

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 226

Introduced by Coash, 27; Larson, 40.

Read first time January 13, 2015

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Securities Act of Nebraska; to amend
- 2 section 8-1111, Revised Statutes Cumulative Supplement, 2014; to
- 3 authorize crowdfunding as prescribed and to exempt crowdfunding from
- 4 registration; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-1111, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 8-1111 Except as provided in this section, sections 8-1103 to 8-1109
4 shall not apply to any of the following transactions:

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

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

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

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

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

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

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

28 (B) The names of the issuer's officers and the names of the issuer's
29 directors, if any, or, in the case of a non-United-States issuer, the
30 corporate equivalents of such persons in the issuer's country of
31 domicile;

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

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

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

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

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

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

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

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

31 (ii) The security is senior in rank to the common stock of the

1 issuer both as to payment of dividends or interest and upon dissolution
2 or liquidation of the issuer and such security has been outstanding at
3 least three years and the issuer or any predecessor has not defaulted
4 within the current fiscal year or the three immediately preceding fiscal
5 years in the payment of any dividend, interest, principal, or sinking
6 fund installment on the security when due and payable;

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

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

15 (5) Any transaction in a bond or other evidence of indebtedness
16 secured by a real or chattel mortgage or deed of trust or by an agreement
17 for the sale of real estate or chattels if the entire mortgage, deed of
18 trust, or agreement, together with all the bonds or other evidences of
19 indebtedness secured thereby, are offered and sold as a unit. Such
20 exemption shall not apply to any transaction in a bond or other evidence
21 of indebtedness secured by a real estate mortgage or deed of trust or by
22 an agreement for the sale of real estate if the real estate securing the
23 evidences of indebtedness are parcels of real estate the sale of which
24 requires the subdivision in which the parcels are located to be
25 registered under the Interstate Land Sales Full Disclosure Act, 15 U.S.C.
26 1701 et seq., as the act existed on January 1, 2015 ~~2013~~;

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

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

31 (8) Any offer or sale to a bank, savings institution, trust company,

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

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

1 advertisements or solicitations are made.

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

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

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

30 (12) Any offer, but not a sale, of a security for which registration
31 statements have been filed under both the Securities Act of Nebraska and

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

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

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

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

21 (16) Any transaction in this state not involving a public offering
22 when (a) there is no general or public advertising or solicitation, (b)
23 no commission or remuneration is paid directly or indirectly for
24 soliciting any prospective buyer, except to a registered agent of a
25 registered broker-dealer or registered issuer-dealer, (c) a notice
26 generally describing the terms of the transaction and containing a
27 representation that the conditions of this exemption are met is filed by
28 the seller with the director within thirty days after the first sale for
29 which this exemption is claimed, except that failure to give such notice
30 may be cured by an order issued by the director in his or her discretion,
31 (d) a filing fee of two hundred dollars is paid at the time of filing the

1 notice, and (e) any such transaction is effected in accordance with rules
2 and regulations adopted and promulgated by the director relating to this
3 section when the director finds in adopting and promulgating such rules
4 and regulations that the applicability of sections 8-1104 to 8-1107 is
5 not necessary or appropriate in the public interest or for the protection
6 of investors. For purposes of this subdivision, not involving a public
7 offering means any offering in which the seller has reason to believe
8 that the securities purchased are taken for investment and in which each
9 offeree, by reason of his or her knowledge about the affairs of the
10 issuer or otherwise, does not require the protections afforded by
11 registration under sections 8-1104 to 8-1107 in order to make a
12 reasonably informed judgment with respect to such investment;

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

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

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

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

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

25 (21) Any transaction by a person who is an organization described in
26 section 501(c)(3) of the Internal Revenue Code as defined in section
27 49-801.01 involving an offering of interests in a fund described in
28 section 3(c)(10)(B) of the Investment Company Act of 1940 solely to
29 persons who are organizations described in section 501(c)(3) of the
30 Internal Revenue Code as defined in section 49-801.01 when (a) there is
31 no general or public advertising or solicitation, (b) a notice generally

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

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

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

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

24 (ii) A corporation, partnership, or other organization specifically
25 formed for the purpose of acquiring securities offered by the issuer in
26 reliance upon this exemption if each equity owner of the corporation,
27 partnership, or other organization is a person described in subdivision
28 (22)(a)(i) of this section;

29 (iii) A pension or profit-sharing trust of the issuer, a self-
30 employed individual retirement plan, or an individual retirement account,
31 if the investment decisions made on behalf of the trust, plan, or account

1 are made solely by persons described in subdivision (22)(a)(i) of this
2 section; or

