

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 76

Introduced by Pahls, 31.

Read first time January 06, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to banking and finance; to amend sections 8-1101,
2 8-1704, 8-1707, 69-2103, 69-2104, and 69-2112, Reissue
3 Revised Statutes of Nebraska, and section 8-1111, Revised
4 Statutes Cumulative Supplement, 2010; to adopt updated
5 federal laws in the areas of securities, commodities, and
6 consumer rental purchase agreements; to change internal
7 references; to repeal the original sections; and to
8 declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-1101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-1101 For purposes of the Securities Act of Nebraska,
4 unless the context otherwise requires:

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

22 (2) Broker-dealer means any person engaged in the
23 business of effecting transactions in securities for the account of
24 others or for his or her own account. Broker-dealer does not include
25 (a) an issuer-dealer, agent, bank, savings institution, or trust

1 company, (b) an issuer effecting a transaction in its own security
2 exempted by subdivision (5) of section 8-1110 or which qualifies as a
3 federal covered security pursuant to section 18(b)(1) of the
4 Securities Act of 1933, (c) a person who has no place of business in
5 this state if he or she effects transactions in this state
6 exclusively with or through the issuers of the securities involved in
7 the transactions, other broker-dealers, or banks, savings
8 institutions, trust companies, insurance companies, investment
9 companies as defined in the Investment Company Act of 1940, pension
10 or profit-sharing trusts, or other financial institutions or
11 institutional buyers, whether acting for themselves or as trustees,
12 or (d) a person who has no place of business in this state if during
13 any period of twelve consecutive months he or she does not direct
14 more than five offers to sell or to buy into this state in any manner
15 to persons other than those specified in subdivision (2)(c) of this
16 section;

17 (3) Director means the Director of Banking and Finance of
18 the State of Nebraska except as further provided in section 8-1120;

19 (4) Federal covered adviser means a person who is (a)
20 registered under section 203 of the Investment Advisers Act of 1940
21 or (b) is excluded from the definition of investment adviser under
22 section 202 of the Investment Advisers Act of 1940;

23 (5) Federal covered security means any security described
24 as a covered security under section 18(b) of the Securities Act of
25 1933 or rules and regulations promulgated thereunder;

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

3 (7) Investment adviser means any person who for
4 compensation engages in the business of advising others, either
5 directly or through publications or writings, as to the value of
6 securities or as to the advisability of investing in, purchasing, or
7 selling securities or who for compensation and as a part of a regular
8 business issues or promulgates analyses or reports concerning
9 securities. Investment adviser also includes financial planners and
10 other persons who, as an integral component of other financially
11 related services, provide the foregoing investment advisory services
12 to others for compensation and as part of a business or who hold
13 themselves out as providing the foregoing investment advisory
14 services to others for compensation. Investment adviser does not
15 include (a) an investment adviser representative, (b) a bank, savings
16 institution, or trust company, (c) a lawyer, accountant, engineer, or
17 teacher whose performance of these services is solely incidental to
18 the practice of his or her profession, (d) a broker-dealer or its
19 agent whose performance of these services is solely incidental to its
20 business as a broker-dealer and who receives no special compensation
21 for them, (e) an issuer-dealer, (f) a publisher of any bona fide
22 newspaper, news column, news letter, news magazine, or business or
23 financial publication or service, whether communicated in hard copy
24 form, by electronic means, or otherwise which does not consist of the
25 rendering of advice on the basis of the specific investment situation

1 of each client, (g) a person who has no place of business in this
2 state if (i) his or her only clients in this state are other
3 investment advisers, federal covered advisers, broker-dealers, banks,
4 savings institutions, trust companies, insurance companies,
5 investment companies as defined in the Investment Company Act of
6 1940, pension or profit-sharing trusts, or other financial
7 institutions or institutional buyers, whether acting for themselves
8 or as trustees, or (ii) during the preceding twelve-month period, he
9 or she has had five or fewer clients who are residents of this state
10 other than those persons specified in subdivision (g)(i) of this
11 subdivision, (h) any person that is a federal covered adviser, or (i)
12 such other persons not within the intent of this subdivision as the
13 director may by rule, regulation, or order designate;

