based capital under the capital guidelines of the appropriate
24 federal banking agency, based on the bank's most recent consolidated
25 report of condition filed under 12 U.S.C. 1817(a)(3), as such section
26 existed on January 1, 2020; and

27 (B) The ~~(ii)~~ the balance of the bank's allowance for loan and lease
28 losses not included in the bank's tier 2 capital for purposes of the
29 calculation of risk-based capital by the appropriate federal banking
30 agency, based on the bank's most recent consolidated report of condition
31 filed under 12 U.S.C. 1817(a)(3), as such section existed on January 1,

1 2020.

2 (7) Notwithstanding the provisions of section 8-1,140, the director
3 may, by order, deny or limit the inclusion of goodwill in the calculation
4 of a bank's unimpaired capital and unimpaired surplus or in the
5 calculation of a bank's paid-up capital and surplus.

6 Sec. 4. Section 8-143.01, Revised Statutes Supplement, 2019, is
7 amended to read:

8 8-143.01 (1) No bank shall extend credit to any of its executive
9 officers, directors, or principal shareholders or to any related interest
10 of such persons in an amount that, when aggregated with the amount of all
11 other extensions of credit by the bank to that person and to all related
12 interests of that person, exceeds the higher of twenty-five thousand
13 dollars or five percent of the bank's unimpaired capital and unimpaired
14 surplus unless (a) the extension of credit has been approved in advance
15 by a majority vote of the entire board of directors of the bank, a record
16 of which shall be made and kept as a part of the records of such bank,
17 and (b) the interested party has abstained from participating directly or
18 indirectly in such vote.

19 (2) No bank shall extend credit to any of its executive officers,
20 directors, or principal shareholders or to any related interest of such
21 persons in an amount that, when aggregated with the amount of all other
22 extensions of credit by the bank to that person and to all related
23 interests of that person, exceeds five hundred thousand dollars except by
24 complying with the requirements of subdivisions (1)(a) and (b) of this
25 section.

26 (3) No bank shall extend credit to any of its executive officers,
27 and no such executive officer shall borrow from or otherwise become
28 indebted to his or her bank, except in the amounts and for the purposes
29 set forth in subsection (4) of this section.

30 (4) A bank shall be authorized to extend credit to any of its
31 executive officers:

1 (a) In any amount to finance the education of such executive
2 officer's children;

3 (b)(i) In any amount to finance or refinance the purchase,
4 construction, maintenance, or improvement of a residence of such
5 executive officer if the extension of credit is secured by a first lien
6 on the residence and the residence is owned or is expected to be owned
7 after the extension of credit by the executive officer and (ii) in the
8 case of a refinancing, only the amount of the refinancing used to repay
9 the original extension of credit, together with the closing costs of the
10 refinancing, and any additional amount thereof used for any of the
11 purposes enumerated in this subdivision are included within this category
12 of credit;

13 (c) In any amount if the extension of credit is (i) secured by a
14 perfected security interest in bonds, notes, certificates of
15 indebtedness, or Treasury Bills of the United States or in other such
16 obligations fully guaranteed as to principal and interest by the United
17 States, (ii) secured by unconditional takeout commitments or guarantees
18 of any department, agency, bureau, board, commission, or establishment of
19 the United States or any corporation wholly owned directly or indirectly
20 by the United States, or (iii) secured by a perfected security interest
21 in a segregated deposit account in the lending bank; or

22 (d) For any other purpose not specified in subdivisions (a), (b),
23 and (c) of this subsection if the aggregate amount of such other
24 extensions of credit to such executive officer does not exceed, at any
25 one time, the greater of two and one-half percent of the bank's
26 unimpaired capital and unimpaired surplus or twenty-five thousand
27 dollars, but in no event greater than one hundred thousand dollars or the
28 amount of the bank's lending limit as prescribed in section 8-141,
29 whichever is less.

30 (5)(a) Except as provided in subdivision (b) or (c) of this
31 subsection, any executive officer shall make, on an annual basis, a

1 written report to the board of directors of the bank of which he or she
2 is an executive officer stating the date and amount of all loans or
3 indebtedness on which he or she is a borrower, cosigner, or guarantor,
4 the security therefor, and the purpose for which the proceeds have been
5 or are to be used.

6 (b) Except as provided in subdivision (c) of this subsection, in
7 lieu of the reports required by subdivision (a) of this subsection, the
8 board of directors of a bank may obtain a credit report from a recognized
9 credit agency, on an annual basis, for any or all of its executive
10 officers.

11 (c) Subdivisions (a) and (b) of this subsection do not apply to any
12 executive officer if such officer is excluded by a resolution of the
13 board of directors or by the bylaws of the bank from participating in the
14 major policymaking functions of the bank and does not actually
15 participate in the major policymaking functions of the bank.

16 (6) No bank shall extend credit to any of its executive officers,
17 directors, or principal shareholders or to any related interest of such
18 persons in an amount that, when aggregated with the amount of all other
19 extensions of credit by the bank to that person and to all related
20 interests of that person, exceeds the lending limit of the bank as
21 prescribed in section 8-141.

22 (7)(a) Except as provided in subdivision (b) of this subsection, no
23 bank shall extend credit to any of its executive officers, directors, or
24 principal shareholders or to any related interest of such persons unless
25 the extension of credit (i) is made on substantially the same terms,
26 including interest rates and collateral, as, and following credit-
27 underwriting procedures that are not less stringent than, those
28 prevailing at the time for comparable transactions by the bank with other
29 persons that are not covered by this section and who are not employed by
30 the bank and (ii) does not involve more than the normal risk of repayment
31 or present other unfavorable features.

1 (b) Nothing in subdivision (a) of this subsection shall prohibit any
2 extension of credit made by a bank pursuant to a benefit or compensation
3 program under the provisions of 12 C.F.R. 215.4(a)(2), as such regulation
4 existed on January 1, 2020 ~~2019~~.

5 (8) For purposes of this section:

6 (a) Executive officer means a person who participates or has
7 authority to participate, other than in the capacity of director, in the
8 major policymaking functions of the bank, whether or not the officer has
9 an official title, the title designates such officer as an assistant, or
10 such officer is serving without salary or other compensation. Executive
11 officer includes the chairperson of the board of directors, the
12 president, all vice presidents, the cashier, the corporate secretary, and
13 the treasurer, unless the executive officer is excluded by a resolution
14 of the board of directors or by the bylaws of the bank from
15 participating, other than in the capacity of director, in the major
16 policymaking functions of the bank, and the executive officer does not
17 actually participate in such functions. A manager or assistant manager of
18 a branch of a bank shall not be considered to be an executive officer
19 unless such individual participates or is authorized to participate in
20 the major policymaking functions of the bank; and

21 (b) Unimpaired capital and unimpaired surplus means the sum of:

22 (i) The total equity capital of the bank reported on its most recent
23 consolidated report of condition filed under section 8-166;

24 (ii) Any subordinated notes and debentures approved as an addition
25 to the bank's capital structure by the appropriate federal banking
26 agency; and

27 (iii) Any valuation reserves created by charges to the bank's income
28 reported on its most recent consolidated report of condition filed under
29 section 8-166.

30 (9) Any executive officer, director, or principal shareholder of a
31 bank or any other person who intentionally violates this section or who

1 aids, abets, or assists in a violation of this section is guilty of a
2 Class IV felony.

3 (10) The Director of Banking and Finance may adopt and promulgate
4 rules and regulations to carry out this section, including rules and
5 regulations defining or further defining terms used in this section,
6 consistent with the provisions of 12 U.S.C. 84 and implementing
7 Regulation 0 as such section and regulation existed on January 1, 2020
8 ~~2019~~.

9 Sec. 5. Section 8-157.01, Revised Statutes Supplement, 2019, is
10 amended to read:

11 8-157.01 (1) Any establishing financial institution may establish
12 and maintain any number of automatic teller machines at which all banking
13 transactions, defined as receiving deposits of every kind and nature and
14 crediting such to customer accounts, cashing checks and cash withdrawals,
15 transferring funds from checking accounts to savings accounts,
16 transferring funds from savings accounts to checking accounts,
17 transferring funds from either checking accounts and savings accounts to
18 accounts of other customers, transferring payments from customer accounts
19 into accounts maintained by other customers of the financial institution
20 or the financial institution, including preauthorized draft authority,
21 preauthorized loans, and credit transactions, receiving payments payable
22 at the financial institution or otherwise, account balance inquiry, and
23 any other transaction incidental to the business of the financial
24 institution or which will provide a benefit to the financial
25 institution's customers or the general public, may be conducted. Any
26 automatic teller machine owned by a nonfinancial institution third party
27 shall be sponsored by an establishing financial institution. Neither such
28 automatic teller machines nor the transactions conducted thereat shall be
29 construed as the establishment of a branch or as branch banking.

30 (2) Any financial institution may become a user financial
31 institution by agreeing to pay the establishing financial institution the

1 automatic teller machine usage fee. Such agreement shall be implied by
2 the use of such automatic teller machines.

3 (3)(a)(i) All automatic teller machines shall be made available on a
4 nondiscriminating basis for use by Nebraska customers of a user financial
5 institution and (ii) all Nebraska automatic teller machine transactions
6 initiated by Nebraska customers of a user financial institution shall be
7 made on a nondiscriminating basis.

8 (b) It shall not be deemed discrimination if (i) an automatic teller
9 machine does not offer the same transaction services as other automatic
10 teller machines, (ii) there are no automatic teller machine usage fees
11 charged between affiliate financial institutions for the use of automatic
12 teller machines, (iii) the automatic teller machine usage fees of an
13 establishing financial institution that authorizes and directly or
14 indirectly routes Nebraska automatic teller machine transactions to
15 multiple switches, all of which comply with the requirements of
16 subdivision (3)(d) of this section, differ solely based upon the fees
17 established by the switches, (iv) automatic teller machine usage fees
18 differ based upon whether the transaction initiated at an automatic
19 teller machine is subject to a surcharge or provided on a surcharge-free
20 basis, or (v) the automatic teller machines established or sponsored by
21 an establishing financial institution are made available for use by
22 Nebraska customers of any user financial institution which agrees to pay
23 the automatic teller machine usage fee and which conforms to the
24 operating rules and technical standards established by the switch to
25 which a Nebraska automatic teller machine transaction is directly or
26 indirectly routed.

27 (c) The director, upon notice and after a hearing, may terminate or
28 suspend the use of any automatic teller machine if he or she determines
29 that the automatic teller machine is not made available on a
30 nondiscriminating basis or that Nebraska automatic teller machine
31 transactions initiated at such automatic teller machine are not made on a

1 nondiscriminating basis.

2 (d) A switch (i) shall provide to all financial institutions that
3 have a main office or approved branch located in the State of Nebraska
4 and that conform to the operating rules and technical standards
5 established by the switch an equal opportunity to participate in the
6 switch for the use of and access thereto; (ii) shall be capable of
7 operating to accept and route Nebraska automatic teller machine
8 transactions, whether receiving data from an automatic teller machine, an
9 establishing financial institution, or a data processing center; and
10 (iii) shall be capable of being directly or indirectly connected to every
11 data processing center for any automatic teller machine.

12 (e) The director, upon notice and after a hearing, may terminate or
13 suspend the operation of any switch with respect to all Nebraska
14 automatic teller machine transactions if he or she determines that the
15 switch is not being operated in the manner required under subdivision (3)
16 (d) of this section.

17 (f) Subject to the requirement for a financial institution to comply
18 with this subsection, no user financial institution or establishing
19 financial institution shall be required to become a member of any
20 particular switch.

21 (4) Any consumer initiating an electronic funds transfer at an
22 automatic teller machine for which an automatic teller machine surcharge
23 will be imposed shall receive notice in accordance with the provisions of
24 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1,
25 2020 ~~2019~~. Such notice shall appear on the screen of the automatic teller
26 machine or appear on a paper notice issued from such machine after the
27 transaction is initiated and before the consumer is irrevocably committed
28 to completing the transaction.

29 (5) A point-of-sale terminal may be established at any point within
30 this state by a financial institution, a group of two or more financial
31 institutions, or a combination of a financial institution or financial

1 institutions and a third party or parties. Such parties may contract with
2 a seller of goods and services or any other third party for the operation
3 of point-of-sale terminals.

4 (6) A seller of goods and services or any other third party on whose
5 premises one or more point-of-sale terminals are established shall not
6 be, solely by virtue of such establishment, a financial institution and
7 shall not be subject to the laws governing, or other requirements imposed
8 on, financial institutions, except for the requirement that it faithfully
9 perform its obligations in connection with any transaction originated at
10 any point-of-sale terminal on its premises.

11 (7) Nothing in this section shall be construed to prohibit nonbank
12 employees from assisting in transactions originated at automatic teller
13 machines or point-of-sale terminals, and such assistance shall not be
14 deemed to be engaging in the business of banking.

15 (8)(a) Annually by September 1, any entity operating as a switch in
16 Nebraska shall file a notice with the department setting forth its name,
17 address, and contact information for an officer authorized to answer
18 inquiries related to its operations in Nebraska.

19 (b) Any entity intending to operate in Nebraska as a switch shall
20 file a notice with the department setting forth its name, address, and
21 contact information for an officer authorized to answer inquiries related
22 to its operations in Nebraska. Such notice shall be filed at least thirty
23 days prior to the date on which the switch commences operations, and
24 thereafter annually by September 1.

25 (9) Nothing in this section prohibits ordinary clearinghouse
26 transactions between financial institutions.

27 (10) Nothing in this section shall prevent any financial institution
28 which has a main chartered office or an approved branch located in the
29 State of Nebraska from participating in a national automatic teller
30 machine program to allow its customers to use automatic teller machines
31 located outside of the State of Nebraska which are established by out-of-

1 state financial institutions or foreign financial institutions or to
2 allow customers of out-of-state financial institutions or foreign
3 financial institutions to use its automatic teller machines. Such
4 participation and any automatic teller machine usage fees charged or
5 received pursuant to the national automatic teller machine program or
6 usage fees charged for the use of its automatic teller machines by
7 customers of out-of-state financial institutions or foreign financial
8 institutions shall not be considered for purposes of determining (a) if
9 an automatic teller machine has been made available or Nebraska automatic
10 teller machine transactions have been made on a nondiscriminating basis
11 for use by Nebraska customers of a user financial institution or (b) if a
12 switch complies with subdivision (3)(d) of this section.

13 (11) An agreement to operate or share an automatic teller machine
14 may not prohibit, limit, or restrict the right of the operator or owner
15 of the automatic teller machine to charge a customer conducting a
16 transaction using an account from a foreign financial institution an
17 access fee or surcharge not otherwise prohibited under state or federal
18 law.

19 (12) Switch fees shall not be subject to this section or be
20 regulated by the department.

21 (13) Nothing in this section shall prevent a group of two or more
22 credit unions, each of which has a main chartered office or an approved
23 branch located in the State of Nebraska, from participating in a credit
24 union service organization organized on or before January 1, 2015, for
25 the purpose of owning automatic teller machines, provided that all
26 participating credit unions have an ownership interest in the credit
27 union service organization and that the credit union service organization
28 has an ownership interest in each of the participating credit unions'
29 automatic teller machines. Such participation and any automatic teller
30 machine usage fees associated with Nebraska automatic teller machine
31 transactions initiated by customers of participating credit unions at

1 such automatic teller machines shall not be considered for purposes of
2 determining if such automatic teller machines have been made available on
3 a nondiscriminating basis or if Nebraska automatic teller machine
4 transactions initiated at such automatic teller machines have been made
5 on a nondiscriminating basis, provided that all Nebraska automatic teller
6 machine transactions initiated by customers of participating credit
7 unions result in the same automatic teller machine usage fees for
8 essentially the same service routed over the same switch.

9 (14) Nebraska automatic teller machine usage fees and any agreements
10 relating to Nebraska automatic teller machine usage fees shall comply
11 with subsection (3) of this section.

12 (15) For purposes of this section:

13 (a) Access means the ability to utilize an automatic teller machine
14 or a point-of-sale terminal to conduct permitted banking transactions or
15 purchase goods and services electronically;

16 (b) Account means a checking account, a savings account, a share
17 account, or any other customer asset account held by a financial
18 institution. Such an account may also include a line of credit which a
19 financial institution has agreed to extend to its customer;

20 (c) Affiliate financial institution means any financial institution
21 which is a subsidiary of the same bank holding company;

22 (d) Automatic teller machine usage fee means any per transaction fee
23 established by a switch or otherwise established on behalf of an
24 establishing financial institution and collected from the user financial
25 institution and paid to the establishing financial institution for the
26 use of the automatic teller machine. An automatic teller machine usage
27 fee shall not include switch fees;

28 (e) Electronic funds transfer means any transfer of funds, other
29 than a transaction originated by check, draft, or similar paper
30 instrument, that is initiated through a point-of-sale terminal, an
31 automatic teller machine, or a personal terminal for the purpose of

1 ordering, instructing, or authorizing a financial institution to debit or
2 credit an account;

3 (f) Essentially the same service means the same Nebraska automatic
4 teller machine transaction offered by an establishing financial
5 institution irrespective of the user financial institution, the Nebraska
6 customer of which initiates the Nebraska automatic teller machine
7 transaction. A Nebraska automatic teller machine transaction that is
8 subject to a surcharge is not essentially the same service as the same
9 banking transaction for which a surcharge is not imposed;

10 (g) Establishing financial institution means any financial
11 institution which has a main chartered office or approved branch located
12 in the State of Nebraska that establishes or sponsors an automatic teller
13 machine or any out-of-state financial institution that establishes or
14 sponsors an automatic teller machine;

15 (h) Financial institution means a bank, savings bank, building and
16 loan association, savings and loan association, or credit union, whether
17 chartered by the department, the United States, or a foreign state
18 agency; any other similar organization which is covered by federal
19 deposit insurance; or a subsidiary of any such entity;

20 (i) Foreign financial institution means a financial institution
21 located outside the United States;

22 (j) Nebraska automatic teller machine transaction means a banking
23 transaction as defined in subsection (1) of this section which is (i)
24 initiated at an automatic teller machine established in whole or in part
25 or sponsored by an establishing financial institution, (ii) for an
26 account of a Nebraska customer of a user financial institution, and (iii)
27 processed through a switch regardless of whether it is routed directly or
28 indirectly from an automatic teller machine;

29 (k) Personal terminal means a personal computer and telephone,
30 wherever located, operated by a customer of a financial institution for
31 the purpose of initiating a transaction affecting an account of the

1 customer;

2 (l) Sponsoring an automatic teller machine means the acceptance of
3 responsibility by an establishing financial institution for compliance
4 with all provisions of law governing automatic teller machines and
5 Nebraska automatic teller machine transactions in connection with an
6 automatic teller machine owned by a nonfinancial institution third party;

7 (m) Switch fee means a fee established by a switch and assessed to a
8 user financial institution or to an establishing financial institution
9 other than an automatic teller machine usage fee; and

10 (n) User financial institution means any financial institution which
11 has a main chartered office or approved branch located in the State of
12 Nebraska which avails itself of and provides its customers with automatic
13 teller machine services.

