

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 814

Introduced by Gloor, 35; Dubas, 34; Fulton, 29; Hadley, 37; Pahls, 31; Sullivan, 41; Utter, 33.

Read first time January 08, 2010

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Securities Act of Nebraska; to amend
2 section 8-1111, Reissue Revised Statutes of Nebraska; to
3 change provisions relating to transactions exempt 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, Reissue Revised Statutes of
2 Nebraska, is amended to read:

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

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

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

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

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

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

25 (iv) A nationally recognized securities manual designated

1 by rule and regulation or order of the director or a document
2 filed with the Securities and Exchange Commission which is publicly
3 available through the Electronic Data Gathering and Retrieval
4 System (EDGAR) contains:

5 (A) A description of the business and operations of the
6 issuer;

7 (B) The names of the issuer's officers and the names
8 of the issuer's directors, if any, or, in the case of a
9 non-United-States issuer, the corporate equivalents of such persons
10 in the issuer's country of domicile;

11 (C) An audited balance sheet of the issuer as of a
12 date within eighteen months or, in the case of a reorganization
13 or merger when parties to the reorganization or merger had such
14 audited balance sheet, a pro forma balance sheet; and

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

21 (v) The issuer of the security has a class of equity
22 securities listed on a national securities exchange registered
23 under the Securities Exchange Act of 1934 or designated for
24 trading on the National Association of Securities Dealers Automated
25 Quotation System (NASDAQ), unless:

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

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

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

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

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

19 (ii) The security is senior in rank to the common stock
20 of the issuer both as to payment of dividends or interest and upon
21 dissolution or liquidation of the issuer and such security has been
22 outstanding at least three years and the issuer or any predecessor
23 has not defaulted within the current fiscal year or the three
24 immediately preceding fiscal years in the payment of any dividend,
25 interest, principal, or sinking fund installment on the security

1 when due and payable;

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

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

11 (5) Any transaction in a bond or other evidence of
12 indebtedness secured by a real or chattel mortgage or deed of trust
13 or by an agreement for the sale of real estate or chattels if the
14 entire mortgage, deed of trust, or agreement, together with all
15 the bonds or other evidences of indebtedness secured thereby, are
16 offered and sold as a unit. Such exemption shall not apply to any
17 transaction in a bond or other evidence of indebtedness secured by
18 a real estate mortgage or deed of trust or by an agreement for the
19 sale of real estate if the real estate securing the evidences of
20 indebtedness are parcels of real estate the sale of which requires
21 the subdivision in which the parcels are located to be registered
22 under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701
23 et seq., as the act existed on July 20, 2002;

24 (6) Any transaction by an executor, personal
25 representative, administrator, sheriff, marshal, receiver,

1 guardian, or conservator;

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

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

24 ~~(9)~~ (9)(a) Any transaction pursuant to an offering in
25 which sales are made to not more than fifteen persons, other

1 than those designated in subdivisions (8), (11), and (17) of this
2 section, in this state during any period of twelve consecutive
3 months if ~~(a)~~ (i) the seller reasonably believes that all the
4 buyers are purchasing for investment, ~~(b)~~ (ii) no commission or
5 other remuneration is paid or given directly or indirectly for
6 soliciting any prospective buyer except to a registered agent of a
7 registered broker-dealer, ~~(c)~~ (iii) a notice generally describing
8 the terms of the transaction and containing a representation that
9 the conditions of this exemption are met is filed by the seller
10 with the director within thirty days after the first sale for which
11 this exemption is claimed, except that failure to give such notice
12 may be cured by an order issued by the director in his or her
13 discretion, and ~~(d)~~ (iv) no general or public advertisements or
14 solicitations are made.