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

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

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

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

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

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

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

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

26 (E) If the issuer retains ownership or becomes the beneficiary of
27 the insurance policy, an audit report from an independent certified
28 public accountant together with a balance sheet and related statements of
29 income, retained earnings, and cash flows that reflect the issuer's
30 financial position, the results of the issuer's operations, and the
31 issuer's cash flows as of a date within fifteen months before the date of

1 the initial issuance of the securities described in this subdivision. The
2 financial statements shall be prepared in conformity with generally
3 accepted accounting principles. If the date of the audit report is more
4 than one hundred twenty days before the date of the initial issuance of
5 the securities described in this subdivision, the issuer shall provide
6 unaudited interim financial statements;

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

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

1 order, judgment, or decree that has been vacated or overturned or is more
2 than ten years old;

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

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

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

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

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

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

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

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

30 (D) If a group insurance policy, the name, address, and telephone
31 number of the group and, if applicable, the material terms and conditions

1 of converting the policy to an individual policy, including the amount of
2 increased premiums;

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

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

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

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

11 (I) The name, address, and telephone number of the person who will
12 be the insurance policyowner and the person who will be responsible for
13 paying premiums;

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

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

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

30 (f) A notice of the issuer's intent to sell securities pursuant to
31 this subdivision, signed by a duly authorized officer of the issuer and

1 notarized, together with a filing fee of two hundred dollars, is filed
2 with the Department of Banking and Finance before any offers or sales of
3 securities are made under this subdivision. Such notice shall include:

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

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

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

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

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

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

30 (a) The proceeds from all sales of securities by the issuer in any
31 two-year period do not exceed two hundred fifty thousand dollars and at

1 least eighty percent of the proceeds are used in Nebraska;

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

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

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

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

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

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

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

30 (A) The name, address, telephone number, and email address of the
31 issuer;

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

3 (C) The amount of the offering; and

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

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

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

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

19 (i) Has received the written disclosure statement;

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

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

23 (g) The issuer, within thirty days after the completion of the
24 offering, files with the Department of Banking and Finance a statement
25 indicating the number of investors, the total dollar amount raised, and
26 the use of the offering proceeds; or -

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

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

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

5 (c) Except as provided in subdivision (d) of this subdivision, the
6 sum of all cash and other consideration to be received for all sales of
7 the security in reliance on the exemption under this subdivision,
8 excluding sales to any accredited investor, does not exceed the following
9 amount:

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

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

24 (d) An offer or sale to an officer, director, partner, trustee, or
25 individual occupying similar status or performing similar functions with
26 respect to the issuer or to a person owning ten percent or more of the
27 outstanding shares of any class or classes of securities of the issuer
28 does not count toward the monetary limitations in subdivision (c) of this
29 subdivision;

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

1 accredited investor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (vi) For each person identified as required in subdivision (1)(v) of
22 this subdivision, a description of the consideration being paid to the
23 person for such assistance;

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

26 (viii) The names and addresses, including the Uniform Resource
27 Locator, of each Internet web site that will be used by the issuer to
28 offer or sell securities under an exemption under this subdivision; and

29 (ix) Any additional information material to the offering, including,
30 if appropriate, a discussion of significant factors that make the
31 offering speculative or risky. This discussion must be concise and

1 organized logically and may not be limited to risks that could apply to
2 any issuer or any offering;

3 (m) The exemption under this subdivision may not be used in
4 conjunction with any other exemption under the Securities Act of
5 Nebraska, except for offers and sales to individuals identified in the
6 disclosure document, during the immediately preceding twelve-month
7 period;

8 (n) The exemption described in this subdivision does not apply if an
9 issuer or any director, executive officer, general partner, managing
10 member, or other person with management authority over the issuer, has
11 been subject to any conviction, order, judgment, decree, or other action
12 specified in Rule 506(d)(1) adopted under the Securities Act of 1933, 17
13 C.F.R. 230.506(d)(1), that would disqualify an issuer under Rule 506(d)
14 adopted under the Securities Act of 1933, 17 C.F.R. 230.506(d), from
15 claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted
16 under the Securities Act of 1933, 17 C.F.R. 230.506(a) to 17 C.F.R.
17 230.506(c). However, this subdivision does not apply if both of the
18 following are met:

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

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

28 (o) The offering exempted under this subdivision is made exclusively
29 through one or more Internet web sites and each Internet web site is
30 subject to the following:

31 (i) Before any offer or sale of securities, the issuer must provide

1 to the Internet web site operator evidence that the issuer is organized
2 under the laws of Nebraska and is authorized to do business in Nebraska;