14 Sec. 6. Section 8-167, Revised Statutes Cumulative Supplement, 2018,
15 is amended to read:

16 8-167 Each report required by section 8-166 shall exhibit in detail
17 and under appropriate headings the resources and liabilities of the bank
18 at the close of business on any past day specified by the call for report
19 and shall be submitted to the department within thirty days, or as may be
20 required by the department, after the receipt of requisition for the
21 report. ~~A summary of such report in the form prescribed by the department
22 shall be published one time in a legal newspaper in the place where the
23 main office of such bank is located. If there is no legal newspaper in
24 the place where the main office of the bank is located, then such summary
25 shall be published in a legal newspaper published in the same county or,
26 if none is published in the county, in a legal newspaper of general
27 circulation in the county. Such publication shall be at the expense of
28 such bank. Proof of such publication shall be transmitted to the
29 department within thirty days, or as may be required by the director,
30 from the date fixed for such report.~~

31 Sec. 7. Section 8-183.04, Revised Statutes Supplement, 2019, is

1 amended to read:

2 8-183.04 (1) Notwithstanding any other provision of the Nebraska
3 Banking Act or any other Nebraska law, a state or federal savings
4 association which was formed and in operation as a mutual savings
5 association as of July 15, 1998, may elect to retain its mutual form of
6 corporate organization upon conversion to a state bank.

7 (2) All references to shareholders or stockholders for state banks
8 shall be deemed to be references to members for such a converted savings
9 association.

10 (3) The amount and type of capital required for such a converted
11 savings association shall be as required for federal mutual savings
12 associations in 12 C.F.R. 5.21, as such regulation existed on January 1,
13 2020 ~~2019~~, except that if at any time the department determines that the
14 capital of such a converted savings association is impaired, the director
15 may require the members to make up the capital impairment.

16 (4) The director may adopt and promulgate rules and regulations
17 governing such converted mutual savings associations. In adopting and
18 promulgating such rules and regulations, the director may consider the
19 provisions of sections 8-301 to 8-384 governing savings associations in
20 mutual form of corporate organization.

21 Sec. 8. Section 8-1,140, Revised Statutes Supplement, 2019, is
22 amended to read:

23 8-1,140 Notwithstanding any of the other provisions of the Nebraska
24 Banking Act or any other Nebraska statute, any bank incorporated under
25 the laws of this state and organized under the provisions of the act, or
26 under the laws of this state as they existed prior to May 9, 1933, shall
27 directly, or indirectly through a subsidiary or subsidiaries, have all
28 the rights, powers, privileges, benefits, and immunities which may be
29 exercised as of January 1, 2020 ~~2019~~, by a federally chartered bank doing
30 business in Nebraska, including the exercise of all powers and activities
31 that are permitted for a financial subsidiary of a federally chartered

1 bank. Such rights, powers, privileges, benefits, and immunities shall not
2 relieve such bank from payment of state taxes assessed under any
3 applicable laws of this state.

4 Sec. 9. Section 8-224.01, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 8-224.01 (1) No charge shall be allowed against an estate or trust
7 for legal services performed by an attorney who is a salaried employee of
8 the trust company or when a portion of the charge for legal service is
9 retained by the trust company. Any officer or employee of the trust
10 company causing or consenting to such division of fee for legal service
11 shall be guilty of a Class I misdemeanor. No investments of an estate or
12 trust shall be made in the capital stock or securities of the trust
13 company, in the stock or securities of its affiliated companies, or in
14 obligations, either direct or indirect, of any director, officer, or
15 employee of the trust company. The trust company shall not substitute any
16 of the assets of an estate or trust under its control for securities of
17 the trust company. A trust company may administer, in a fiduciary
18 capacity, an estate or trust which contains such capital stock,
19 securities, or obligations as part of its assets if such assets are
20 received in kind from the grantor of the estate or trust and retention of
21 such capital stock, securities, or obligations is properly authorized by
22 the terms of the governing document. Any officer or employee of the trust
23 company making such an investment or consenting to such an investment or
24 causing such substitution or consenting to such substitution shall be
25 guilty of a Class III felony.

26 (2) No loan of the assets of the trust company shall be made to any
27 officer or director of such corporation. No trust company shall cause or
28 allow funds of any account entrusted to the trust company to be loaned,
29 directly or indirectly, to any director, officer, or employee of the
30 trust company except when the director, officer, or employee has a
31 specific beneficial interest in the account and such loans are allowed in

1 governing account documents and are not prohibited by other state or
2 federal law. Any director, officer, or employee of the trust company
3 causing, consenting to, or receiving funds from a loan made in violation
4 of this section shall be guilty of a Class III felony.

5 (3) This section shall not apply to:

6 (a) Investments authorized in section 30-3205; or

7 (b) Investments for which the will or trust states that the stock of
8 the trust company or securities of a company or companies affiliated with
9 the trust company may be acquired for the estate or trust.

10 Sec. 10. Section 8-318, Revised Statutes Supplement, 2019, is
11 amended to read:

12 8-318 (1)(a) Shares of stock in any association, or in any federal
13 savings and loan association incorporated under the provisions of the
14 federal Home Owners' Loan Act, with its principal office and place of
15 business in this state, may be subscribed for, held, transferred,
16 surrendered, withdrawn, and forfeited and payments thereon received and
17 receipted for by any person, regardless of age, in the same manner and
18 with the same binding effect as though such person were of the age of
19 majority, except that a minor or his or her estate shall not be bound on
20 his or her subscription to stock except to the extent of payments
21 actually made thereon.

22 (b) Whenever a share account is accepted by any building and loan
23 association in the name of any person, regardless of age, the deposit may
24 be withdrawn by the shareholder by any of the following methods:

25 (i) Check or other instrument in writing. The check or other
26 instrument in writing constitutes a receipt or acquittance if the check
27 or other instrument in writing is signed by the shareholder and
28 constitutes a valid release in discharge to the building and loan
29 association for all payments so made; or

30 (ii) Electronic means through:

31 (A) Preauthorized direct withdrawal;

- 1 (B) An automatic teller machine;
- 2 (C) A debit card;
- 3 (D) A transfer by telephone;
- 4 (E) A network, including the Internet; or
- 5 (F) Any electronic terminal, computer, magnetic tape, or other
- 6 electronic means.

7 (c) This section shall not be construed to affect the rights,
8 liabilities, or responsibilities of participants in an electronic fund
9 transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693
10 et seq., as it existed on January 1, 2020 ~~2019~~, and shall not affect the
11 legal relationships between a minor and any person other than the
12 building and loan association.

13 (2) All trustees, guardians, personal representatives,
14 administrators, and conservators appointed by the courts of this state
15 may invest and reinvest in, acquire, make withdrawals in whole or in
16 part, hold, transfer, or make new or additional investments in or
17 transfers of shares of stock in any (a) building and loan association
18 organized under the laws of the State of Nebraska or (b) federal savings
19 and loan association incorporated under the provisions of the federal
20 Home Owners' Loan Act, having its principal office and place of business
21 in this state, without an order of approval from any court.

22 (3) Trustees created solely by the terms of a trust instrument may
23 invest in, acquire, hold, and transfer such shares, and make withdrawals,
24 in whole or in part, therefrom, without any order of court, unless
25 expressly limited, restricted, or prohibited therefrom by the terms of
26 such trust instrument.

27 (4) All building and loan associations referred to in this section
28 are qualified to act as trustee or custodian within the provisions of the
29 federal Self-Employed Individuals Tax Retirement Act of 1962, as amended,
30 or under the terms and provisions of section 408(a) of the Internal
31 Revenue Code, if the provisions of such retirement plan require the funds

1 of such trust or custodianship to be invested exclusively in shares or
2 accounts in the association or in other associations. If any such
3 retirement plan, within the judgment of the association, constitutes a
4 qualified plan under the federal Self-Employed Individuals Tax Retirement
5 Act of 1962, or under the terms and provisions of section 408(a) of the
6 Internal Revenue Code, and the regulations promulgated thereunder at the
7 time the trust was established and accepted by the association, is
8 subsequently determined not to be such a qualified plan or subsequently
9 ceases to be such a qualified plan, in whole or in part, the association
10 may continue to act as trustee of any deposits theretofore made under
11 such plan and to dispose of the same in accordance with the directions of
12 the member and beneficiaries thereof. No association, in respect to
13 savings made under this section, shall be required to segregate such
14 savings from other assets of the association. The association shall keep
15 appropriate records showing in proper detail all transactions engaged in
16 under the authority of this section.

17 Sec. 11. Section 8-355, Revised Statutes Supplement, 2019, is
18 amended to read:

19 8-355 Notwithstanding any of the provisions of Chapter 8, article 3,
20 or any other Nebraska statute, except as provided in section 8-345.02,
21 any association incorporated under the laws of the State of Nebraska and
22 organized under the provisions of such article shall have all the rights,
23 powers, privileges, benefits, and immunities which may be exercised as of
24 January 1, 2020 ~~2019~~, by a federal savings and loan association doing
25 business in Nebraska. Such rights, powers, privileges, benefits, and
26 immunities shall not relieve such association from payment of state taxes
27 assessed under any applicable laws of this state.

28 Sec. 12. Section 8-1101, Revised Statutes Supplement, 2019, is
29 amended to read:

30 8-1101 For purposes of the Securities Act of Nebraska, unless the
31 context otherwise requires:

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

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

1 during any period of twelve consecutive months he or she does not direct
2 more than five offers to sell or to buy into this state in any manner to
3 persons other than those specified in subdivision (2)(c) of this section,
4 or (e) a person who is a resident of Canada and who has no office or
5 other physical presence in Nebraska if the following conditions are
6 satisfied: (i) The person must be registered with, or be a member of, a
7 securities self-regulatory organization in Canada or a stock exchange in
8 Canada; (ii) the person must maintain, in good standing, its provisional
9 or territorial registration or membership in a securities self-regulatory
10 organization in Canada, or stock exchange in Canada; (iii) the person
11 effects, or attempts to effect, (A) a transaction with or for a Canadian
12 client who is temporarily present in this state and with whom the
13 Canadian broker-dealer had a bona fide customer relationship before the
14 client entered this state or (B) a transaction with or for a Canadian
15 client in a self-directed tax advantaged retirement plan in Canada of
16 which that client is the holder or contributor; and (iv) the person
17 complies with all provisions of the Securities Act of Nebraska relating
18 to the disclosure of material information in connection with the
19 transaction;

20 (3) Department means the Department of Banking and Finance. Director
21 means the Director of Banking and Finance of the State of Nebraska except
22 as further provided in section 8-1120;

23 (4) Federal covered adviser means a person who is registered under
24 section 203 of the Investment Advisers Act of 1940;

25 (5) Federal covered security means any security described as a
26 covered security under section 18(b) of the Securities Act of 1933 or
27 rules and regulations under the act;

28 (6) Guaranteed means guaranteed as to payment of principal,
29 interest, or dividends;

30 (7) Investment adviser means any person who for compensation engages
31 in the business of advising others, either directly or through

1 publications or writings, as to the value of securities or as to the
2 advisability of investing in, purchasing, or selling securities or who
3 for compensation and as a part of a regular business issues or
4 promulgates analyses or reports concerning securities. Investment adviser
5 also includes financial planners and other persons who, as an integral
6 component of other financially related services, provide the foregoing
7 investment advisory services to others for compensation and as part of a
8 business or who hold themselves out as providing the foregoing investment
9 advisory services to others for compensation. Investment adviser does not
10 include (a) an investment adviser representative, (b) a bank, savings
11 institution, or trust company, (c) a lawyer, accountant, engineer, or
12 teacher whose performance of these services is solely incidental to the
13 practice of his or her profession, (d) a broker-dealer or its agent whose
14 performance of these services is solely incidental to its business as a
15 broker-dealer and who receives no special compensation for them, (e) an
16 issuer-dealer, (f) a publisher of any bona fide newspaper, news column,
17 newsletter, news magazine, or business or financial publication or
18 service, whether communicated in hard copy form, by electronic means, or
19 otherwise which does not consist of the rendering of advice on the basis
20 of the specific investment situation of each client, (g) a person who has
21 no place of business in this state if (i) his or her only clients in this
22 state are other investment advisers, federal covered advisers, broker-
23 dealers, banks, savings institutions, credit unions, trust companies,
24 insurance companies, investment companies as defined in the Investment
25 Company Act of 1940, pension or profit-sharing trusts, or other financial
26 institutions or institutional buyers, whether acting for themselves or as
27 trustees, or (ii) during the preceding twelve-month period, he or she has
28 had five or fewer clients who are residents of this state other than
29 those persons specified in subdivision (g)(i) of this subdivision, (h)
30 any person that is a federal covered adviser or is excluded from the
31 definition of investment adviser under section 202 of the Investment

1 Adviser Act of 1940, or (i) such other persons not within the intent of
2 this subdivision as the director may by rule and regulation or order
3 designate;

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

18 (9) Issuer means any person who issues or proposes to issue any
19 security, except that (a) with respect to certificates of deposit,
20 voting-trust certificates, or collateral-trust certificates or with
21 respect to certificates of interest or shares in an unincorporated
22 investment trust not having a board of directors, or persons performing
23 similar functions, or of the fixed, restricted management, or unit type,
24 the term issuer means the person or persons performing the acts and
25 assuming the duties of depositor or manager pursuant to the provisions of
26 the trust or other agreement or instrument under which the security is
27 issued and (b) with respect to a fractional or pooled interest in a
28 viatical settlement contract, issuer means the person who creates, for
29 the purpose of sale, the fractional or pooled interest. In the case of a
30 viatical settlement contract that is not fractionalized or pooled, issuer
31 means the person effecting a transaction with a purchaser of such

1 contract;

2 (10) Issuer-dealer means (a) any issuer located in the State of
3 Nebraska or (b) any issuer which registered its securities by
4 qualification who proposes to sell to the public of the State of Nebraska
5 the securities that it issues without the benefit of another registered
6 broker-dealer. Such securities shall have been approved for sale in the
7 State of Nebraska pursuant to section 8-1104;

8 (11) Nonissuer means not directly or indirectly for the benefit of
9 the issuer;

10 (12) Person means an individual, a corporation, a partnership, a
11 limited liability company, an association, a joint-stock company, a trust
12 in which the interests of the beneficiaries are evidenced by a security,
13 an unincorporated organization, a government, or a political subdivision
14 of a government;

15 (13) Sale or sell includes every contract of sale of, contract to
16 sell, or disposition of a security or interest in a security for value.
17 Offer or offer to sell includes every attempt or offer to dispose of, or
18 solicitation of an offer to buy, a security or interest in a security for
19 value. Any security given or delivered with or as a bonus on account of
20 any purchase of securities or any other thing is considered to constitute
21 part of the subject of the purchase and to have been offered and sold for
22 value. A purported gift of assessable stock shall be considered to
23 involve an offer and sale. Every sale or offer of a warrant or right to
24 purchase or subscribe to another security of the same or another issuer,
25 as well as every sale or offer of a security which gives the holder a
26 present or future right or privilege to convert into another security of
27 the same or another issuer, shall be considered to include an offer of
28 the other security;

29 (14) Securities Act of 1933, Securities Exchange Act of 1934,
30 Investment Advisers Act of 1940, Investment Company Act of 1940, and
31 Commodity Exchange Act, and the federal Interstate Land Sales Full

1 Disclosure Act means the acts as they existed on January 1, ~~2020~~ 2019;

2 (15) Security means any note, stock, treasury stock, bond,
3 debenture, units of beneficial interest in a real estate trust, evidence
4 of indebtedness, certificate of interest or participation in any profit-
5 sharing agreement, collateral-trust certificate, preorganization
6 certificate or subscription, transferable share, investment contract,
7 viatical settlement contract or any fractional or pooled interest in such
8 contract, membership interest in any limited liability company organized
9 under Nebraska law or any other jurisdiction unless otherwise excluded
10 from this definition, voting-trust certificate, certificate of deposit
11 for a security, certificate of interest or participation in an oil, gas,
12 or mining title or lease or in payments out of production under such a
13 title or lease, in general any interest or instrument commonly known as a
14 security, or any certificate of interest or participation in, temporary
15 or interim certificate for, guarantee of, or warrant or right to
16 subscribe to or purchase any of the foregoing. Security does not include
17 any insurance or endowment policy or annuity contract issued by an
18 insurance company. Security also does not include a membership interest
19 in a limited liability company when all of the following exist: (a) The
20 member enters into a written commitment to be engaged actively and
21 directly in the management of the limited liability company; and (b) all
22 members of the limited liability company are actively engaged in the
23 management of the limited liability company. For the limited purposes of
24 determining professional malpractice insurance premiums, a security
25 issued through a transaction that is exempted pursuant to subdivision
26 (23) of section 8-1111 shall not be considered a security;

27 (16) State means any state, territory, or possession of the United
28 States as well as the District of Columbia and Puerto Rico; and

29 (17) Viatical settlement contract means an agreement for the
30 purchase, sale, assignment, transfer, devise, or bequest of all or any
31 portion of the death benefit or ownership of a life insurance policy or

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

12 Sec. 13. Section 8-1101.01, Revised Statutes Supplement, 2019, is
13 amended to read:

14 8-1101.01 For purposes of the Securities Act of Nebraska:

15 (1) Federal , ~~federal~~ rules and regulations adopted under the
16 Investment Advisors Act of 1940 or the Securities Act of 1933 means such
17 rules and regulations as they existed on January 1, 2020; and ~~2019~~.

18 (2) Fair practice or ethical rules or standards promulgated by the
19 Securities and Exchange Commission, the Financial Industry Regulatory
20 Authority, or a self-regulatory organization approved by the Securities
21 and Exchange Commission means such practice, rules, or standards as they
22 existed on January 1, 2020.

23 Sec. 14. Section 8-1103, Revised Statutes Supplement, 2019, is
24 amended to read:

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

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

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

10 (b) Except with respect to federal covered advisers whose only
11 clients are those described in subdivision (7)(g)(i) of section 8-1101,
12 it shall be unlawful for any federal covered adviser to conduct advisory
13 business in this state unless such person files with the director the
14 documents which are filed with the Securities and Exchange Commission, as
15 the director may by rule and regulation or order require, a consent to
16 service of process, and payment of the fee prescribed in subsection (6)
17 of this section prior to acting as a federal covered adviser in this
18 state.

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

23 (ii) It shall be unlawful for any federal covered adviser to employ,
24 supervise, or associate with an investment adviser representative having
25 a place of business located in this state unless such investment adviser
26 representative is registered under the Securities Act of Nebraska or is
27 exempt from registration.

28 (d) The registration of an investment adviser representative shall
29 not be effective unless the investment adviser representative is employed
30 by a registered investment adviser or a federal covered adviser. When an
31 investment adviser representative begins or terminates employment with an

1 investment adviser, the investment adviser shall promptly notify the
2 director. When an investment adviser representative begins or terminates
3 employment with a federal covered adviser, the investment adviser
4 representative shall promptly notify the director.