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

1 this subdivision or after the elapse of each additional sixty-month
2 period during which sales are made pursuant to this subdivision;

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

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

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

25 (13) The issuance of any stock dividend, whether the

1 corporation distributing the dividend is the issuer of the stock
2 or not, if nothing of value is given by the stockholders for the
3 distribution other than the surrender of a right to a cash dividend
4 when the stockholder can elect to take a dividend in cash or stock;

5 (14) Any transaction incident to a right of conversion
6 or a statutory or judicially approved reclassification,
7 recapitalization, reorganization, quasi-reorganization, stock
8 split, reverse stock split, merger, consolidation, or sale of
9 assets;

10 (15) Any transaction involving the issuance for cash
11 of any evidence of ownership interest or indebtedness by an
12 agricultural cooperative formed as a corporation under section
13 21-1301 or 21-1401 if the issuer has first filed a notice of
14 intention to issue with the director and the director has not by
15 order, mailed to the issuer by certified or registered mail within
16 ten business days after receipt thereof, disallowed the exemption;

17 (16) Any transaction in this state not involving a public
18 offering when (a) there is no general or public advertising or
19 solicitation, (b) no commission or remuneration is paid directly
20 or indirectly for soliciting any prospective buyer, except to
21 a registered agent of a registered broker-dealer or registered
22 issuer-dealer, (c) a notice generally describing the terms of the
23 transaction and containing a representation that the conditions of
24 this exemption are met is filed by the seller with the director
25 within thirty days after the first sale for which this exemption

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

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

23 (18) Any interest in a common trust fund or similar fund
24 maintained by a bank or trust company organized and supervised
25 under the laws of any state or a bank organized under the laws of

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

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

19 (20) Any transaction in this state not involving a
20 public offering by a Nebraska issuer selling solely to Nebraska
21 residents, when (a) any such transaction is effected in accordance
22 with rules and regulations adopted and promulgated by the director
23 relating to this section when the director finds in adopting and
24 promulgating such rules and regulations that the applicability
25 of sections 8-1104 to 8-1107 is not necessary or appropriate in

1 the public interest or for the protection of investors, (b) no
2 commission or remuneration is paid directly or indirectly for
3 soliciting any prospective buyer, except to a registered agent of a
4 registered broker-dealer or registered issuer-dealer, (c) a notice
5 generally describing the terms of the transaction and containing
6 a representation that the conditions of this exemption are met is
7 filed by the seller with the director no later than twenty days
8 prior to any sales for which this exemption is claimed, except that
9 failure to give such notice may be cured by an order issued by the
10 director in his or her discretion, (d) a filing fee of two hundred
11 dollars is paid at the time of filing the notice, and (e) there is
12 no general or public advertising or solicitation;

13 (21) Any transaction by a person who is an organization
14 described in section 501(c)(3) of the Internal Revenue Code as
15 defined in section 49-801.01 involving an offering of interests in
16 a fund described in section 3(c)(10)(B) of the Investment Company
17 Act of 1940 solely to persons who are organizations described
18 in section 501(c)(3) of the Internal Revenue Code as defined
19 in section 49-801.01 when (a) there is no general or public
20 advertising or solicitation, (b) a notice generally describing
21 the terms of the transaction and containing a representation that
22 the conditions of this exemption are met is filed by the seller
23 with the director within thirty days after the first sale for
24 which this exemption is claimed, except that failure to give such
25 notice may be cured by an order issued by the director in his

1 or her discretion, and (c) any such transaction is effected by a
2 trustee, director, officer, employee, or volunteer of the seller
3 who is either a volunteer or is engaged in the overall fundraising
4 activities of a charitable organization and receives no commission
5 or other special compensation based on the number or the value of
6 interests sold in the fund; or

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

10 (a) Sales of such securities are made only to the
11 following purchasers:

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

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

25 (iii) A pension or profit-sharing trust of the issuer,

1 a self-employed individual retirement plan, or an individual
2 retirement account, if the investment decisions made on behalf
3 of the trust, plan, or account are made solely by persons described
4 in subdivision (22) of this section; or