3 (ii) Subject to subdivisions (iii) and (v) of this subdivision, the
4 Internet web site operator must register with the Department of Banking
5 and Finance by filing a statement, accompanied by a two hundred dollar
6 filing fee, that includes the following information:

7 (A) Documentation which demonstrates that the Internet web site
8 operator is a business entity organized under the laws of Nebraska and
9 authorized to do business in Nebraska;

10 (B) A representation that the Internet web site is being used to
11 offer and sell securities pursuant to the exemption under this
12 subdivision; and

13 (C) The identity and location of, and contact information for, the
14 Internet web site operator;

15 (iii) The Internet web site operator is not required to register as
16 a broker-dealer if all of the following apply with respect to the
17 Internet web site and its operator;

18 (A) It does not offer investment advice or recommendations;

19 (B) It does not solicit purchases, sales, or offers to buy the
20 securities offered or displayed on the Internet web site;

21 (C) It does not compensate employees, agents, or other persons for
22 the solicitation or based on the sale of securities displayed or
23 referenced on the Internet web site;

24 (D) It is not compensated based on the amount of securities sold,
25 and it does not hold, manage, possess, or otherwise handle investor funds
26 or securities;

27 (E) The fee it charges an issuer for an offering of securities on
28 the Internet web site is a fixed amount for each offering, a variable
29 amount based on the length of time that the securities are offered on the
30 Internet web site, or a combination of the fixed and variable amounts;

31 (F) It does not identify, promote, or otherwise refer to any

1 individual security offered on the Internet web site in any advertising
2 for the Internet web site;

3 (G) It does not engage in any other activities that the Department
4 of Banking and Finance, by rule, regulation, or order, determines are
5 prohibited of the Internet web site; and

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

17 (I) On a showing of good cause and without prejudice to any other
18 action by the director, the director determines that it is not necessary
19 under the circumstances that an exemption is denied; and

20 (II) The Internet web site operator establishes that it made a
21 factual inquiry into whether any disqualification existed under this
22 subdivision but did not know, and in the exercise of reasonable care,
23 could not have known, that a disqualification existed under this
24 subdivision. The nature and scope of the requisite inquiry will vary
25 based on the circumstances of the issuer and the other offering
26 participants;

27 (iv) If any change occurs that affects the Internet web site's
28 registration exemption, the Internet web site operator must notify the
29 Department of Banking and Finance within thirty days after the change
30 occurs;

31 (v) A registered broker-dealer who also serves as an Internet web

1 site operator must register with the Department of Banking and Finance as
2 an Internet web site operator pursuant to subdivision (ii) of this
3 subdivision, except that, the fee for registration shall be waived;

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

18 (vii) The Internet web site operator shall limit web site access to
19 the offer or sale of securities to only Nebraska residents;

20 (viii) The Internet web site operator shall not hold, manage,
21 possess, or handle investor funds or securities; and

22 (ix) The Internet web site operator may not be an investor in any
23 Nebraska offering under this subdivision;

24 (p) An issuer of a security, the offer and sale of which is exempt
25 under this subdivision, shall provide, free of charge, a quarterly report
26 to the issuer's investors until no securities issued under an exemption
27 under this subdivision are outstanding. An issuer may satisfy the
28 reporting requirement of this subdivision by making the information
29 available on an Internet web site if the information is made available
30 within forty-five days after the end of each fiscal quarter and remains
31 available until the succeeding quarterly report is issued. An issuer

1 shall file each quarterly report under this subdivision with the
2 Department of Banking and Finance and, if the quarterly report is made
3 available on an Internet web site, the issuer shall also provide a
4 written copy of the report to any investor upon request. The report must
5 contain all the following:

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

11 (ii) An analysis by management of the issuer of the business
12 operations and financial condition of the issuer; and

13 (q) For purposes of this subdivision:

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

20 (ii) Individual accredited investor means (A) any director,
21 executive officer, or general partner of the issuer of the securities
22 being offered or sold, or any director, executive officer, or general
23 partner of a general partner of that issuer, (B) any manager of a limited
24 liability company that is the issuer of the securities being offered or
25 sold, (C) any natural person whose individual net worth, or joint net
26 worth with that person's spouse, at the time of his or her purchase,
27 exceeds one million dollars, excluding the value of the primary residence
28 of such person, or (D) any natural person who had an individual income in
29 excess of two hundred thousand dollars in each of the two most recent
30 years or joint income with that person's spouse in excess of three
31 hundred thousand dollars in each of those years and has a reasonable

1 expectation of reaching the same income level in the current year.

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

22 Sec. 2. Original section 8-1111, Revised Statutes Cumulative
23 Supplement, 2014, is repealed.