5 (3) A broker-dealer, issuer-dealer, agent, investment adviser, or
6 investment adviser representative may apply for registration by filing
7 with the director an application and payment of the fee prescribed in
8 subsection (6) of this section. If the applicant is an individual, the
9 application shall include the applicant's social security number.
10 Registration of a broker-dealer or issuer-dealer shall automatically
11 constitute registration of all partners, limited liability company
12 members, officers, or directors of such broker-dealer or issuer-dealer as
13 agents, except any partner, limited liability company member, officer, or
14 director whose registration as an agent is denied, suspended, or revoked
15 under subsection (9) of this section, without the filing of applications
16 for registration as agents or the payment of fees for registration as
17 agents. The application shall contain whatever information the director
18 requires concerning such matters as:

19 (a) The applicant's form and place of organization;

20 (b) The applicant's proposed method of doing business;

21 (c) The qualifications and business history of the applicant and, in
22 the case of a broker-dealer or investment adviser, the qualifications and
23 business history of any partner, limited liability company member,
24 officer, director, person occupying a similar status or performing
25 similar functions of a partner, limited liability company member,
26 officer, or director, or person directly or indirectly controlling the
27 broker-dealer or investment adviser;

28 (d) Any injunction or administrative order or conviction of a
29 misdemeanor involving a security or any aspect of the securities business
30 and any conviction of a felony;

31 (e) The applicant's financial condition and history; and

1 (f) Information to be furnished or disseminated to any client or
2 prospective client if the applicant is an investment adviser.

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

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

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

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

20 (iii) That an issuer-dealer have a minimum net capital of twenty-
21 five thousand dollars. In lieu of a minimum net capital requirement of
22 twenty-five thousand dollars, the director may require an issuer-dealer
23 to post a corporate surety bond with a surety company licensed to do
24 business in Nebraska in an amount equal to such capital requirements.
25 When the director finds that a surety bond with a surety company would
26 cause an undue burden on an issuer-dealer, the director may require the
27 issuer-dealer to post a signature bond. Every such surety or signature
28 bond shall run in favor of Nebraska, shall provide for an action thereon
29 by any person who has a cause of action under section 8-1118, and shall
30 provide that no action may be maintained to enforce any liability on the
31 bond unless brought within the time periods specified by section 8-1118;

1 (iv) That a broker-dealer have such minimum net capital as the
2 director may by rule and regulation or order require, subject to the
3 limitations provided in section 15 of the Securities Exchange Act of
4 1934. In lieu of any such minimum net capital requirement, the director
5 may by rule and regulation or order require a broker-dealer to post a
6 corporate surety bond with a surety company licensed to do business in
7 Nebraska in an amount equal to such capital requirement, subject to the
8 limitations of section 15 of the Securities Exchange Act of 1934. Every
9 such surety bond shall run in favor of Nebraska, shall provide for an
10 action thereon by any person who has a cause of action under section
11 8-1118, and shall provide that no action may be maintained to enforce any
12 liability on the bond unless brought within the time periods specified by
13 section 8-1118; and

14 (v) That an investment adviser have such minimum net capital as the
15 director may by rule and regulation or order require, subject to the
16 limitations of section 222 of the Investment Advisers Act of 1940, which
17 may include different requirements for those investment advisers who
18 maintain custody of clients' funds or securities or who have
19 discretionary authority over such funds or securities and those
20 investment advisers who do not. In lieu of any such minimum net capital
21 requirement, the director may require by rule and regulation or order an
22 investment adviser to post a corporate surety bond with a surety company
23 licensed to do business in Nebraska in an amount equal to such capital
24 requirement, subject to the limitations of section 222 of the Investment
25 Advisers Act of 1940. Every such surety bond shall run in favor of
26 Nebraska, shall provide for an action thereon by any person who has a
27 cause of action under section 8-1118, and shall provide that no action
28 may be maintained to enforce any liability on the bond unless brought
29 within the time periods specified by section 8-1118.

30 (c) The director may waive the requirement of an examination for any
31 applicant who by reason of prior experience can demonstrate his or her

1 knowledge of the securities business. Registration of a broker-dealer,
2 agent, investment adviser, and investment adviser representative shall be
3 effective for a period of not more than one year and shall expire on
4 December 31 unless renewed. Registration of an issuer-dealer shall be
5 effective for a period of not more than one year and may be renewed as
6 provided in this section. Notice filings by a federal covered adviser
7 shall be effective for a period of not more than one year and shall
8 expire on December 31 unless renewed.

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

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

26 (6) The fee for initial or renewal registration shall be two hundred
27 fifty dollars for a broker-dealer, two hundred dollars for an investment
28 adviser, one hundred dollars for an issuer-dealer, forty dollars for an
29 agent, and forty dollars for an investment adviser representative. The
30 fee for initial or renewal filings for a federal covered adviser shall be
31 two hundred dollars. When an application is denied or withdrawn, the

1 director shall retain all of the fee.

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

10 (b) All the records of a registered broker-dealer, issuer-dealer, or
11 investment adviser shall be subject at any time or from time to time to
12 such reasonable periodic, special, or other examinations by
13 representatives of the director, within or without this state, as the
14 director deems necessary or appropriate in the public interest or for the
15 protection of investors and advisory clients. For the purpose of avoiding
16 unnecessary duplication of examinations, the director, insofar as he or
17 she deems it practicable in administering this subsection, may cooperate
18 with the securities administrators of other states, the Securities and
19 Exchange Commission, and any national securities exchange or national
20 securities association registered under the Securities Exchange Act of
21 1934. Costs of such examinations shall be borne by the registrant.

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

27 (d) If any information contained in any document filed with the
28 director is or becomes inaccurate or incomplete in any material respect,
29 a broker-dealer, issuer-dealer, agent, investment adviser, or investment
30 adviser representative shall promptly file a correcting amendment or a
31 federal covered adviser shall file a correcting amendment when such

1 amendment is required to be filed with the Securities and Exchange
2 Commission.

3 (8) With respect to investment advisers, the director may require
4 that certain information be furnished or disseminated to clients as
5 necessary or appropriate in the public interest or for the protection of
6 investors and advisory clients. To the extent determined by the director
7 in his or her discretion, information furnished to clients of an
8 investment adviser that would be in compliance with the Investment
9 Advisers Act of 1940 and the rules and regulations under such act may be
10 used in whole or in part to satisfy the information requirement
11 prescribed in this subsection.

12 (9)(a) The director may by order deny, suspend, or revoke
13 registration of any broker-dealer, issuer-dealer, agent, investment
14 adviser, or investment adviser representative or bar, censure, or impose
15 a fine pursuant to subsection (4) of section 8-1108.01 on any registrant
16 or any partner, limited liability company member, officer, director, or
17 person occupying a similar status or performing similar functions of a
18 partner, limited liability company member, officer, or director for a
19 registrant from employment with any broker-dealer, issuer-dealer, or
20 investment adviser if he or she finds that the order is in the public
21 interest and that the applicant or registrant or, in the case of a
22 broker-dealer, issuer-dealer, or investment adviser, any partner, limited
23 liability company member, officer, director, person occupying a similar
24 status or performing similar functions of a partner, limited liability
25 company member, officer, or director, or person directly or indirectly
26 controlling the broker-dealer, issuer-dealer, or investment adviser:

27 (i) Has filed an application for registration under this section
28 which, as of any date after filing in the case of an order denying
29 effectiveness, was incomplete in any material respect or contained any
30 statement which was, in the light of the circumstances under which it was
31 made, false or misleading with respect to any material fact;

1 (ii) Has willfully violated or willfully failed to comply with any
2 provision of the Securities Act of Nebraska or any rule and regulation or
3 order under the act;

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

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

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

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

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

23 (viii) Is insolvent, either in the sense that his or her liabilities
24 exceed his or her assets or in the sense that he or she cannot meet his
25 or her obligations as they mature, but the director may not enter an
26 order against a broker-dealer, issuer-dealer, or investment adviser under
27 this subdivision without a finding of insolvency as to the broker-dealer,
28 issuer-dealer, or investment adviser;

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

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

4 (xi) Has failed to reasonably supervise his or her agents or
5 employees, if he or she is a broker-dealer or issuer-dealer, or his or
6 her investment adviser representatives or employees, if he or she is an
7 investment adviser, to assure their compliance with the Securities Act of
8 Nebraska;

9 (xii) Has been denied the right to do business in the securities
10 industry, or the person's respective authority to do business in an
11 investment-related industry has been revoked by any other state, federal,
12 or foreign governmental agency or self-regulatory organization for cause,
13 or the person has been the subject of a final order in a criminal, civil,
14 injunctive, or administrative action for securities, commodities, or
15 fraud-related violations of the law of any state, federal, or foreign
16 governmental unit; or

17 (xiii) Has refused to allow or otherwise impedes the department from
18 conducting an examination under subsection (7) of this section or has
19 refused the department access to a registrant's office to conduct an
20 examination under subsection (7) of this section.

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

24 (i) Willfully violated or willfully failed to comply with any
25 provision of the Securities Act of Nebraska or any rule and regulation or
26 order under the act; or

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

30 (c)(i) For purposes of subdivisions (9)(a)(vii) and (9)(b)(ii) of
31 this section, the director may, by rule and regulation or order,

1 determine that a violation of any provision of the fair practice or
2 ethical rules or standards promulgated by the Securities and Exchange
3 Commission, the Financial Industry Regulatory Authority, or a self-
4 regulatory organization approved by the Securities and Exchange
5 Commission, ~~in effect on January 1, 2019,~~ constitutes a dishonest or
6 unethical practice in the securities or commodities business.

7 (ii) The director may not institute a proceeding under this section
8 on the basis of a final judicial or administrative order made known to
9 him or her by the applicant prior to the effective date of the
10 registration unless the proceeding is instituted within the next ninety
11 days following registration. For purposes of this subdivision, a final
12 judicial or administrative order does not include an order that is stayed
13 or subject to further review or appeal. This subdivision shall not apply
14 to renewed registrations.

15 (iii) The director may by order summarily postpone or suspend
16 registration pending final determination of any proceeding under this
17 subsection. Upon the entry of the order, the director shall promptly
18 notify the applicant or registrant, as well as the employer or
19 prospective employer if the applicant or registrant is an agent or
20 investment adviser representative, that it has been entered and of the
21 reasons therefor and that within fifteen business days after the receipt
22 of a written request the matter will be set down for hearing. If no
23 hearing is requested within fifteen business days of the issuance of the
24 order and none is ordered by the director, the order shall automatically
25 become a final order and shall remain in effect until it is modified or
26 vacated by the director. If a hearing is requested or ordered, the
27 director, after notice of and opportunity for hearing, shall enter his or
28 her written findings of fact and conclusions of law and may affirm,
29 modify, or vacate the order. No order may be entered under this section
30 denying or revoking registration without appropriate prior notice to the
31 applicant or registrant, as well as the employer or prospective employer

1 if the applicant or registrant is an agent or investment adviser
2 representative, and opportunity for hearing.

3 (10)(a) If the director finds that any registrant or applicant for
4 registration is no longer in existence or has ceased to do business as a
5 broker-dealer, issuer-dealer, agent, investment adviser, or investment
6 adviser representative, is subject to an adjudication of mental
7 incompetence or to the control of a committee, conservator, or guardian,
8 or cannot be located after reasonable search, the director may by order
9 cancel the registration or application.

10 (b) If an applicant for registration does not complete the
11 registration application and fails to respond to a notice or notices from
12 the department to correct the deficiency or deficiencies for a period of
13 one hundred twenty days or more after the date the department sends the
14 initial notice to correct the deficiency, the department may deem the
15 registration application as abandoned and may issue a notice of
16 abandonment of the registration application to the applicant in lieu of
17 proceedings to deny the application.

18 (c) Withdrawal from registration as a broker-dealer, issuer-dealer,
19 agent, investment adviser, or investment adviser representative shall
20 become effective thirty days after receipt of an application to withdraw
21 or within a shorter period of time as the director may determine unless a
22 revocation or suspension proceeding is pending when the application is
23 filed or a proceeding to revoke or suspend or to impose conditions upon
24 the withdrawal is instituted within thirty days after the application is
25 filed. If a revocation or suspension proceeding is pending or instituted,
26 withdrawal shall become effective at such time and upon such conditions
27 as the director shall order.

28 Sec. 15. Section 8-1111, Revised Statutes Supplement, 2019, is
29 amended to read:

30 8-1111 Except as provided in this section, sections 8-1103 to 8-1109
31 shall not apply to any of the following transactions:

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

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

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

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

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

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

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

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

28 (C) An audited balance sheet of the issuer as of a date within
29 eighteen months or, in the case of a reorganization or merger when
30 parties to the reorganization or merger had such audited balance sheet, a
31 pro forma balance sheet; and

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

6 (v) The issuer of the security has a class of equity securities
7 listed on a national securities exchange registered under the Securities
8 Exchange Act of 1934 unless:

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

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

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

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

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

25 (ii) The security is senior in rank to the common stock of the
26 issuer both as to payment of dividends or interest and upon dissolution
27 or liquidation of the issuer and such security has been outstanding at
28 least three years and the issuer or any predecessor has not defaulted
29 within the current fiscal year or the three immediately preceding fiscal
30 years in the payment of any dividend, interest, principal, or sinking
31 fund installment on the security when due and payable.

1 The director may by order deny or revoke the exemption specified in
2 subdivision (a) or (b) of subdivision (2) of this section with respect to
3 a specific security. Upon the entry of such an order, the director shall
4 promptly notify all registered broker-dealers that such order has been
5 entered and the reasons for such order and that within fifteen business
6 days after receipt of a written request the matter will be set for
7 hearing. If no hearing is requested within fifteen business days of the
8 issuance of the order and none is ordered by the director, the order
9 shall automatically become a final order and shall remain in effect until
10 modified or vacated by the director. If a hearing is requested or
11 ordered, the director shall, after notice of and opportunity for hearing
12 to all interested persons, enter his or her written findings of fact and
13 conclusions of law and may affirm, modify, or vacate the order. No such
14 order shall operate retroactively. No person may be considered to have
15 violated the Securities Act of Nebraska by reason of any offer or sale
16 effected after the entry of any such order if he or she sustains the
17 burden of proof that he or she did not know, and in the exercise of
18 reasonable care could not have known, of the order;

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

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

27 (5) Any transaction in a bond or other evidence of indebtedness
28 secured by a real or chattel mortgage or deed of trust or by an agreement
29 for the sale of real estate or chattels if the entire mortgage, deed of
30 trust, or agreement, together with all the bonds or other evidences of
31 indebtedness secured thereby, are offered and sold as a unit. Such

1 exemption shall not apply to any transaction in a bond or other evidence
2 of indebtedness secured by a real estate mortgage or deed of trust or by
3 an agreement for the sale of real estate if the real estate securing the
4 evidences of indebtedness are parcels of real estate the sale of which
5 requires the subdivision in which the parcels are located to be
6 registered under the federal Interstate Land Sales Full Disclosure Act,
7 15 U.S.C. 1701 et seq., ~~as such act existed on January 1, 2019;~~

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

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

12 (8)(a) Any offer or sale to any of the following, whether the
13 purchaser is acting for itself or in some fiduciary capacity:

14 (i) A bank, savings institution, credit union, trust company, or
15 other financial institution;

16 (ii) An insurance company;

17 (iii) An investment company as defined in the Investment Company Act
18 of 1940;

19 (iv) A pension or profit-sharing trust;

20 (v) A broker-dealer;

21 (vi) A corporation with total assets in excess of five million
22 dollars, not formed for the specific purpose of acquiring the securities
23 offered;

24 (vii) A Massachusetts or similar business trust with total assets in
25 excess of five million dollars, not formed for the specific purpose of
26 acquiring the securities offered;

27 (viii) A partnership with total assets in excess of five million
28 dollars, not formed for the specific purpose of acquiring the securities
29 offered;

30 (ix) A trust with total assets in excess of five million dollars,
31 not formed for the specific purpose of acquiring the securities, whose

1 purchase is directed by a person who has such knowledge and experience in
2 financial and business matters that he or she is capable of evaluating
3 the merits and risks of the prospective investment;

4 (x) Any entity in which all of the equity owners are individuals who
5 are individual accredited investors as defined in subdivision (b) of this
6 subdivision;

7 (xi) An institutional buyer as may be defined by the director by
8 rule and regulation or order; or

9 (xii) An individual accredited investor.

10 (b) For purposes of subdivision (8)(a) of this section, individual
11 accredited investor means (i) any director, executive officer, or general
12 partner of the issuer of the securities being offered or sold, or any
13 director, executive officer, or general partner of a general partner of
14 that issuer, (ii) any manager of a limited liability company that is the
15 issuer of the securities being offered or sold, (iii) any natural person
16 whose individual net worth, or joint net worth with that person's spouse,
17 at the time of his or her purchase, exceeds one million dollars,
18 excluding the value of the primary residence of such person, or (iv) any
19 natural person who had an individual income in excess of two hundred
20 thousand dollars in each of the two most recent years or joint income
21 with that person's spouse in excess of three hundred thousand dollars in
22 each of those years and has a reasonable expectation of reaching the same
23 income level in the current year;

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

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

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

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

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

1 issuer first files a notice specifying the terms of the offer and the
2 director does not by order disallow the exemption within the next five
3 full business days;

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

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

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

19 (15) Any transaction involving the issuance for cash of any evidence
20 of ownership interest or indebtedness by a cooperative formed as a
21 corporation under section 21-1301 or 21-1401 or a limited cooperative
22 association formed under the Nebraska Limited Cooperative Association Act
23 if the issuer has first filed a notice of intention to issue with the
24 director and the director has not by order, mailed to the issuer by
25 certified or registered mail within ten business days after receipt
26 thereof, 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 of the director relating to this section when the
9 director finds in adopting and promulgating such rules and regulations
10 that the applicability of sections 8-1104 to 8-1107 is not necessary or
11 appropriate in the public interest or for the protection of investors.
12 For purposes of this subdivision, not involving a public offering means
13 any offering in which the seller has reason to believe that the
14 securities purchased are taken for investment and in which each offeree,
15 by reason of his or her knowledge about the affairs of the issuer or
16 otherwise, does not require the protections afforded by registration
17 under sections 8-1104 to 8-1107 in order to make a reasonably informed
18 judgment with respect to such investment;

19 (17) Any security issued in connection with an employees' stock
20 purchase, savings, option, profit-sharing, pension, or similar employees'
21 benefit plan, including any securities, plan interests, and guarantees
22 issued under a compensatory benefit plan or compensation contract,
23 contained in a record, established by the issuer, its parents, its
24 majority-owned subsidiaries, or the majority-owned subsidiaries of the
25 issuer's parent for the participation of their employees, if no
26 commission or other remuneration is paid or given directly or indirectly
27 for soliciting any prospective buyer except to a registered agent of a
28 registered broker-dealer. This subdivision shall apply to offers and
29 sales to the following individuals:

30 (a) Directors; general partners; trustees, if the issuer is a
31 business trust; officers; consultants; and advisors;

1 (b) Family members who acquire such securities from those persons
2 through gifts or domestic relations orders;

3 (c) Former employees, directors, general partners, trustees,
4 officers, consultants, and advisors if those individuals were employed by
5 or providing services to the issuer when the securities were offered; and

6 (d) Insurance agents who are exclusive insurance agents of the
7 issuer, or the issuer's subsidiaries or parents, or who derive more than
8 fifty percent of their annual income from those organizations;