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

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

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

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

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

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

25 (C) A description of the issuer's type of business

1 organization and the state in which the issuer is organized or
2 incorporated;

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

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

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

19 (G) A description of any order, judgment, or decree
20 that is final as to the issuing entity of any state, federal, or
21 foreign governmental agency or administrator, or of any state,
22 federal, or foreign court of competent jurisdiction (I) revoking,
23 suspending, denying, or censuring for cause any license, permit,
24 or other authority of the issuer or of any director, officer,
25 partner, member, trustee, or person owning or controlling, directly

1 or indirectly, ten percent or more of the outstanding interest
2 or equity securities of the issuer, to engage in the securities,
3 commodities, franchise, insurance, real estate, or lending business
4 or in the offer or sale of securities, commodities, franchises,
5 insurance, real estate, or loans, (II) permanently restraining,
6 enjoining, barring, suspending, or censuring any such person from
7 engaging in or continuing any conduct, practice, or employment
8 in connection with the offer or sale of securities, commodities,
9 franchises, insurance, real estate, or loans, (III) convicting
10 any such person of, or pleading nolo contendere by any such
11 person to, any felony or misdemeanor involving a security,
12 commodity, franchise, insurance, real estate, or loan, or any
13 aspect of the securities, commodities, franchise, insurance, real
14 estate, or lending business, or involving dishonesty, fraud,
15 deceit, embezzlement, fraudulent conversion, or misappropriation of
16 property, or (IV) holding any such person liable in a civil action
17 involving breach of a fiduciary duty, fraud, deceit, embezzlement,
18 fraudulent conversion, or misappropriation of property. This
19 subdivision does not apply to any order, judgment, or decree that
20 has been vacated or overturned or is more than ten years old;

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

23 (I) A statement to the effect that any projected rate of
24 return to the purchaser from the purchase of a viatical settlement
25 contract or any fractionalized or pooled interest therein is based

1 on an estimated life expectancy for the person insured under the
2 life insurance policy; that the return on the purchase may vary
3 substantially from the expected rate of return based upon the
4 actual life expectancy of the insured that may be less than, may
5 be equal to, or may greatly exceed the estimated life expectancy;
6 and that the rate of return would be higher if the actual life
7 expectancy were less than, and lower if the actual life expectancy
8 were greater than, the estimated life expectancy of the insured at
9 the time the viatical settlement contract was closed;

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

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

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

18 (A) The name, address, and telephone number of the
19 issuing insurance company and the name, address, and telephone
20 number of the state or foreign country regulator of the insurance
21 company;

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

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

25 (D) If a group insurance policy, the name, address, and

1 telephone number of the group and, if applicable, the material
2 terms and conditions of converting the policy to an individual
3 policy, including the amount of increased premiums;

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

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

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

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

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

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

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

20 (e) The purchaser may rescind or cancel the purchase for
21 any reason by giving written notice of rescission or cancellation
22 to the issuer or the issuer's agent within (i) fifteen calendar
23 days after the date the purchaser remits the required consideration
24 or receives the disclosure required under subdivision (d)(i) of
25 this subdivision and (ii) five business days after the date

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

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

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

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

19 (iii) An audit report of an independent certified public
20 accountant together with a balance sheet and related statements of
21 income, retained earnings and cash flows that reflect the issuer's
22 financial position, the results of the issuer's operations, and the
23 issuer's cash flows as of a date within fifteen months before the
24 date of the notice prescribed in this subdivision. The financial
25 statements shall be prepared in conformity with generally accepted

1 accounting principles and shall be examined according to generally
2 accepted auditing standards. If the date of the audit report is
3 more than one hundred twenty days before the date of the notice
4 prescribed in this subdivision, the issuer shall provide unaudited
5 interim financial statements;

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

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

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

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

11 Sec. 2. Original section 8-1111, Reissue Revised Statutes
12 of Nebraska, is repealed.