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

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

29 (20) Any transaction in this state not involving a public offering
30 by a Nebraska issuer selling solely to Nebraska residents, when (a) any
31 such transaction is effected in accordance with rules and regulations of

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

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

1 based on the number or the value of interests sold in the fund;

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

5 (a) Sales of such securities are made only to the following
6 purchasers:

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

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

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

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

30 (b) The amount of the investment of any purchaser, except a
31 purchaser described in subdivision (a)(ii) of this subdivision, does not

1 exceed five percent of the net worth, as determined by this subdivision,
2 of that purchaser;

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

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

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

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

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

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

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

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

31 (G) A description of any order, judgment, or decree that is final as

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

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

27 (I) A statement to the effect that any projected rate of return to
28 the purchaser from the purchase of a viatical settlement contract or any
29 fractionalized or pooled interest therein is based on an estimated life
30 expectancy for the person insured under the life insurance policy; that
31 the return on the purchase may vary substantially from the expected rate

1 of return based upon the actual life expectancy of the insured that may
2 be less than, may be equal to, or may greatly exceed the estimated life
3 expectancy; and that the rate of return would be higher if the actual
4 life expectancy were less than, and lower if the actual life expectancy
5 were greater than, the estimated life expectancy of the insured at the
6 time the viatical settlement contract was closed;

7 (J) A statement that the purchaser should consult with his or her
8 tax advisor regarding the tax consequences of the purchase of the
9 viatical settlement contract or any fractionalized or pooled interest
10 therein; and

11 (K) Any other information as may be prescribed by rule and
12 regulation or order of the director; and

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

15 (A) The name, address, and telephone number of the issuing insurance
16 company and the name, address, and telephone number of the state or
17 foreign country regulator of the insurance company;

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

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

21 (D) If a group insurance policy, the name, address, and telephone
22 number of the group and, if applicable, the material terms and conditions
23 of converting the policy to an individual policy, including the amount of
24 increased premiums;

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

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

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

31 (H) The amount of the purchaser's money that will be set aside to

1 pay premiums;

2 (I) The name, address, and telephone number of the person who will
3 be the insurance policyowner and the person who will be responsible for
4 paying premiums;

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

7 (K) Any other information as may be prescribed by rule and
8 regulation or order of the director;

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

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

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

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

31 (iii) An audit report of an independent certified public accountant

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

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

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

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

21 (a) The proceeds from all sales of securities by the issuer in any
22 two-year period do not exceed seven hundred fifty thousand dollars or
23 such greater amount as from time to time may be set in accordance with
24 rules and regulations adopted and promulgated by the director to adjust
25 the amount to reflect changes in the Consumer Price Index for All Urban
26 Consumers as prepared by the United States Department of Labor, Bureau of
27 Labor Statistics, and at least eighty percent of the proceeds are used in
28 Nebraska;

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

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

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

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

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

19 (iv) Temporarily or preliminarily restrained or enjoined by a court
20 of competent jurisdiction from engaging in or continuing any conduct or
21 practice in connection with the purchase or sale of any security or
22 involving the making of any false filing with any state or with the
23 Securities and Exchange Commission;

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

26 (A) The name, address, telephone number, and email address of the
27 issuer;

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

30 (C) The amount of the offering; and

31 (D) The type of security being offered, the manner in which

1 purchasers will be solicited, and a statement made upon oath or
2 affirmation that the conditions of this exemption have been or will be
3 met.

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

6 (e) Prior to payment of consideration for the securities, the
7 offeree receives a written disclosure statement containing (i) a
8 description of the proposed use of the proceeds of the offering; (ii) the
9 name of each partner or limited liability company member of the issuer,
10 officer, director, or person occupying a similar status of the issuer or
11 performing similar functions for the issuer; and (iii) the financial
12 condition of the issuer;

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

15 (i) Has received the written disclosure statement;

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

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

19 (g) The issuer, within thirty days after the completion of the
20 offering, files with the department a statement indicating the number of
21 investors, the total dollar amount raised, and the use of the offering
22 proceeds; or

23 (24)(a) An offer or a sale of a security made after August 30, 2015,
24 by an issuer if the offer or sale is conducted in accordance with all the
25 following requirements:

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

28 (ii) The transaction meets the requirements of the federal exemption
29 for intrastate offerings in section 3(a)(11) of the Securities Act of
30 1933 and Rule 147 adopted under the Securities Act of 1933, or complies
31 with Rule 147A adopted under the Securities Act of 1933;

1 (iii) Except as provided in subdivision (c) of this subdivision, the
2 sum of all cash and other consideration to be received for all sales of
3 the security in reliance on the exemption under this subdivision,
4 excluding sales to any accredited investor, does not exceed the following
5 amount:

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

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

20 (iv) The issuer does not accept more than five thousand dollars from
21 any single purchaser except that such limitation shall not apply to an
22 accredited investor;

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

27 (A) Make a notice filing with the department on a form prescribed by
28 the director;

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

31 (C) Provide the director a copy of the disclosure document to be

1 provided to prospective investors under subdivision (a)(xi) of this
2 subdivision;

3 (D) Provide the director a copy of an escrow agreement with a bank,
4 regulated trust company, savings bank, savings and loan association, or
5 credit union authorized to do business in Nebraska in which the issuer
6 will deposit the investor funds or cause the investor funds to be
7 deposited. The bank, regulated trust company, savings bank, savings and
8 loan association, or credit union in which the investor funds are
9 deposited is only responsible to act at the direction of the party
10 establishing the escrow agreement and does not have any duty or
11 liability, contractual or otherwise, to any investor or other person;

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

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

18 (vi) The issuer is not, either before or as a result of the
19 offering, an investment company, as defined in section 3 of the
20 Investment Company Act of 1940, an entity that would be an investment
21 company but for the exclusions provided in section 3(c) of the Investment
22 Company Act of 1940, or subject to the reporting requirements of section
23 13 or 15(d) of the Securities Exchange Act of 1934;

24 (vii) The issuer informs all prospective purchasers of securities
25 offered under an exemption under this subdivision that the securities
26 have not been registered under federal or state securities law and that
27 the securities are subject to limitations on resale. The issuer shall
28 display the following legend conspicuously on the cover page of the
29 disclosure document:

30 IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN
31 EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE

1 MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY
2 ANY FEDERAL OR STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR
3 OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE
4 NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT.
5 ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE
6 SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND
7 MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF
8 SEC RULE 147 OR SUBSECTION (e) OF RULE 147A ADOPTED UNDER THE SECURITIES
9 ACT OF 1933 AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO
10 REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY
11 WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN
12 INDEFINITE PERIOD OF TIME.;

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

15 I understand and acknowledge that I am investing in a high-risk,
16 speculative business venture. I may lose all of my investment, or under
17 some circumstances more than my investment, and I can afford this loss.
18 This offering has not been reviewed or approved by any state or federal
19 securities commission, department, or division or other regulatory
20 authority and no such person or authority has confirmed the accuracy or
21 determined the adequacy of any disclosure made to me relating to this
22 offering. The securities I am acquiring in this offering are illiquid,
23 there is no ready market for the sale of such securities, it may be
24 difficult or impossible for me to sell or otherwise dispose of this
25 investment, and, accordingly, I may be required to hold this investment
26 indefinitely. I may be subject to tax on my share of the taxable income
27 and losses of the company, whether or not I have sold or otherwise
28 disposed of my investment or received any dividends or other
29 distributions from the company.;

30 (ix) The issuer obtains from each purchaser of a security offered
31 under an exemption under this subdivision evidence that the purchaser is

1 a resident of Nebraska and, if applicable, is an individual accredited
2 investor;

3 (x) All payments for purchase of securities offered under an
4 exemption under this subdivision are directed to and held by the
5 financial institution specified in subdivision (a)(v)(D) of this
6 subdivision. The director may request from the financial institutions
7 information necessary to ensure compliance with this section. This
8 information is not a public record and is not available for public
9 inspection;

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

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

20 (B) The identity of all persons owning more than twenty percent of
21 the ownership interests of any class of securities of the company;

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

26 (D) The terms and conditions of the securities being offered and of
27 any outstanding securities of the company; the minimum and maximum amount
28 of securities being offered, if any; either the percentage ownership of
29 the company represented by the offered securities or the valuation of the
30 company implied by the price of the offered securities; the price per
31 share, unit, or interest of the securities being offered; any

1 restrictions on transfer of the securities being offered; and a
2 disclosure of any anticipated future issuance of securities that might
3 dilute the value of securities being offered;

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

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

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

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

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

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

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

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

1 (B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision,
2 the portal operator must register with the department by filing a
3 statement, accompanied by a two-hundred-dollar filing fee, that includes
4 the following information:

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

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

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

11 (C) The portal operator is not required to register as a broker-
12 dealer if all of the following apply with respect to the funding portal
13 and its portal operator:

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

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

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

20 (IV) It is not compensated based on the amount of securities sold,
21 and it does not hold, manage, possess, or otherwise handle investor funds
22 or securities;

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

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

30 (VII) It does not engage in any other activities that the director,
31 by rule and regulation or order, determines are prohibited of the funding

1 portal; and

2 (VIII) Neither the portal operator, nor any director, executive
3 officer, general partner, managing member, or other person with
4 management authority over the portal operator, has been subject to any
5 conviction, order, judgment, decree, or other action specified in Rule
6 506(d)(1) adopted under the Securities Act of 1933, that would disqualify
7 an issuer under Rule 506(d) adopted under the Securities Act of 1933,
8 from claiming an exemption specified in Rule 506(a) to Rule 506(c)
9 adopted under the Securities Act of 1933. However, this subdivision does
10 not apply if both of the following are met:

11 (1) On a showing of good cause and without prejudice to any other
12 action by the Director of Banking and Finance, the director determines
13 that it is not necessary under the circumstances that an exemption is
14 denied; and

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

21 (D) If any change occurs that affects the funding portal's
22 registration exemption, the portal operator must notify the department
23 within thirty days after the change occurs;

24 (E) A registered broker-dealer who also serves as a portal operator
25 must register with the department as a portal operator pursuant to
26 subdivision (a)(xii)(B) of this subdivision, except that the fee for
27 registration shall be waived;

28 (F) The issuer and the portal operator must maintain records of all
29 offers and sales of securities effected through the funding portal and
30 must provide ready access to the records to the department, upon request.
31 The records of a portal operator under this subdivision are subject to

1 the reasonable periodic, special, or other audits or inspections by a
2 representative of the director, in or outside Nebraska, as the director
3 considers necessary or appropriate in the public interest and for the
4 protection of investors. An audit or inspection may be made at any time
5 and without prior notice. The director may copy, and remove for audit or
6 inspection copies of, all records the director reasonably considers
7 necessary or appropriate to conduct the audit or inspection. The director
8 may assess a reasonable charge for conducting an audit or inspection
9 under this subdivision;

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

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

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

16 (b) An issuer of a security, the offer and sale of which is exempt
17 under this subdivision, shall provide, free of charge, a quarterly report
18 to the issuer's investors until no securities issued under an exemption
19 under this subdivision are outstanding. An issuer may satisfy the
20 reporting requirement of this subdivision by making the information
21 available on a funding portal if the information is made available within
22 forty-five days after the end of each fiscal quarter and remains
23 available until the succeeding quarterly report is issued. An issuer
24 shall file each quarterly report under this subdivision with the
25 department and, if the quarterly report is made available on a funding
26 portal, the issuer shall also provide a written copy of the report to any
27 investor upon request. The report must contain all the following:

28 (i) Compensation received by each director and executive officer,
29 including cash compensation earned since the previous report and on an
30 annual basis and any bonuses, stock options, other rights to receive
31 securities of the issuer or any affiliate of the issuer, or other

1 compensation received; and

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

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

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

15 (e) The exemption under this subdivision does not apply if an issuer
16 or any director, executive officer, general partner, managing member, or
17 other person with management authority over the issuer, has been subject
18 to any conviction, order, judgment, decree, or other action specified in
19 Rule 506(d)(1) adopted under the Securities Act of 1933, that would
20 disqualify an issuer under Rule 506(d) adopted under the Securities Act
21 of 1933, from claiming an exemption specified in Rule 506(a) to Rule
22 506(c) adopted under the Securities Act of 1933. However, this
23 subdivision does not apply if both of the following are met:

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

28 (ii) The issuer establishes that it made a factual inquiry into
29 whether any disqualification existed under this subdivision but did not
30 know, and in the exercise of reasonable care, could not have known, that
31 a disqualification existed under this subdivision. The nature and scope

1 of the requisite inquiry will vary based on the circumstances of the
2 issuer and the other offering participants.

3 (f) For purposes of this subdivision:

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

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

13 (iii) Individual accredited investor means (A) any director,
14 executive officer, or general partner of the issuer of the securities
15 being offered or sold, or any director, executive officer, or general
16 partner of a general partner of that issuer, (B) any manager of a limited
17 liability company that is the issuer of the securities being offered or
18 sold, (C) any natural person whose individual net worth, or joint net
19 worth with that person's spouse, at the time of his or her purchase,
20 exceeds one million dollars, excluding the value of the primary residence
21 of such person, or (D) any natural person who had an individual income in
22 excess of two hundred thousand dollars in each of the two most recent
23 years or joint income with that person's spouse in excess of three
24 hundred thousand dollars in each of those years and has a reasonable
25 expectation of reaching the same income level in the current year; and

26 (iv) Portal operator means an entity authorized to do business in
27 this state which operates a funding portal and has registered with the
28 department as required by this subdivision.

29 Sec. 16. Section 8-1704, Revised Statutes Supplement, 2019, is
30 amended to read:

31 8-1704 CFTC rule shall mean any rule, regulation, or order of the

1 Commodity Futures Trading Commission in effect on January 1, 2020 ~~2019~~.

2 Sec. 17. Section 8-1707, Revised Statutes Supplement, 2019, is
3 amended to read:

4 8-1707 Commodity Exchange Act shall mean the act of Congress known
5 as the Commodity Exchange Act, 7 U.S.C. 1, as amended on January 1, 2020
6 ~~2019~~.

7 Sec. 18. For purposes of sections 18 to 20 of this act:

8 (1) Account means a contract of deposit of funds between the
9 depositor and a financial institution and:

10 (a) The account is owned by a vulnerable adult or senior adult,
11 whether individually or with one or more other persons; or

12 (b) A vulnerable adult or senior adult is a beneficiary of the
13 account, including a formal or informal trust account, a payable on death
14 account, a conservatorship account, or a guardianship account;

15 (2) Department means the Department of Health and Human Services;

16 (3) Financial exploitation means:

17 (a) The wrongful or unauthorized taking, withholding, appropriation,
18 or use of the money, assets, or other property or the identifying
19 information of a vulnerable adult or senior adult by any person; or

20 (b) An act or omission by a person, including through the use of a
21 power of attorney on behalf of, or as the conservator or guardian of, a
22 vulnerable adult or senior adult, to:

23 (i) Obtain control, through deception, intimidation, fraud, or undue
24 influence, over the vulnerable adult's or senior adult's money, assets,
25 or other property to deprive the vulnerable adult or senior adult of the
26 ownership, use, benefit, or possession of the property; or

27 (ii) Convert the money, assets, or other property of a vulnerable
28 adult or senior adult to deprive a vulnerable adult or senior adult of
29 the ownership, use, benefit, or possession of the property;

30 (4) Financial institution means a bank, savings bank, building and
31 loan association, savings and loan association, or credit union, whether

1 chartered by the Department of Banking and Finance, the United States, or
2 a foreign state agency; any other similar organization which is covered
3 by federal deposit insurance; a subsidiary or affiliate of any such
4 entity; or a trust company as defined in section 8-230;

5 (5) Law enforcement agency has the same meaning as in section
6 28-359;

7 (6) Senior adult has the same meaning as in section 28-366.01;

8 (7) Transaction means any of the following as applicable to services
9 provided by a financial institution:

10 (a) A transfer or request to transfer or disburse funds or assets in
11 an account;

12 (b) A request to initiate a wire transfer, initiate an automated
13 clearinghouse transfer, or issue a money order, cashier's check, or
14 official check;

15 (c) A request to negotiate a check or other negotiable instrument;

16 (d) A request to change the ownership of, or access to, an account;

17 (e) A request for a loan, guarantee of a loan, extension of credit,
18 or draw on a line of credit;

19 (f) A request to encumber any movable or immovable property,
20 including real property, personal property, or fixtures; and

21 (g) A request to designate or change the designation of
22 beneficiaries to receive any property, benefit, or contract right for a
23 vulnerable adult or senior adult at death; and

24 (8) Vulnerable adult has the same meaning as in section 28-371.

25 Sec. 19. (1) It is the intent of the Legislature to provide legal
26 protection to financial institutions so that they have the discretion to
27 take action to assist in detecting and preventing financial exploitation;

28 (2) The Legislature recognizes that financial institutions are in a
29 unique position to potentially discover financial exploitation when
30 conducting transactions on behalf of and at the request of their
31 customers;

1 (3) The Legislature recognizes that financial institutions have
2 duties imposed by contract and duties imposed by both federal and state
3 law to conduct transactions requested by their customers faithfully and
4 timely in accordance with the customer's instructions; and

5 (4) The Legislature recognizes that financial institutions do not
6 have a duty to contravene the valid instructions of their customers and
7 nothing in sections 18 to 20 of this act creates such a duty.

8 Sec. 20. (1) When a financial institution, or an employee of a
9 financial institution, reasonably believes, or has received information
10 from the department or a law enforcement agency demonstrating that it is
11 reasonable to believe, that financial exploitation of a vulnerable adult
12 or senior adult may have occurred, may have been attempted, is occurring,
13 or is being attempted, the financial institution may, but is not required
14 to:

15 (a) Delay or refuse a transaction with or involving the vulnerable
16 adult or senior adult;

17 (b) Delay or refuse to permit the withdrawal or disbursement of
18 funds contained in the vulnerable adult's or senior adult's account;

19 (c) Prevent a change in ownership of the vulnerable adult's or
20 senior adult's account;

21 (d) Prevent a transfer of funds from the vulnerable adult's or
22 senior adult's account to an account owned wholly or partially by another
23 person;

24 (e) Refuse to comply with instructions given to the financial
25 institution by an agent or a person acting for or with an agent under a
26 power of attorney signed or purported to have been signed by the
27 vulnerable adult or senior adult; or

28 (f) Prevent the designation or change the designation of
29 beneficiaries to receive any property, benefit, or contract rights for a
30 vulnerable adult or senior adult at death.

31 (2) A financial institution is not required to act under subsection

1 (1) of this section when provided with information alleging that
2 financial exploitation may have occurred, may have been attempted, is
3 occurring, or is being attempted, but may use the financial institution's
4 discretion to determine whether or not to act under subsection (1) of
5 this section based on the information available to the financial
6 institution at the time.

7 (3)(a)(i) A financial institution may notify any third party
8 reasonably associated with a vulnerable adult or senior adult if the
9 financial institution reasonably believes that the financial exploitation
10 of a vulnerable adult or senior adult may have occurred, may have been
11 attempted, is occurring, or is being attempted.

12 (ii) A third party reasonably associated with a vulnerable adult or
13 senior adult includes, but is not limited to, the following: (A) A
14 parent, spouse, adult child, sibling, or other known family member or
15 close associate of a vulnerable adult or senior adult; (B) an authorized
16 contact provided by a vulnerable adult or senior adult to the financial
17 institution; (C) a co-owner, additional authorized signatory, or
18 beneficiary on a vulnerable adult's or a senior adult's account; (D) an
19 attorney in fact, trustee, conservator, guardian, or other fiduciary who
20 has been selected by a vulnerable adult or senior adult, a court, or a
21 third party to manage some or all of the financial affairs of the
22 vulnerable adult or senior adult; and (E) an attorney known to represent
23 or have represented the vulnerable adult or senior adult.

24 (b) A financial institution may choose not to notify any third party
25 reasonably associated with a vulnerable adult or senior adult of
26 suspected financial exploitation of the vulnerable adult or senior adult
27 if the financial institution reasonably believes the third party is, may
28 be, or may have been engaged in the financial exploitation of the
29 vulnerable adult or senior adult or if requested to refrain from making a
30 notification by a law enforcement agency, if such notification could
31 interfere with a law enforcement investigation.

1 (c) Nothing in this subsection shall prevent a financial institution
2 from notifying the department or a law enforcement agency, if the
3 financial institution reasonably believes that the financial exploitation
4 of a vulnerable adult or senior adult may have occurred, may have been
5 attempted, is occurring, or is being attempted.

6 (4) The authority granted the financial institution under subsection
7 (1) of this section expires upon the sooner of: (a) Thirty business days
8 after the date on which the financial institution first acted under
9 subsection (1) of the section; (b) when the financial institution is
10 satisfied that the transaction or act will not result in financial
11 exploitation of the vulnerable adult or senior adult; or (c) upon
12 termination by an order of a court of competent jurisdiction.

13 (5) Unless otherwise directed by order of a court of competent
14 jurisdiction, a financial institution may extend the duration under
15 subsection (4) of this section based on a reasonable belief that the
16 financial exploitation of a vulnerable adult or senior adult may continue
17 to occur or continue to be attempted.

18 (6) A financial institution and its bank holding company, if any,
19 and any employees, agents, officers, and directors of the financial
20 institution and its bank holding company, if any, shall be immune from
21 any civil, criminal, or administrative liability that may otherwise exist
22 (a) for delaying or refusing to execute a transaction, withdrawal, or
23 disbursement, or for not delaying or refusing to execute such
24 transaction, withdrawal, or disbursement under this section and (b) for
25 actions taken in furtherance of determinations made under subsections (1)
26 through (5) of this section.

27 (7)(a) Notwithstanding any other law to the contrary, the refusal by
28 a financial institution to engage in a transaction as authorized under
29 subsection (1) of this section shall not constitute the wrongful dishonor
30 of an item under section 4-402, Uniform Commercial Code.

31 (b) Notwithstanding any other law to the contrary, a reasonable

1 belief that payment of a check will facilitate the financial exploitation
2 of a vulnerable adult or senior adult shall constitute reasonable grounds
3 to doubt the collectability of the item for purposes of the federal Check
4 Clearing for the 21st Century Act, 12 U.S.C. 5001 et seq., the federal
5 Expedited Funds Availability Act, 12 U.S.C. 4001 et seq., and 12 C.F.R.
6 part 229, as such acts and part existed on January 1, 2020.

7 Sec. 21. Section 21-17,115, Revised Statutes Supplement, 2019, is
8 amended to read:

9 21-17,115 Notwithstanding any of the other provisions of the Credit
10 Union Act or any other Nebraska statute, any credit union incorporated
11 under the laws of the State of Nebraska and organized under the
12 provisions of the act shall have all the rights, powers, privileges,
13 benefits, and immunities which may be exercised as of January 1, 2020
14 ~~2019~~, by a federal credit union doing business in Nebraska on the
15 condition that such rights, powers, privileges, benefits, and immunities
16 shall not relieve such credit union from payment of state taxes assessed
17 under any applicable laws of this state.

18 Sec. 22. Section 30-3205, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 30-3205 (1) Notwithstanding the prohibition on investments in
21 section 8-224.01, a A fiduciary holding funds for investment may invest
22 such funds in securities of, or other interests in, a private investment
23 fund or any open-end or closed-end management-type investment company or
24 investment trust registered or exempt from registration under ~~pursuant to~~
25 the federal Investment Company Act of 1940, as amended, if a court order,
26 will, agreement, or other instrument creating or defining the investment
27 powers of the fiduciary directs, requires, authorizes, or permits the
28 investment of such funds in any of the following:

29 (a) Such investments as the fiduciary may, in his or her discretion,
30 select;

31 (b) Investments ~~investments~~ generally, other than those in which

1 fiduciaries are by law authorized to invest trust funds; and

2 (c) United States Government obligations if the portfolio of such
3 investment company or investment trust is limited to United States
4 Government obligations and to repurchase agreements fully collateralized
5 by such obligations and if such investment company or investment trust
6 takes delivery of the collateral, either directly or through an
7 authorized custodian.

8 (2)(a) Notwithstanding the prohibition on investments in section
9 8-224.01, a (2)—A bank or trust company acting as a fiduciary, agent, or
10 otherwise may, in the exercise of its investment discretion or at the
11 direction of another person authorized to direct investment of funds held
12 by the bank or trust company as a fiduciary, invest and reinvest
13 interests in the securities of a private investment fund or an open-end
14 or closed-end management-type investment company or investment trust
15 registered or exempt from registration under ~~pursuant to~~ the federal
16 Investment Company Act of 1940, as amended, or may retain, sell, or
17 exchange such interests so long as the portfolio of the investment
18 company or investment trust as an entity consists substantially of
19 investments not prohibited by the instrument governing the fiduciary
20 relationship.

21 (b) The fact that the bank or trust company or an affiliate of the
22 bank or trust company provides services to the investment company, ~~or~~
23 investment trust, or private investment fund, such as that of an
24 investment advisor, custodian, transfer agent, registrar, sponsor,
25 distributor, manager, or otherwise, and is receiving reasonable
26 compensation for the services shall not preclude the bank or trust
27 company from investing, reinvesting, retaining, or exchanging any
28 interest held by the trust estate in the securities of a private
29 investment fund or any open-end or closed-end management-type investment
30 company or investment trust registered or exempt from registration under
31 ~~pursuant to~~ the federal Investment Company Act of 1940, as amended.

1 Sec. 23. Section 45-191.02, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 45-191.02 (1) Before advertising or making any oral or written
4 representation or acting as a loan broker in this state a loan broker
5 shall file with the department one copy of the disclosure statement and
6 one copy of any loan brokerage agreement.

7 (2) The loan broker shall renew these filings no less than annually
8 and shall also file any amendment to the disclosure statement within
9 forty-five days after any material change in information required to be
10 disclosed in the disclosure statement.

11 (3) The loan broker shall pay a one-hundred-fifty-dollar filing fee
12 upon filing the initial disclosure statement and a one-hundred-dollar
13 filing fee upon the filing of a renewal of the disclosure statement. The
14 loan broker shall pay a fifty-dollar filing fee for each amendment filed.
15 All funds collected by the department under this section shall be
16 remitted to the State Treasurer for credit to the Securities Act
17 ~~Financial Institution Assessment~~ Cash Fund.

18 (4) The information contained or filed under this section may be
19 made available to the public under such rules and regulations as the
20 department may prescribe.

21 Sec. 24. Section 45-191.09, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 45-191.09 (1) The director may summarily order a loan broker to
24 cease and desist from acting as a loan broker or from the use of certain
25 forms or practices relating to the loan broker's activities if the order
26 is in the public interest and the director finds:

27 (a) The disclosure statement on file is incomplete in any material
28 respect or contains any statement which was, in light of the
29 circumstances under which it was made, false or misleading with respect
30 to any material fact;

31 (b) The loan broker has willfully violated or willfully failed to

1 comply with any provision of sections 45-189 to 45-191.11;

2 (c) There has been a substantial failure to comply with any of the
3 provisions of such sections;

4 (d) The continued use of certain forms or practices relating to the
5 loan broker's activity would constitute a misrepresentation, deceit, or
6 fraud upon the consumer; or

7 (e) Any person identified in the required disclosure statement has
8 been convicted of an offense described in subdivision (2)(i)(i) of
9 section 45-191.01 or is subject to an order or has had a civil judgment
10 entered against him or her as described in subdivision (2)(i)(ii) or (2)
11 (i)(iii) of section 45-191.01 and the involvement of such person in the
12 loan broker's business creates an unreasonable risk to prospective
13 borrowers.

14 (2) If the director believes, whether or not based upon an
15 investigation conducted under section 45-191.08, that any person or loan
16 broker has engaged in or is about to engage in any act or practice
17 constituting a violation of any provision of sections 45-189 to 45-191.11
18 or any rule, regulation, or order under such sections, the director may:

19 (a) Issue a cease and desist order;

20 (b) Impose a fine not to exceed one thousand dollars per violation,
21 in addition to costs of the investigation; or

22 (c) Initiate an action in any court of competent jurisdiction to
23 enjoin such acts or practices and to enforce compliance with such
24 sections or any order under such sections.

25 (3) Upon a proper showing a permanent or temporary injunction,
26 restraining order, or writ of mandamus shall be granted. The director
27 shall not be required to post a bond.

28 (4)(a) Any fines and costs imposed pursuant to this section shall be
29 in addition to all other penalties imposed by the laws of this state. The
30 department shall collect the fines and costs and remit them to the State
31 Treasurer. The State Treasurer shall credit the costs to the Securities

1 ~~Act Cash Fund and distribute the fines in accordance with Article VII,~~
2 ~~section 5, of the Constitution of Nebraska Any fine and costs imposed~~
3 ~~pursuant to this section shall be in addition to all other penalties~~
4 ~~imposed by the laws of this state and shall be collected by the~~
5 ~~department and remitted to the State Treasurer. Costs shall be credited~~
6 ~~to the Securities Act Cash Fund, and fines shall be credited to the~~
7 ~~permanent school fund.~~

8 (b) If a person fails to pay the fine or costs of the investigation
9 referred to in this subsection, a lien in the amount of the fine and
10 costs may be imposed upon all of the assets and property of such person
11 in this state and may be recovered by suit by the department. Failure of
12 the person to pay a fine and costs shall constitute a separate violation
13 of sections 45-189 to 45-191.11.

14 (5) Upon entry of an order pursuant to this section, the director
15 shall promptly notify all persons to whom such order is directed that it
16 has been entered and of the reasons for such order and that any person to
17 whom the order is directed may request a hearing in writing within
18 fifteen business days of the issuance of the order. Upon receipt of a
19 written request, the matter shall be set down for hearing to commence
20 within thirty business days after the receipt unless the parties consent
21 to a later date or the hearing officer sets a later date for good cause.
22 If a hearing is not requested within fifteen business days from the
23 issuance of the order and none is ordered by the director, the order
24 shall automatically become final and shall remain in effect until it is
25 modified or vacated by the director. If a hearing is requested or
26 ordered, the director, after notice and hearing, shall enter his or her
27 written findings of fact and conclusions of law and may affirm, modify,
28 or vacate the order.

29 (6) The director may vacate or modify a cease and desist order if he
30 or she finds that the conditions which caused its entry have changed or
31 that it is otherwise in the public interest to do so.

1 (7) Any person aggrieved by a final order of the director may appeal
2 the order. The appeal shall be in accordance with the Administrative
3 Procedure Act.

4 Sec. 25. Section 45-601, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 45-601 Sections 45-601 to 45-622 and section 33 of this act shall be
7 known and may be cited as the Collection Agency Act.

8 No person, firm, corporation, or association shall conduct or
9 operate a collection agency or do a collection agency business as defined
10 in the act until he, she, or it has secured a license as provided in the
11 act. Any person, firm, corporation, or association conducting or
12 operating such a collection agency or doing such a collection agency
13 business without a license shall be guilty of a Class III misdemeanor for
14 each day that such unlawful business is conducted. Any officer or agent
15 of a firm, corporation, or association who personally participates in any
16 violation of the act shall be guilty of a Class III misdemeanor.

17 Nothing contained in this section shall be construed to require a
18 regular employee of a collection agency duly licensed as such in this
19 state to procure a collection agency license.

20 Nothing in the act shall be construed to prohibit a person, firm,
21 corporation, or association regulated as a collection agency in another
22 state and residing in another state from communicating with a debtor in
23 this state.

24 Sec. 26. Section 45-602, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 45-602 For purposes of the Collection Agency Act:

27 (1) Board means ~~shall mean~~ the Collection Agency Licensing Board;

28 (2) Collection agency means ~~shall mean~~ and includes ~~include~~:

29 (a) All persons, firms, corporations, and associations directly or
30 indirectly engaged in soliciting, from more than one person, firm,
31 corporation, or association, claims of any kind owed or due or asserted

1 to be owed or due such solicited person, firm, corporation, or
2 association, and all persons, firms, corporations, and associations
3 directly or indirectly engaged in asserting, enforcing, or prosecuting
4 such claims;

5 (b) Any person, firm, corporation, or association which, in
6 attempting to collect or in collecting his, her, or its own accounts or
7 claims, uses a fictitious name or any name other than his, her, or its
8 own name which would indicate to the debtor that a third person is
9 collecting or attempting to collect such account or claim; and

10 (c) Any person, firm, corporation, or association which attempts to
11 or does give away or sell to any person, firm, corporation, or
12 association, other than one licensed under the act, any system or series
13 of letters or forms for use in the collection of accounts or claims which
14 assert or indicate, directly or indirectly, that the claim or account is
15 being asserted or collected by any other person, firm, corporation, or
16 association other than the creditor or owner of the claim or demand; ~~and~~

17 (3) Collection agency ~~does shall~~ not mean or include (a) regular
18 employees of a single creditor, (b) banks, (c) trust companies, (d)
19 savings and loan associations, (e) building and loan associations, (f)
20 abstract companies doing an escrow business, (g) duly licensed real
21 estate brokers and agents when the claims or accounts being handled by
22 such broker or agent are related to or are in connection with such
23 brokers' or agents' regular real estate business, (h) express and
24 telegraph companies subject to public regulation and supervision, (i)
25 attorneys at law handling claims and collections in their own names and
26 not operating a collection agency under the management of a layperson,
27 (j) any person, firm, corporation, or association handling claims,
28 accounts, or collections under an order or orders of any court, or (k) a
29 person, firm, corporation, or association which, for valuable
30 consideration, purchases accounts, claims, or demands of another and
31 then, in such purchaser's own name, proceeds to assert or collect such

1 accounts, claims, or demands; and -

2 (4) Nationwide Mortgage Licensing System and Registry means a
3 licensing system developed and maintained by the Conference of State Bank
4 Supervisors and the American Association of Residential Mortgage
5 Regulators for the licensing and registration of mortgage loan
6 originators, mortgage bankers, installment loan companies, and other
7 state-regulated financial services entities and industries.

8 Sec. 27. Section 45-605, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 45-605 The board shall be responsible for the administration of the
11 Collection Agency Act. All applications for licenses provided for in the
12 act shall be made to the board. If the applicant is an individual, the
13 application shall include the applicant's social security number. The
14 board shall investigate the qualifications of each applicant for a
15 license. Based on the results of the investigation, the board may either
16 issue a license to the applicant upon the payment of the license fee and
17 any processing fee allowed under section 33 of this act and the
18 furnishing of the bond provided for in section 45-608 or refuse to issue
19 such license. The action of the board may be appealed, and the appeal
20 shall be in accordance with the Administrative Procedure Act.

21 Sec. 28. Section 45-606, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 45-606 (1) Any person, firm, corporation, or association desiring
24 to engage in this state in the collection business under as defined in
25 the Collection Agency Act shall make written and sworn application for
26 such a license therefor to the board upon a form to be prescribed by the
27 board, which application shall be accompanied by an investigation fee of
28 not to exceed two hundred fifty dollars and any processing fee allowed
29 under section 33 of this act. The amount of the investigation fee shall
30 be fixed by the board and shall not exceed the amount actually necessary
31 to sustain the administration and enforcement of the act. Such

1 application shall be accompanied by a duly verified financial statement
2 of the applicant in form prescribed by the board.

3 (2) The board may require applicants to utilize the Nationwide
4 Mortgage Licensing System and Registry or an entity designated by the
5 Nationwide Mortgage Licensing System and Registry for the processing of
6 applications and fees.

7 Sec. 29. Section 45-609, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 45-609 The license provided for in section 45-607 shall be in such
10 form as prescribed by the board. If the licensee maintains a branch
11 office, the licensee he, she, or it shall not do a collection agency
12 business in such branch office until the licensee he, she, or it has
13 secured a branch office certificate for such branch office therefor. A
14 licensee, so long as his, her, or its license is in full force and effect
15 and in good standing, shall be entitled to branch office certificates for
16 any branch offices operated by such licensee upon payment of the fee as
17 set forth therefor provided in section 45-620 and any processing fee
18 allowed under section 33 of this act. A licensee shall display his, her,
19 or its license in a conspicuous place in his, her, or its principal place
20 of business, and if the licensee he, she, or it conducts a branch office,
21 the branch office certificate shall be conspicuously displayed in the
22 branch office.

23 Sec. 30. Section 45-610, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 45-610 The board shall, upon written application by a licensee and
26 the payment of the fee as set forth therefor provided in section 45-620
27 and any processing fee allowed under section 33 of this act, issue
28 solicitor's certificates to employees of the licensee who solicit or
29 collect accounts, which certificates shall be in such form as determined
30 by the board. Such certificates shall entitle the solicitor named in the
31 certificate to solicit and handle, for the licensee named in the

1 certificate, collection agency business, accounts, and claims. Upon the
2 termination of the employment of the solicitor by the licensee, such
3 certificate shall become null and void and shall be returned by such
4 solicitor to the licensee for cancellation by the board.

5 Sec. 31. Section 45-611, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 45-611 (1) All licenses and certificates issued under the
8 Collection Agency Act shall expire on December 31 following the date of
9 issuance unless renewed as provided in this section prior to such date.
10 All branch office certificates and solicitor's certificates shall
11 continue in full force and effect only so long as the license under which
12 they are issued is in full force and effect.

13 (2) Each licensee shall, if he or she desires to have his or her
14 license renewed, make application to the board for such renewal on or
15 before December 31 of each year and shall, with such application,
16 furnish the bond required by section 45-608 or furnish evidence of the
17 continuation in effect of the prior bond so furnished and pay the renewal
18 fee provided for in section 45-620 and any processing fee allowed under
19 section 33 of this act.

20 (3) If an application for renewal of a license is denied, the
21 applicant may appeal from such refusal the same as from the refusal to
22 issue an original license.

23 (4) Upon renewal of a license, the board shall issue to the licensee
24 a new license or a certificate of renewal of the previous license in such
25 form as the board determines. Upon the renewal of a license, the licensee
26 may, if the licensee he, she, or it maintains a branch office, secure a
27 renewal of his, her, or its branch office certificate upon payment of the
28 renewal fee provided for in such section 45-620 and any processing fee
29 allowed under section 33 of this act. Such licensee may also secure
30 renewals of his, her, or its solicitor's certificates upon payment of the
31 renewal fee provided for in such section 45-620 and any processing fee

1 allowed under section 33 of this act.

2 Sec. 32. Section 45-620, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 45-620 No license, renewal of license, branch office certificate, or
5 solicitor's certificate, as provided for in the Collection Agency Act,
6 shall be issued by the board until any processing fee allowed under
7 section 33 of this act has been paid and the following fees have been
8 paid to the Secretary of State: For a license, not to exceed two hundred
9 dollars; for renewal of a license, not to exceed one hundred dollars; for
10 a branch office certificate, not to exceed fifty dollars; for renewal of
11 a branch office certificate, not to exceed thirty-five dollars; for a
12 solicitor's certificate and for renewal of a solicitor's certificate, not
13 to exceed ten dollars. The amount of the fees to be paid to the Secretary
14 of State shall be fixed by the board and shall not exceed the amounts
15 actually necessary to sustain the administration and enforcement of the
16 act.

17 Sec. 33. (1) Effective October 1, 2020, or within one year after
18 the Nationwide Mortgage Licensing System and Registry is capable of
19 processing licenses issued under the Collection Agency Act, whichever is
20 later, the board, upon its discretion, may require licensees under the
21 act to be licensed and registered through the Nationwide Mortgage
22 Licensing System and Registry. In order to carry out this requirement,
23 the board may participate in the Nationwide Mortgage Licensing System and
24 Registry. For this purpose, the board may establish, by adopting and
25 promulgating rules and regulations or by order, requirements as
26 necessary. The requirements may include, but not be limited to:

27 (a) Any information as deemed necessary by the Nationwide Mortgage
28 Licensing System and Registry;

29 (b) The payment of fees to apply for or renew a license provided for
30 in sections 45-606 and 45-620 and any processing fee allowed under this
31 section through the Nationwide Mortgage Licensing System and Registry;

1 (c) The setting or resetting, as necessary, of renewal processing or
2 reporting dates; and

3 (d) Amending or surrendering a license or any other such activities
4 as the board deems necessary for participation in the Nationwide Mortgage
5 Licensing System and Registry.

6 (2) In order to fulfill the purposes of the Nebraska Collection
7 Agency Act, the board may establish relationships or contracts with the
8 Nationwide Mortgage Licensing System and Registry or other entities
9 designated by the Nationwide Mortgage Licensing System and Registry to
10 collect and maintain records and process transaction fees or other fees
11 related to licensees or other persons subject to the act. The board may
12 allow such system to collect licensing fees on behalf of the board and
13 allow such system to collect a processing fee for the services of the
14 system directly from each licensee or applicant for a license.

15 (3) The board shall regularly report enforcement actions and other
16 relevant information to the Nationwide Mortgage Licensing System and
17 Registry.

18 (4) The board shall establish a process whereby applicants and
19 licensees may challenge information entered into the Nationwide Mortgage
20 Licensing System and Registry by the board.

21 (5) The board shall ensure that the Nationwide Mortgage Licensing
22 System and Registry adopts a privacy, data security, and breach of
23 security of the system notification policy. The board shall make
24 available upon written request a copy of the contract between the board
25 and the Nationwide Mortgage Licensing System and Registry pertaining to
26 the breach of security of the system provisions.

27 (6) Upon written request, the board shall provide the most recently
28 available audited financial report of the Nationwide Mortgage Licensing
29 System and Registry.

30 Sec. 34. Section 45-623, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 45-623 (1) Any state agency, county, city, village, or other
2 political subdivision may contract to retain a collection agency licensed
3 pursuant to the Collection Agency Act ~~sections 45-601 to 45-622~~, within
4 or without this state, for the purpose of collecting public debts owed by
5 any person to such state agency, county, city, village, or other
6 political subdivision.

7 (2) No debt owed pursuant to subsection (1) of this section may be
8 assigned to a collection agency unless (a) there has been an attempt to
9 advise the debtor by first-class mail, postage prepaid, at the last-known
10 address of the debtor (i) of the existence of the debt and (ii) that the
11 debt may be assigned to a collection agency for collection if the debt is
12 not paid and (b) at least thirty days have elapsed from the time the
13 notice was sent, except that in the case of an order for support being
14 enforced by a county attorney, authorized attorney, or prosecuting
15 attorney pursuant to Chapter 42 or 43, this notice requirement shall not
16 apply and Title IV-D of the federal Social Security Act, as amended,
17 shall be complied with.

18 (3) A collection agency which is assigned a debt under this section
19 shall have only those remedies and powers which would be available to it
20 as an assignee of a private creditor. This subsection shall not be
21 construed to in any way limit the remedies and powers available to an
22 authorized attorney as defined in section 43-512.

23 (4) For purposes of this section, debt shall include all delinquent
24 fees or payments except delinquent property taxes on real estate. In the
25 case of debt arising as a result of an order or judgment of a court in a
26 criminal or traffic matter, a collection fee may be added to the debt.
27 The collection fee shall be twenty-five dollars or four and one-half
28 percent of the debt, whichever is greater. The collection fee shall be
29 paid by the person who owes the debt directly to the person or agency
30 providing the collection service.

31 Sec. 35. Section 45-901, Revised Statutes Cumulative Supplement,

1 2018, is amended to read:

2 45-901 Sections 45-901 to 45-931 and section 39 of this act shall be
3 known and may be cited as the Delayed Deposit Services Licensing Act.

4 Sec. 36. Section 45-902, Revised Statutes Cumulative Supplement,
5 2018, is amended to read:

6 45-902 For purposes of the Delayed Deposit Services Licensing Act:

7 (1) Annual percentage rate means an annual percentage rate as
8 determined under section 107 of the federal Truth in Lending Act, 15
9 U.S.C. 1606, as such section existed on January 1, 2020 ~~2018~~, and
10 includes all fees, interest, and charges contained in a delayed deposit
11 service contract, except for charges permitted for the presentation of
12 instruments that are not negotiable under subdivision (1)(a)(v) of
13 section 45-917 or returned unpaid under section 45-918.01;

14 (2) Check means any check, draft, or other instrument for the
15 payment of money. Check also means an authorization to debit an account
16 electronically;

17 (3) Default means a maker's failure to repay a delayed deposit
18 transaction in compliance with the terms contained in a delayed deposit
19 service agreement;

20 (4) Delayed deposit services business means any person who for a fee
21 (a) accepts a check dated subsequent to the date it was written or (b)
22 accepts a check dated on the date it was written and holds the check for
23 a period of days prior to deposit or presentment pursuant to an agreement
24 with or any representation made to the maker of the check, whether
25 express or implied;

26 (5) Department means the Department of Banking and Finance;

27 (6) Director means the Director of Banking and Finance or his or her
28 designee;

29 (7) Financial institution has the same meaning as in section
30 8-101.03;

31 (8) Licensee means any person licensed under the Delayed Deposit

1 Services Licensing Act;

2 (9) Maker means an individual who receives the proceeds of a delayed
3 deposit transaction;~~and~~

4 (10) Nationwide Mortgage Licensing System and Registry means a
5 licensing system developed and maintained by the Conference of State Bank
6 Supervisors and the American Association of Residential Mortgage
7 Regulators for the licensing and registration of mortgage loan
8 originators, mortgage bankers, installment loan companies, and other
9 state-regulated financial services entities and industries; and

10 (11) ~~(10)~~ Person means an individual, proprietorship, association,
11 joint venture, joint stock company, partnership, limited partnership,
12 limited liability company, business corporation, nonprofit corporation,
13 or any group of individuals however organized.

14 Sec. 37. Section 45-905, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 45-905 (1) An applicant for a license shall submit an application,
17 under oath, to the director on forms prescribed by the director. The
18 forms shall contain such information as the director may prescribe,
19 including, but not limited to:

20 (a) The applicant's financial condition;

21 (b) The qualifications and business history of the applicant and of
22 its officers, directors, shareholders, partners, or members;

23 (c) Whether the applicant or any of its officers, directors,
24 shareholders, partners, or members have ever been convicted of any (i)
25 misdemeanor involving any aspect of a delayed deposit services business
26 or any business of a similar nature or (ii) felony;

27 (d) Whether the applicant or any of its officers, directors,
28 shareholders, partners, or members have ever been permanently or
29 temporarily enjoined by a court of competent jurisdiction from engaging
30 in or continuing any conduct or practice involving any aspect of a
31 delayed deposit services business or any business of a similar nature;

1 (e) A description of the applicant's proposed method of doing
2 business; and

3 (f) If the applicant is an individual, the applicant's social
4 security number.

5 (2) The director shall cause a criminal history record information
6 check to be conducted of the applicant, its officers, directors,
7 shareholders, partners, or members and, on or after January 1, 2021, as
8 provided in subsection (1) of section 39 of this act. The direct cost of
9 the criminal history record information check shall be paid by the
10 applicant.

11 Sec. 38. Section 45-906, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 45-906 The application required by section 45-905 shall be
14 accompanied by:

15 (1) A nonrefundable application fee of five hundred dollars and any
16 processing fee allowed under subsection (2) of section 39 of this act;
17 and

18 (2) A surety bond in the base amount ~~sum~~ of fifty thousand dollars
19 which, on or after January 1, 2021, shall be increased by fifty thousand
20 dollars for each branch office established or to be established in
21 Nebraska. The surety bond shall ~~to~~ be executed by the licensee and a
22 surety company authorized to do business in Nebraska and approved by the
23 director conditioned for the faithful performance by the licensee of the
24 duties and obligations pertaining to the delayed deposit services
25 business so licensed and the prompt payment of any judgment recovered
26 against the licensee. The bond or a substitute bond shall remain in
27 effect during all periods of licensing or the licensee shall immediately
28 cease doing business and its license shall be surrendered to or canceled
29 by the department. A surety may cancel a bond only upon thirty days'
30 written notice to the director.

31 (3) The director may at any time require the filing of a new or

1 supplemental bond in the form as provided in subdivision (2) of this
2 section if he or she determines that the bond filed under this section is
3 exhausted or is inadequate for any reason, including, but not limited to,
4 the financial condition of the licensee or the applicant for a license,
5 or violations of the Delayed Deposit Services Licensing Act, any rule,
6 regulation, or order thereunder, or any state or federal law applicable
7 to the licensee or applicant for a license. The new or supplemental bond
8 shall not exceed one hundred thousand dollars over the amount of the bond
9 required by subdivision (2) of this section.

10 Sec. 39. (1) On and after January 1, 2021, licensees under the
11 Delayed Deposit Services Licensing Act are required to be licensed and
12 registered through the Nationwide Mortgage Licensing System and Registry.
13 In order to carry out this requirement, the department is authorized to
14 participate in the Nationwide Mortgage Licensing System and Registry. For
15 this purpose, the director may establish requirements as necessary by
16 adopting and promulgating rules and regulations or by order. The
17 requirements may include, but are not limited to:

18 (a) Background checks of applicants and licensees, including, but
19 not limited to:

20 (i) Fingerprints of any principal officer, director, partner,
21 member, or sole proprietor submitted to the Federal Bureau of
22 Investigation and any other governmental agency or entity authorized to
23 receive such information for a state, national, and international
24 criminal history record information check;

25 (ii) Checks of civil or administrative records;

26 (iii) Checks of an applicant's or a licensee's credit history; or

27 (iv) Any other information as deemed necessary by the director;

28 (b) The payment of fees to apply for or renew a license through the
29 Nationwide Mortgage Licensing System and Registry;

30 (c) The setting or resetting, as necessary, of renewal processing or
31 reporting dates; and

1 (d) Amending or surrendering a license or any other such activities
2 as the director deems necessary for participation in the Nationwide
3 Mortgage Licensing System and Registry.

4 (2) In order to fulfill the purposes of the Delayed Deposit Services
5 Licensing Act, the department may contract with the Nationwide Mortgage
6 Licensing System and Registry or other entities designated by the
7 Nationwide Mortgage Licensing System and Registry to collect and maintain
8 records and process transaction fees or other fees related to applicants,
9 licensees, or other persons subject to the act. The department may allow
10 such system to collect licensing fees on behalf of the department and may
11 allow such system to collect a processing fee for the services of the
12 system directly from each applicant or licensee.

13 (3) The director shall regularly report enforcement actions and
14 other relevant information to the Nationwide Mortgage Licensing System
15 and Registry.

16 (4) The director shall establish a process whereby applicants and
17 licensees may challenge information entered by the director into the
18 Nationwide Mortgage Licensing System and Registry.

19 (5) The department shall ensure that the Nationwide Mortgage
20 Licensing System and Registry adopts a privacy, data security, and breach
21 of security of the system notification policy. The director shall make
22 available upon written request a copy of such policy and the contract
23 between the department and the system.

24 (6) Upon written request the department shall provide the most
25 recently available audited financial report of the Nationwide Mortgage
26 Licensing System and Registry.

27 (7) The director may use the Nationwide Mortgage Licensing System
28 and Registry as a channeling agent for requesting information from and
29 distributing information to the United States Department of Justice or
30 any other governmental agency in order to reduce the points of contact
31 which the Federal Bureau of Investigation may have to maintain for

1 purposes of subsection (5) of this section.

2 Sec. 40. Section 45-910, Revised Statutes Cumulative Supplement,
3 2018, is amended to read:

4 45-910 (1) A license issued pursuant to the Delayed Deposit Services
5 Licensing Act shall be conspicuously posted at the licensee's place of
6 business.

7 (2)(a) Except as provided in subdivision (2)(b) of this section, all
8 ~~(2)~~ All licenses shall remain in effect until the next succeeding May 1,
9 unless earlier canceled, suspended, or revoked by the director pursuant
10 to section 45-922 or surrendered by the licensee pursuant to section
11 45-911.

12 (b) All licenses issued on or after the operative date of this
13 section and before January 1, 2021, shall remain in effect until December
14 31, 2021, unless earlier canceled, suspended, or revoked by the director
15 pursuant to section 45-922 or surrendered by the licensee pursuant to
16 section 45-911. All licenses issued on or after January 1, 2021, shall
17 remain in effect until the next succeeding December 31, unless earlier
18 canceled, suspended, or revoked by the director pursuant to section
19 45-922 or surrendered by the licensee pursuant to section 45-911.

20 (3) Licenses may be renewed annually by filing with the director (a)
21 a renewal fee consisting of five hundred dollars and any processing fee
22 allowed under subsection (2) of section 39 of this act for the main
23 office location and five hundred dollars and any processing fee allowed
24 under subsection (2) of section 39 of this act for each branch office
25 location and (b) an application for renewal in writing through the
26 Nationwide Mortgage Licensing System and Registry containing such
27 information as the director may require to indicate any material change
28 in the information contained in the original application or succeeding
29 renewal applications.

30 Sec. 41. Section 45-911, Revised Statutes Cumulative Supplement,
31 2018, is amended to read:

1 45-911 A licensee may surrender a delayed deposit services business
2 license by delivering to the director written notice that the license is
3 surrendered and any processing fee allowed under subsection (2) of
4 section 39 of this act. The department may issue a notice of cancellation
5 of the license following such surrender in lieu of revocation
6 proceedings. The surrender shall not affect the licensee's civil or
7 criminal liability for acts committed prior to such surrender, affect the
8 liability for any fines which may be levied against the licensee or any
9 of its officers, directors, shareholders, partners, or members for acts
10 committed before the surrender, affect the liability of the surety on the
11 bond, or entitle such licensee to a return of any part of the annual
12 license fee or fees. The director may establish procedures for the
13 disposition of the books, accounts, and records of the licensee and may
14 require such action as he or she deems necessary for the protection of
15 the makers of checks which are outstanding at the time of surrender of
16 the license.

17 Sec. 42. Section 45-912, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 45-912 A licensee shall be required to notify the director in
20 writing through the Nationwide Mortgage Licensing System and Registry
21 within thirty days after the occurrence of any material development,
22 including, but not limited to:

23 (1) Bankruptcy or corporate reorganization;

24 (2) Business reorganization;

25 (3) Institution of license revocation procedures by any other state
26 or jurisdiction;

27 (4) The filing of a criminal indictment or complaint against the
28 licensee or any of its officers, directors, shareholders, partners,
29 members, employees, or agents;

30 (5) A felony conviction against the licensee or any of the
31 licensee's officers, directors, shareholders, partners, members,

1 employees, or agents; or

2 (6) The termination of employment or association with the licensee
3 of any of the licensee's officers, directors, shareholders, partners,
4 members, employees, or agents for violations or suspected violations of
5 the Delayed Deposit Services Licensing Act, any rule, regulation, or
6 order thereunder, or any state or federal law applicable to the licensee.

7 Sec. 43. Section 45-915, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 45-915 (1) Except as provided in subsection (2) of this section, a
10 licensee, on or before December 31, 2020, may offer a delayed deposit
11 services business only at an office designated as its principal place of
12 business in the application. A licensee may change the location of its
13 designated principal place of business with the prior written approval of
14 the director. The director may establish forms and procedures for
15 determining whether the change of location should be approved.

16 (2) On or before December 31, 2020, a A licensee may operate branch
17 offices only in the same county in which the licensee's designated
18 principal place of business is located. The licensee may establish a
19 branch office or change the location of a branch office with the prior
20 written approval of the director. The director may establish forms and
21 procedures for determining whether an original branch or branches or a
22 change of location of a branch should be approved.

23 (3) On or after January 1, 2021, a licensee shall designate an
24 office in Nebraska as its principal place of business. A licensee may
25 change the location of its designated principal place of business with
26 the prior written approval of the director. The director may establish
27 forms and procedures for determining whether the change of location
28 should be approved.

29 (4) On or after January 1, 2021, a licensee may operate branch
30 offices in Nebraska. The licensee may establish a branch office or change
31 the location of a branch office with the prior written approval of the

1 director. The director may establish forms and procedures for determining
2 whether an original branch or branches or a change of location of a
3 branch should be approved.

4 (5) A licensee may offer a delayed deposit services business only at
5 an office designated as its principal place of business and any branch
6 office established pursuant to this section.

7 (6) ~~(3)~~ A fee of one hundred fifty dollars and any processing fee
8 allowed under shall be paid to the director for each request made
9 pursuant to subsection ~~(1)~~ or (2) of this section 39 of this act shall be
10 submitted with each request made pursuant to this section.

11 Sec. 44. Section 45-1017, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 45-1017 (1) The department shall inspect the business, records, and
14 accounts of all persons that lend money subject to the Nebraska
15 Installment Loan Act. The department may examine or investigate
16 complaints about or reports of alleged violations by a licensee made to
17 the department. The department may inspect and investigate the business,
18 records, and accounts of all persons in the public business of lending
19 money contrary to the act and who do not have a license under the act.
20 The director may appoint examiners who shall, under his or her direction,
21 investigate the loans and business and conduct examinations ~~examine the~~
22 ~~books and records~~ of licensees as annually and more often as determined
23 by the director. The expenses incurred by the department in examining ~~the~~
24 ~~books and records~~ of licensees and in administering the act ~~during each~~
25 ~~calendar year~~ shall be charged to ~~paid by~~ the licensee as set forth in
26 sections 8-605 and 8-606.

27 (2) Upon receipt by a licensee of a notice of investigation or
28 inquiry request for information from the department, the licensee shall
29 respond within twenty-one calendar days. Each day a licensee fails to
30 respond as required by this subsection constitutes a separate violation.

31 (3) If the director finds, after notice and opportunity for hearing

1 in accordance with the Administrative Procedure Act, that any person has
2 willfully and intentionally violated any provision of the Nebraska
3 Installment Loan Act, any rule or regulation adopted and promulgated
4 under the act, or any order issued under the act, the director may order
5 such person to pay (a) an administrative fine of not more than one
6 thousand dollars for each separate violation and (b) the costs of
7 investigation. The department shall remit fines collected under this
8 subsection to the State Treasurer for distribution in accordance with
9 Article VII, section 5, of the Constitution of Nebraska. ~~All fines~~
10 ~~collected by the department pursuant to this subsection shall be remitted~~
11 ~~to the State Treasurer for credit to the permanent school fund.~~

12 (4) If a person fails to pay an administrative fine and the costs of
13 investigation ordered pursuant to subsection (3) of this section, a lien
14 in the amount of such fine and costs may be imposed upon all assets and
15 property of such person in this state and may be recovered in a civil
16 action by the director. The lien shall attach to the real property of
17 such person when notice of the lien is filed and indexed against the real
18 property in the office of the register of deeds in the county where the
19 real property is located. The lien shall attach to any other property of
20 such person when notice of the lien is filed against the property in the
21 manner prescribed by law. Failure of the person to pay such fine and
22 costs constitutes a separate violation of the act.

23 Sec. 45. Section 45-1033, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 45-1033 (1) The director may, following a hearing under the
26 Administrative Procedure Act and the rules and regulations adopted and
27 promulgated by the department under the act, suspend or revoke any
28 license issued pursuant to the Nebraska Installment Loan Act. The
29 director may also impose an administrative fine on the licensee for each
30 separate violation of the act. The director may take one or more of these
31 actions if the director finds:

1 (a) The licensee has materially violated or demonstrated a
2 continuing pattern of violating the Nebraska Installment Loan Act or
3 rules and regulations adopted and promulgated under the act, any order
4 issued under the act, or any other state or federal law applicable to the
5 conduct of its business;

6 (b) A fact or condition exists which, if it had existed at the time
7 of the original application for the license, would have warranted the
8 director to deny the application;

9 (c) The licensee has violated a voluntary consent or compliance
10 agreement which had been entered into with the director;

11 (d) The licensee has knowingly provided or caused to be provided to
12 the director any false or fraudulent representation of a material fact or
13 any false or fraudulent financial statement or suppressed or withheld
14 from the director any information which, if submitted by the licensee,
15 would have resulted in denial of the license application;

16 (e) The licensee has refused to permit an examination by the
17 director of the licensee ~~licensee's business, records, and accounts~~
18 pursuant to subsection (1) of section 45-1017 or refused or failed to
19 comply with subsection (2) of section 45-1017 or failed to make any
20 report required under section 45-1018. Each day the licensee continues in
21 violation of this subdivision constitutes a separate violation;

22 (f) The licensee has failed to maintain records as required by the
23 director following written notice. Each day the licensee continues in
24 violation of this subdivision constitutes a separate violation;

25 (g) The licensee knowingly has employed any individual or knowingly
26 has maintained a contractual relationship with any individual acting as
27 an agent, if such individual has been convicted of, pleaded guilty to, or
28 was found guilty after a plea of nolo contendere to (i) a misdemeanor
29 under any state or federal law which involves dishonesty or fraud or
30 which involves any aspect of the mortgage banking business, financial
31 institution business, or installment loan business or (ii) any felony

1 under state or federal law;

2 (h) The licensee has violated the written restrictions or conditions
3 under which the license was issued;

4 (i) The licensee, or if the licensee is a business entity, one of
5 the officers, directors, members, partners, or controlling shareholders,
6 was found guilty after a plea of nolo contendere to (i) a misdemeanor
7 under any state or federal law which involves dishonesty or fraud or
8 which involves any aspect of the mortgage banking business, financial
9 institution business, or installment loan business or (ii) any felony
10 under state or federal law; or

11 (j) The licensee knowingly has employed any individual or knowingly
12 has maintained a contractual relationship with any individual acting as
13 an agent, if such individual is conducting activities requiring a
14 mortgage loan originator license in this state without first obtaining
15 such license.

16 (2) Except as provided in this section, a license shall not be
17 revoked or suspended except after notice and a hearing in accordance with
18 the Administrative Procedure Act and the rules and regulations adopted
19 and promulgated by the department under the act.

20 (3)(a) If a licensee fails to renew its license as required by
21 subsection (1) of section 45-1013 and does not voluntarily surrender the
22 license pursuant to section 45-1032, the department may issue a notice of
23 expiration of the license to the licensee in lieu of revocation
24 proceedings.

25 (b) If a licensee fails to maintain a surety bond as required by
26 section 45-1007, the department may issue a notice of cancellation of the
27 license in lieu of revocation proceedings.

28 (4) Revocation, suspension, cancellation, or expiration of a license
29 shall not impair or affect the obligation of a preexisting lawful
30 contract between the licensee and any person, including a borrower.

31 (5) Revocation, suspension, cancellation, or expiration of a license

1 shall not affect civil or criminal liability for acts committed before
2 the revocation, suspension, cancellation, or expiration or liability for
3 any fines which may be imposed against the licensee or any of its
4 officers, directors, shareholders, partners, or members pursuant to this
5 section or section 45-1069 for acts committed before the surrender.

6 Sec. 46. Section 52-1308, Revised Statutes Cumulative Supplement,
7 2018, is amended to read:

8 52-1308 Farm product shall mean an agricultural commodity, a species
9 of livestock used or produced in farming operations, or a product of such
10 crop or livestock in its unmanufactured state, that is in the possession
11 of a person engaged in farming operations. Farm products shall include,
12 but are not limited to, apples, artichokes, asparagus, barley, bees,
13 buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens,
14 corn, cucumbers, dry beans, eggs, embryos or genetic products, emu, fish,
15 flax seed, goats, grapes, hay, hemp, hogs, honey, honeydew melon, horses,
16 llamas, milk, millet, muskmelon, oats, onions, ostrich, popcorn,
17 potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and
18 lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar
19 beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys,
20 vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may,
21 by rule and regulation, add other farm products to the list specified in
22 this section if such products are covered by the general definition
23 provided by this section.

24 Sec. 47. Section 59-1722, Revised Statutes Cumulative Supplement,
25 2018, is amended to read:

26 59-1722 (1) Any transaction involving the sale of a franchise as
27 defined in 16 C.F.R. 436.1(h), as such regulation existed on January 1,
28 2020 in which the seller has complied with the Federal Trade Commission
29 trade regulation rule titled Disclosure Requirements and Prohibitions
30 Concerning Franchising, 16 C.F.R. 436, shall be exempt from the Seller-
31 Assisted Marketing Plan Act, except that such transactions shall be

1 subject to subdivision (1)(d) of section 59-1757, those provisions
2 regulating or prescribing the use of the phrase buy-back or secured
3 investment or similar phrases as set forth in sections 59-1726 to 59-1728
4 and 59-1751, and all sections which provide for their enforcement. The
5 exemption shall only apply if:

6 (a) The franchise is offered and sold in compliance with the
7 requirements of 16 C.F.R. part 436, Disclosure Requirements and
8 Prohibitions Concerning Franchising, as such part existed on January 1,
9 2020 ~~The seller uses a disclosure document prepared in accordance with~~
10 ~~either the Federal Trade Commission trade regulation rule titled~~
11 ~~Disclosure Requirements and Prohibitions Concerning Franchising, 16~~
12 ~~C.F.R. 436, or the then current guidelines for the preparation of the~~
13 ~~Uniform Franchise Offering Circular adopted by the North American~~
14 ~~Securities Administrators Association;~~

15 (b) Before placing any advertisement in a Nebraska-based
16 publication, offering for sale to any prospective purchaser in Nebraska,
17 or making any representations in connection with such offer or sale to
18 any prospective purchaser in Nebraska, the seller files a notice with the
19 Department of Banking and Finance which contains (i) the name, address,
20 and telephone number of the seller and the name under which the seller
21 intends to do business and (ii) a brief description of the plan offered
22 by the seller; and

23 (c) The seller pays a filing fee of one hundred dollars.

24 (2) The department may request a copy of the disclosure document
25 upon receipt of a written complaint or inquiry regarding the seller or
26 upon a reasonable belief that a violation of the Seller-Assisted
27 Marketing Plan Act has occurred or may occur. The seller shall provide
28 such copy within ten business days of receipt of the request.

29 (3) All funds collected by the department under this section shall
30 be remitted to the State Treasurer for credit to the Securities Act Cash
31 Fund.

1 (4) The Director of Banking and Finance may by order deny or revoke
2 an exemption specified in this section with respect to a particular
3 offering of one or more business opportunities if the director finds that
4 such an order is in the public interest or is necessary for the
5 protection of purchasers. An order shall not be entered without
6 appropriate prior notice to all interested parties, an opportunity for
7 hearing, and written findings of fact and conclusions of law. If the
8 public interest or the protection of purchasers so requires, the director
9 may by order summarily deny or revoke an exemption specified in this
10 section pending final determination of any proceedings under this
11 section. An order under this section shall not operate retroactively.

12 Sec. 48. Section 59-1725.01, Reissue Revised Statutes of Nebraska,
13 is amended to read:

14 59-1725.01 (1) The Director of Banking and Finance may summarily
15 order a seller or any officer, director, employee, or agent of such
16 seller to cease and desist from the further offer or sale of any seller-
17 assisted marketing plan by the seller if the director finds:

18 (a) There has been a substantial failure to comply with any of the
19 provisions of the Seller-Assisted Marketing Plan Act;

20 (b) The offer or sale of the plan would constitute misrepresentation
21 to or deceit or fraud upon the purchasers; or

22 (c) Any person identified in the required disclosure document has
23 been convicted of an offense described in subdivision (2)(a) of section
24 59-1735 or is subject to an order or has had a civil judgment entered
25 against him or her as described in subdivision (2)(b) or (c) of section
26 59-1735, and the involvement of such person in the sale or management of
27 the seller-assisted marketing plan creates an unreasonable risk to
28 prospective purchasers.

29 (2) If the director believes, whether or not based upon an
30 investigation conducted under section 59-1725, that any person has
31 engaged in or is about to engage in any act or practice constituting a

1 violation of any provision of the Seller-Assisted Marketing Plan Act or
2 any rule, regulation, or order of the director, the director may:

3 (a) Issue a cease and desist order;

4 (b) Impose a fine not to exceed five thousand dollars per violation,
5 in addition to costs of the investigation; or

6 (c) Initiate an action in any court of competent jurisdiction to
7 enjoin such acts or practices and to enforce compliance with the Seller-
8 Assisted Marketing Plan Act or any order under the act.

9 (3) Upon a proper showing, a permanent or temporary injunction,
10 restraining order, or writ of mandamus shall be granted. The director
11 shall not be required to post a bond.

12 (4)(a) Any fines and costs imposed under this section shall be in
13 addition to all other penalties imposed by the laws of this state. The
14 Department of Banking and Finance shall collect the fines and costs and
15 remit them to the State Treasurer. The State Treasurer shall credit the
16 costs to the Securities Act Cash Fund and distribute the fines in
17 accordance with Article VII, section 5, of the Constitution of Nebraska
18 ~~Any fine and costs imposed under this section shall be in addition to all~~
19 ~~other penalties imposed by the laws of this state and shall be collected~~
20 ~~by the Department of Banking and Finance and remitted to the State~~
21 ~~Treasurer. Costs shall be credited to the Securities Act Cash Fund, and~~
22 ~~fines shall be credited to the permanent school fund.~~

23 (b) If a person fails to pay the administrative fine or
24 investigation costs referred to in this section, a lien in the amount of
25 such fine and costs may be imposed upon all assets and property of such
26 person in this state and may be recovered by suit by the director.
27 Failure of the person to pay such fine and costs shall constitute a
28 separate violation of the act.

29 (5) Upon entry of an order pursuant to this section, the director
30 shall, in writing, promptly notify all persons to whom such order is
31 directed that it has been entered and of the reasons for such order and

1 that any person to whom the order is directed may request a hearing in
2 writing within fifteen business days after the issuance of the order.
3 Upon receipt of such written request, the matter shall be set down for
4 hearing to commence within thirty business days after the receipt unless
5 the parties consent to a later date or the hearing officer sets a later
6 date for good cause. If a hearing is not requested within fifteen
7 business days and none is ordered by the director, the order shall
8 automatically become final and shall remain in effect until it is
9 modified or vacated by the director. If a hearing is requested or
10 ordered, the director, after notice and hearing, shall enter his or her
11 written findings of fact and conclusions of law and may affirm, modify,
12 or vacate the order.

13 (6) The director may vacate or modify a cease and desist order if he
14 or she finds that the conditions which caused its entry have changed or
15 that it is otherwise in the public interest to do so.

16 (7) Any person aggrieved by a final order of the director may appeal
17 the order. The appeal shall be in accordance with the Administrative
18 Procedure Act.

19 Sec. 49. Section 69-2103, Revised Statutes Supplement, 2019, is
20 amended to read:

21 69-2103 For purposes of the Consumer Rental Purchase Agreement Act:

22 (1) Advertisement means a commercial message in any medium that
23 aids, promotes, or assists directly or indirectly a consumer rental
24 purchase agreement but does not include in-store merchandising aids such
25 as window signs and ceiling banners;

26 (2) Cash price means the price at which the lessor would have sold
27 the property to the consumer for cash on the date of the consumer rental
28 purchase agreement for the property;

29 (3) Consumer means a natural person who rents property under a
30 consumer rental purchase agreement;

31 (4) Consumer rental purchase agreement means an agreement which is

1 for the use of property by a consumer primarily for personal, family, or
2 household purposes, which is for an initial period of four months or
3 less, whether or not there is any obligation beyond the initial period,
4 which is automatically renewable with each payment, and which permits the
5 consumer to become the owner of the property. A consumer rental purchase
6 agreement in compliance with the act shall not be construed to be a lease
7 or agreement which constitutes a credit sale as defined in 12 C.F.R.
8 1026.2(a)(16), as such regulation existed on January 1, 2020 ~~2019~~, and 15
9 U.S.C. 1602(h), as such section existed on January 1, 2020 ~~2019~~, or a
10 lease which constitutes a consumer lease as defined in 12 C.F.R. 1013.2,
11 as such regulation existed on January 1, 2020 ~~2019~~. Consumer rental
12 purchase agreement does not include:

- 13 (a) Any lease for agricultural, business, or commercial purposes;
 - 14 (b) Any lease made to an organization;
 - 15 (c) A lease or agreement which constitutes an installment sale or
16 installment contract as defined in section 45-335;
 - 17 (d) A security interest as defined in subdivision (35) of section
18 1-201, Uniform Commercial Code; and
 - 19 (e) A home solicitation sale as defined in section 69-1601;
- 20 (5) Consummation means the occurrence of an event which causes a
21 consumer to become contractually obligated on a consumer rental purchase
22 agreement;
- 23 (6) Department means the Department of Banking and Finance;
- 24 (7) Lease payment means a payment to be made by the consumer for the
25 right of possession and use of the property for a specific lease period
26 but does not include taxes imposed on such payment;
- 27 (8) Lease period means a week, month, or other specific period of
28 time, during which the consumer has the right to possess and use the
29 property after paying the lease payment and applicable taxes for such
30 period;
- 31 (9) Lessor means a person who in the ordinary course of business

1 operates a commercial outlet which regularly leases, offers to lease, or
2 arranges for the leasing of property under a consumer rental purchase
3 agreement;

4 (10) Property means any property that is not real property under the
5 laws of this state when made available for a consumer rental purchase
6 agreement; and

7 (11) Total of payments to acquire ownership means the total of all
8 charges imposed by the lessor and payable by the consumer as a condition
9 of acquiring ownership of the property. Total of payments to acquire
10 ownership includes lease payments and any initial nonrefundable
11 administrative fee or required delivery charge but does not include
12 taxes, late charges, reinstatement fees, or charges for optional products
13 or services.

14 Sec. 50. Section 69-2104, Revised Statutes Supplement, 2019, is
15 amended to read:

16 69-2104 (1) Before entering into any consumer rental purchase
17 agreement, the lessor shall disclose to the consumer the following items
18 as applicable:

19 (a) A brief description of the leased property sufficient to
20 identify the property to the consumer and lessor;

21 (b) The number, amount, and timing of all payments included in the
22 total of payments to acquire ownership;

23 (c) The total of payments to acquire ownership;

24 (d) A statement that the consumer will not own the property until
25 the consumer has paid the total of payments to acquire ownership plus
26 applicable taxes;

27 (e) A statement that the total of payments to acquire ownership does
28 not include other charges such as taxes, late charges, reinstatement
29 fees, or charges for optional products or services the consumer may have
30 elected to purchase and that the consumer should see the rental purchase
31 agreement for an explanation of these charges;

1 (f) A statement that the consumer is responsible for the fair market
2 value, remaining rent, early purchase option amount, or cost of repair of
3 the property, whichever is less, if it is lost, stolen, damaged, or
4 destroyed;

5 (g) A statement indicating whether the property is new or used. A
6 statement that indicates that new property is used shall not be a
7 violation of the Consumer Rental Purchase Agreement Act;

8 (h) A statement of the cash price of the property. When the
9 agreement involves a lease for two or more items, a statement of the
10 aggregate cash price of all items shall satisfy the requirement of this
11 subdivision;

12 (i) The total amount of the initial payments required to be paid
13 before consummation of the agreement or delivery of the property,
14 whichever occurs later, and an itemization of the components of the
15 initial payment, including any initial nonrefundable administrative fee
16 or delivery charge, lease payment, taxes, or fee or charge for optional
17 products or services;

18 (j) A statement clearly summarizing the terms of the consumer's
19 options to purchase, including a statement that at any time after the
20 first periodic payment is made the consumer may acquire ownership of the
21 property by tendering an amount which may not exceed fifty-five percent
22 of the difference between the total of payments to acquire ownership and
23 the total of lease payments the consumer has paid on the property at that
24 time;

25 (k) A statement identifying the party responsible for maintaining or
26 servicing the property while it is being leased, together with a
27 description of that responsibility and a statement that if any part of a
28 manufacturer's warranty covers the leased property at the time the
29 consumer acquires ownership of the property, such warranty shall be
30 transferred to the consumer if allowed by the terms of the warranty; and

31 (l) The date of the transaction and the names of the lessor and the

1 consumer.

2 (2) With respect to matters specifically governed by the federal
3 Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such act
4 existed on January 1, ~~2020~~ 2019, compliance with such act shall satisfy
5 the requirements of this section.

6 (3) Subsection (1) of this section shall not apply to a lessor who
7 complies with the disclosure requirements of the federal Consumer Credit
8 Protection Act, 15 U.S.C. 1667a, as such section existed on January 1,
9 ~~2020~~ 2019, with respect to a consumer rental purchase agreement entered
10 into with a consumer.

11 Sec. 51. Section 69-2112, Revised Statutes Supplement, 2019, is
12 amended to read:

13 69-2112 (1) Any advertisement for a consumer rental purchase
14 agreement which refers to or states the amount of any payment or the
15 right to acquire ownership for any specific item shall also state clearly
16 and conspicuously the following if applicable:

17 (a) That the transaction advertised is a consumer rental purchase
18 agreement;

19 (b) The total of payments to acquire ownership; and

20 (c) That the consumer acquires no ownership rights until the total
21 of payments to acquire ownership is paid.

22 (2) Any owner or employee of any medium in which an advertisement
23 appears or through which it is disseminated shall not be liable under
24 this section.

25 (3) Subsection (1) of this section shall not apply to an
26 advertisement which does not refer to a specific item of property, which
27 does not refer to or state the amount of any payment, or which is
28 published in the yellow pages of a telephone directory or any similar
29 directory of business.

30 (4) With respect to matters specifically governed by the federal
31 Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such act

1 existed on January 1, 2020 ~~2019~~, compliance with such act shall satisfy
2 the requirements of this section.

3 Sec. 52. Section 77-2398, Revised Statutes Supplement, 2019, is
4 amended to read:

5 77-2398 (1) As an alternative to the requirements to secure the
6 deposit of public money or public funds in excess of the amount insured
7 or guaranteed by the Federal Deposit Insurance Corporation pursuant to
8 sections 77-2389 and 77-2394, a bank, capital stock financial
9 institution, or qualifying mutual financial institution designated as a
10 public depository may secure the deposits of one or more governmental
11 units by providing a deposit guaranty bond or by depositing, pledging, or
12 granting a security interest in a single pool of securities or by a
13 combination thereof to secure the repayment of all public money or public
14 funds deposited in the bank, capital stock financial institution, or
15 qualifying mutual financial institution by such governmental units and
16 not otherwise secured pursuant to law, if at all times the total value of
17 the deposit guaranty bond and the aggregate market value of the pool of
18 securities so deposited, pledged, or in which a security interest is
19 granted is at least equal to one hundred two percent of the amount on
20 deposit which is in excess of the amount so insured or guaranteed. Each
21 such bank, capital stock financial institution, or qualifying mutual
22 financial institution shall carry on its accounting records at all times
23 a general ledger or other appropriate account of the total amount of all
24 public money or public funds to be secured by a deposit guaranty bond or
25 by the pool of securities, or any combination thereof, as determined at
26 the opening of business each day, and the total value of the deposit
27 guaranty bond or the aggregate market value of the pool of securities
28 deposited, pledged, or in which a security interest is granted to secure
29 such public money or public funds. For purposes of this section, a pool
30 of securities shall include shares of investment companies registered
31 under the federal Investment Company Act of 1940 when the investment

1 companies' assets are limited to obligations that are eligible for
2 investment by the bank, capital stock financial institution, or
3 qualifying mutual financial institution and limited by their prospectuses
4 to owning securities enumerated in section 77-2387.

5 (2) A bank, capital stock financial institution, or qualifying
6 mutual financial institution may secure the deposit of public money or
7 public funds using the dedicated method, the single bank pooled method,
8 or both methods as set forth in subsection (1) of this section.

9 (a) Under the dedicated method, a bank, capital stock financial
10 institution, or qualifying mutual financial institution may secure the
11 deposit of public money or public funds by each governmental unit
12 separately by furnishing securities or providing a deposit guaranty bond,
13 or any combination thereof, pursuant to the Public Funds Deposit Security
14 Act.

15 (b)(i) Under the single bank pooled method, a bank, capital stock
16 financial institution, or qualifying mutual financial institution may
17 secure the deposit of public money or public funds of one or more
18 governmental units by providing a deposit guaranty bond or through a pool
19 of eligible securities established by such bank, capital stock financial
20 institution, or qualifying mutual financial institution with a qualified
21 trustee, or any combination thereof, to be held subject to the order of
22 the director or the administrator for the benefit of the governmental
23 units having public money or public funds with such bank, capital stock
24 financial institution, or qualifying mutual financial institution as set
25 forth in subsection (1) of this section. A bank, capital stock financial
26 institution, or qualifying mutual financial institution may not retain
27 any deposit of public money or public funds which is required to be
28 secured unless, within ten days thereafter or such shorter period as has
29 been agreed upon by the bank, capital stock financial institution, or
30 qualifying mutual financial institution and the director or
31 administrator, it has secured the deposits for the benefit of the

1 governmental units having public money or public funds with such bank,
2 capital stock financial institution, or qualifying mutual financial
3 institution pursuant to this section.

4 (ii) The director shall designate a bank, savings association, trust
5 company, or other qualified firm, corporation, or association which is
6 authorized to transact business in this state to serve as the
7 administrator with respect to a single bank pooled method. Fees and
8 expenses of such administrator shall be paid by the banks, capital stock
9 financial institutions, or qualifying mutual financial institutions
10 utilizing the single bank pooled method.

11 (iii) If a bank, capital stock financial institution, or qualifying
12 mutual financial institution elects to secure the deposit of public money
13 or public funds through the use of the single bank pooled method, such
14 bank, capital stock financial institution, or qualifying mutual financial
15 institution shall notify the administrator in writing that it has elected
16 to utilize the single bank pooled method and the proposed effective date
17 thereof.

18 (iv) The single bank pooled method shall not be utilized by any
19 bank, capital stock financial institution, or qualifying mutual financial
20 institution unless an administrator has been designated by the director
21 pursuant to subdivision (2)(b)(ii) of this section and is acting as the
22 administrator.

23 (3) Only a deposit guaranty bond and the securities listed in
24 subdivision (14) of section 77-2387 may be provided and accepted as
25 security for the deposit of public money or public funds and shall be
26 eligible as collateral. The qualified trustee shall not accept any
27 securities which are not listed in subdivision (14) of section 77-2387.

28 Sec. 53. Section 77-23,100, Revised Statutes Supplement, 2019, is
29 amended to read:

30 77-23,100 (1) Any bank, capital stock financial institution, or
31 qualifying mutual financial institution in which public money or public

1 funds have been deposited which satisfies its requirement to secure the
2 deposit of public money or public funds in excess of the amount insured
3 or guaranteed by the Federal Deposit Insurance Corporation, in whole or
4 in part, by the deposit, pledge, or granting of a security interest in a
5 single pool of securities shall designate a qualified trustee and place
6 with the trustee for holding the securities so deposited, pledged, or in
7 which a security interest has been granted pursuant to subsection (1) of
8 section 77-2398, subject to the order of the director or the
9 administrator. The bank, capital stock financial institution, or
10 qualifying mutual financial institution shall give written notice of the
11 designation of the qualified trustee to any custodial official depositing
12 public money or public funds for which such securities are deposited,
13 pledged, or in which a security interest has been granted, and if an
14 affiliate of the bank, capital stock financial institution, or qualifying
15 mutual financial institution is to serve as the qualified trustee, the
16 notice shall disclose the affiliate relationship and shall be given prior
17 to designation of the qualified trustee. The custodial official shall
18 accept the written receipt of the trustee describing the pool of
19 securities so deposited, pledged, or in which a security interest has
20 been granted by the bank, capital stock financial institution, or
21 qualifying mutual financial institution, a copy of which shall also be
22 delivered to the bank, capital stock financial institution, or qualifying
23 mutual financial institution.

24 (2) Any bank, capital stock financial institution, or qualifying
25 mutual financial institution which satisfies its requirement to secure
26 the deposit of public money or public funds in excess of the amount
27 insured or guaranteed by the Federal Deposit Insurance Corporation under
28 the Public Funds Deposit Security Act, in whole or in part, by providing
29 a deposit guaranty bond pursuant to the provisions of subsection (1) of
30 section 77-2398, shall designate the director and cause to be issued a
31 deposit guaranty bond which runs to the director acting for the benefit

1 of the governmental units having public money or public funds on deposit
2 with such bank, capital stock financial institution, or qualifying mutual
3 financial institution and which is conditioned that the bank, capital
4 stock financial institution, or qualifying mutual financial institution
5 shall render to the administrator the statement required under subsection
6 (3) of this section.

7 (3) Each bank, capital stock financial institution, or qualifying
8 mutual financial institution which satisfies its requirement to secure
9 the deposit of public money or public funds in excess of the amount
10 insured or guaranteed by the Federal Deposit Insurance Corporation by
11 providing a deposit guaranty bond or by depositing, pledging, or granting
12 a security interest in a single pool of securities, or any combination
13 thereof, shall, on or before the tenth day of each month, render to the
14 administrator a statement showing as of the last business day of the
15 previous month (a) the amount of public money or public funds deposited
16 in such bank, capital stock financial institution, or qualifying mutual
17 financial institution that is not insured or guaranteed by the Federal
18 Deposit Insurance Corporation (i) by each governmental unit ~~custodial~~
19 ~~official~~ separately and (ii) by all governmental units ~~custodial~~
20 ~~officials~~ in the aggregate and (b) the total value of the deposit
21 guaranty bond and the aggregate market value of the pool of securities
22 deposited, pledged, or in which a security interest has been granted
23 pursuant to subsection (1) of section 77-2398. The director shall be
24 authorized, acting for the benefit of the governmental units having
25 public money or public funds on deposit with such bank, capital stock
26 financial institution, or qualifying mutual financial institution, to
27 take any and all actions necessary to take title to or to effect a first
28 perfected security interest in the securities deposited, pledged, or in
29 which a security interest is granted.

30 (4) Within twenty days after the deadline for receiving the
31 statement required under subsection (3) of this section from a bank,

1 capital stock financial institution, or qualifying mutual financial
2 institution, the administrator shall provide a report to each
3 governmental unit custodial official listed in such statement reflecting
4 (a) the amount of public money or public funds deposited in such bank,
5 capital stock financial institution, or qualifying mutual financial
6 institution by each governmental unit custodial official as of the last
7 business day of the previous month that is not insured or guaranteed by
8 the Federal Deposit Insurance Corporation and that is secured pursuant to
9 subsection (1) of section 77-2398 and (b) the total value of the deposit
10 guaranty bond and the aggregate market value of the pool of securities
11 deposited, pledged, or in which a security interest is granted pursuant
12 to subsection (1) of section 77-2398 as of the last business day of the
13 previous month. The report shall clearly notify the governmental unit
14 custodial official if the value of the deposit guaranty bond provided or
15 the securities deposited, pledged, or in which a security interest has
16 been granted, or any combination thereof, do does not meet the statutory
17 requirement. The report required by this subsection shall be deemed to
18 have been provided to a governmental unit upon posting of the report by
19 the administrator on its web site for access by governmental units
20 participating under the single bank pooled method if the governmental
21 unit has agreed in advance to receive such report by accessing the
22 administrator's web site.

23 Sec. 54. Section 4A-108, Uniform Commercial Code, Revised Statutes
24 Supplement, 2019, is amended to read:

25 4A-108 Relationship to Electronic Fund Transfer Act.

26 (a) Except as provided in subsection (b), this article does not
27 apply to a funds transfer any part of which is governed by the federal
28 Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as such act existed
29 on January 1, ~~2020~~ 2019.

30 (b) This article applies to a funds transfer that is a remittance
31 transfer as defined in the federal Electronic Fund Transfer Act, 15

1 U.S.C. 1693o-1, as such section existed on January 1, ~~2020~~ 2019, unless
2 the remittance transfer is an electronic fund transfer as defined in the
3 federal Electronic Fund Transfer Act, 15 U.S.C. 1693a, as such section
4 existed on January 1, ~~2020~~ 2019.

5 (c) In a funds transfer to which this article applies, in the event
6 of an inconsistency between an applicable provision of this article and
7 an applicable provision of the federal Electronic Fund Transfer Act, the
8 provision of the federal Electronic Fund Transfer Act governs to the
9 extent of the inconsistency.

10 Sec. 55. Section 9-513A, Uniform Commercial Code, Revised Statutes
11 Cumulative Supplement, 2018, is amended to read:

12 9-513A Unauthorized financing statement filings; procedures;
13 remedies.

14 (a) An individual personally, or as a representative of an
15 organization, may file in the filing office a notarized affidavit, signed
16 under penalty of perjury, that identifies a filed financing statement and
17 states that:

18 (1) the individual or organization is identified as a debtor in the
19 financing statement;

20 (2) the financing statement was not filed by a financial institution
21 or a representative of a financial institution or by an agricultural
22 input supplier or a representative of an agricultural input supplier; and

23 (3) the financing statement was filed by a person not entitled to do
24 so under section 9-509, 9-708, or 9-808.

25 (b) An affidavit filed under subsection (a) shall include any
26 pertinent information that the office of the Secretary of State may
27 reasonably require.

28 (c) An affidavit may not be filed under subsection (a) with respect
29 to a financing statement filed by a financial institution or a
30 representative of a financial institution or by an agricultural input
31 supplier or a representative of an agricultural input supplier.

1 (d) If an affidavit is filed under subsection (a), the filing office
2 may file a termination statement with respect to the financing statement
3 identified in the affidavit. The termination statement must indicate that
4 it was filed pursuant to this section. Except as provided in subsections
5 (g) and (h), a termination statement filed under this subsection shall
6 take effect thirty days after it is filed.

7 (e) On the same day that the filing office files a termination
8 statement under subsection (d), it shall send to each secured party of
9 record identified in the financing statement a notice advising the
10 secured party of record that the termination statement has been filed.
11 The notice shall be sent by certified mail, return receipt requested, to
12 the mailing address provided for the secured party of record.

13 (f) A secured party of record identified in a financing statement as
14 to which a termination statement has been filed under subsection (d) may
15 bring an action within twenty business days after the termination
16 statement is filed against the individual who filed the affidavit under
17 subsection (a) seeking a determination as to whether the financing
18 statement was filed by a person entitled to do so under section 9-509,
19 9-708, or 9-808. An action under this subsection shall have priority on
20 the court's calendar and shall proceed by expedited hearing. The action
21 shall be brought in the district court of the county where the filing
22 office in which the financing statement was filed is located. If the
23 secured party of record identified in a financing statement as to which a
24 termination statement has been filed under subsection (d) timely files an
25 action pursuant to this subsection, the secured party of record shall
26 send written notification to the Secretary of State of the action at the
27 time of filing the action. If the secured party of record identified in a
28 financing statement as to which a termination statement has been filed
29 under subsection (d) does not timely file an action pursuant to this
30 subsection, the Secretary of State may remove the filed financing
31 statement from the searchable index of filed financing statements.

1 (g) In an action brought pursuant to subsection (f), a court may, in
2 appropriate circumstances, order preliminary relief, including, but not
3 limited to, an order precluding the termination statement from taking
4 effect or directing a party to take action to prevent the termination
5 statement from taking effect. If the court issues such an order and the
6 filing office receives a certified copy of the order before the
7 termination statement takes effect, the termination statement shall not
8 take effect and the filing office shall promptly file an amendment to the
9 financing statement that indicates that an order has prevented the
10 termination statement from taking effect. If such an order ceases to be
11 effective by reason of a subsequent order or a final judgment of the
12 court or by an order issued by another court and the filing office
13 receives a certified copy of the subsequent judgment or order, the
14 termination statement shall become immediately effective upon receipt of
15 the certified copy and the filing office shall promptly file an amendment
16 to the financing statement indicating that the termination statement is
17 effective.

18 (h) If a court determines in an action brought pursuant to
19 subsection (f) that the financing statement was filed by a person
20 entitled to do so under section 9-509, 9-708, or 9-808 and the filing
21 office receives a certified copy of the court's final judgment or order
22 before the termination statement takes effect, the termination statement
23 shall not take effect and the filing office shall remove the termination
24 statement and any amendments filed under subsection (g) from the files.
25 If the filing office receives the certified copy after the termination
26 statement takes effect and within thirty days after the final judgment or
27 order was entered, the filing office shall promptly file an amendment to
28 the financing statement that indicates that the financing statement has
29 been reinstated.

30 (i) Except as provided in subsection (j), upon the filing of an
31 amendment reinstating a financing statement under subsection (h) the

1 effectiveness of the financing statement is retroactively reinstated and
2 the financing statement shall be considered never to have been
3 ineffective against all persons and for all purposes.

4 (j) A financing statement whose effectiveness was terminated under
5 subsection (d) and has been reinstated under subsection (h) shall not be
6 effective as against a person that purchased the collateral in good faith
7 between the time the termination statement was filed and the time of the
8 filing of the amendment reinstating the financing statement, to the
9 extent that the person gave new value in reliance on the termination
10 statement.

11 (k) The filing office shall not charge a fee for the filing of an
12 affidavit or a termination statement under this section. The filing
13 office shall not return any fee paid for filing the financing statement
14 identified in the affidavit, whether or not the financing statement is
15 subsequently reinstated.

16 (l) Neither the filing office nor any of its employees shall be
17 subject to liability for the termination or amendment of a financing
18 statement in the lawful performance of the duties of the filing office
19 under this section.

20 (m) The Secretary of State shall adopt and make available a form of
21 affidavit for use under this section.

22 (n) For purposes of this section:

23 (1) Agricultural input supplier means a person regularly in the
24 business of extending credit to agricultural producers; and

25 (2) Financial institution means a person that is in the business of
26 extending credit or servicing loans, including acquiring, purchasing,
27 selling, brokering, or other extensions of credit and where applicable,
28 holds whatever license, charter, or registration that is required to
29 engage in such business. The term includes banks, savings associations,
30 building and loan associations, consumer and commercial finance
31 companies, industrial banks, industrial loan companies, insurance

1 companies, investment companies, installment sellers, mortgage servicers,
2 sales finance companies, and leasing companies.

3 Sec. 56. Sections 9, 18, 19, 20, 22, 25, 26, 27, 28, 29, 30, 31,
4 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 46, 55, and 57 of this
5 act become operative three calendar months after the adjournment of this
6 legislative session. The other sections of this act become operative on
7 their effective date.

8 Sec. 57. Original sections 8-224.01, 30-3205, 45-601, 45-602,
9 45-605, 45-606, 45-609, 45-610, 45-611, 45-620, 45-623, 45-905, 45-906,
10 45-912, and 45-915, Reissue Revised Statutes of Nebraska, sections
11 45-901, 45-902, 45-910, 45-911, and 52-1308, Revised Statutes Cumulative
12 Supplement, 2018, and section 9-513A, Uniform Commercial Code, Revised
13 Statutes Cumulative Supplement, 2018, are repealed.

14 Sec. 58. Original sections 45-191.02, 45-191.09, 45-1017, 45-1033,
15 and 59-1725.01, Reissue Revised Statutes of Nebraska, sections 8-103,
16 8-141, 8-167, and 59-1722, Revised Statutes Cumulative Supplement, 2018,
17 sections 8-135, 8-143.01, 8-157.01, 8-183.04, 8-1,140, 8-318, 8-355,
18 8-1101, 8-1101.01, 8-1103, 8-1111, 8-1704, 8-1707, 21-17,115, 69-2103,
19 69-2104, 69-2112, 77-2398, and 77-23,100, Revised Statutes Supplement,
20 2019, and section 4A-108, Uniform Commercial Code, Revised Statutes
21 Supplement, 2019, are repealed.

22 Sec. 59. The following section is outright repealed: Section
23 8-167.01, Revised Statutes Supplement, 2019.

24 Sec. 60. Since an emergency exists, this act takes effect when
25 passed and approved according to law.