14 (8) Investment adviser representative means any partner,
15 limited liability company member, officer, or director or any person
16 occupying a similar status or performing similar functions of a
17 partner, limited liability company member, officer, or director or
18 other individual, except clerical or ministerial personnel, who is
19 employed by or associated with an investment adviser that is
20 registered or required to be registered under the Securities Act of
21 Nebraska or who has a place of business located in this state and is
22 employed by or associated with a federal covered adviser, and who (a)
23 makes any recommendations or otherwise renders advice regarding
24 securities, (b) manages accounts or portfolios of clients, (c)
25 determines which recommendation or advice regarding securities should

1 be given, (d) solicits, offers, or negotiates for the sale of or
2 sells investment advisory services, or (e) supervises employees who
3 perform any of the foregoing;

4 (9) Issuer means any person who issues or proposes to
5 issue any security, except that (a) with respect to certificates of
6 deposit, voting-trust certificates, or collateral-trust certificates
7 or with respect to certificates of interest or shares in an
8 unincorporated investment trust not having a board of directors, or
9 persons performing similar functions, or of the fixed, restricted
10 management, or unit type, the term issuer means the person or persons
11 performing the acts and assuming the duties of depositor or manager
12 pursuant to the provisions of the trust or other agreement or
13 instrument under which the security is issued and (b) with respect to
14 a fractional or pooled interest in a viatical settlement contract,
15 issuer means the person who creates, for the purpose of sale, the
16 fractional or pooled interest. In the case of a viatical settlement
17 contract that is not fractionalized or pooled, issuer means the
18 person effecting a transaction with a purchaser of such contract;

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

25 (11) Nonissuer means not directly or indirectly for the

1 benefit of the issuer;

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

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

22 (14) Securities Act of 1933, Securities Exchange Act of
23 1934, Public Utility Holding Company Act of 1935, Investment Advisers
24 Act of 1940, Investment Company Act of 1940, and Commodity Exchange
25 Act means the federal statutes of those names as amended on or before

1 ~~December 31, 2000; January 1, 2011;~~

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

25 (16) State means any state, territory, or possession of

1 the United States as well as the District of Columbia and Puerto
2 Rico; and

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

18 Sec. 2. Section 8-1111, Revised Statutes Cumulative
19 Supplement, 2010, is amended to read:

20 8-1111 Except as provided in this section, sections
21 8-1103 to 8-1109 shall not apply to any of the following
22 transactions:

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

25 (2)(a) Any nonissuer transaction by a registered agent of

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

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

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

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

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

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

24 (B) The names of the issuer's officers and the names of
25 the issuer's directors, if any, or, in the case of a non-United-

1 States issuer, the corporate equivalents of such persons in the
2 issuer's country of domicile;

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

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

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

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

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

23 (C) The issuer of the security has total assets of at
24 least two million dollars based on an audited balance sheet as of a
25 date within eighteen months or, in the case of a reorganization or

1 merger when parties to the reorganization or merger had such audited
2 balance sheet, a pro forma balance sheet; or

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

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

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

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

25 (4) Any transaction between the issuer or other person on

1 whose behalf the offering is made and an underwriter or among
2 underwriters;

3 (5) Any transaction in a bond or other evidence of
4 indebtedness secured by a real or chattel mortgage or deed of trust
5 or by an agreement for the sale of real estate or chattels if the
6 entire mortgage, deed of trust, or agreement, together with all the
7 bonds or other evidences of indebtedness secured thereby, are offered
8 and sold as a unit. Such exemption shall not apply to any transaction
9 in a bond or other evidence of indebtedness secured by a real estate
10 mortgage or deed of trust or by an agreement for the sale of real
11 estate if the real estate securing the evidences of indebtedness are
12 parcels of real estate the sale of which requires the subdivision in
13 which the parcels are located to be registered under the Interstate
14 Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as the act
15 existed on ~~July 20, 2002~~; January 1, 2011;

16 (6) Any transaction by an executor, personal
17 representative, administrator, sheriff, marshal, receiver, guardian,
18 or conservator;

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

21 (8) Any offer or sale to a bank, savings institution,
22 trust company, insurance company, investment company as defined in
23 the Investment Company Act of 1940, pension or profit-sharing trust,
24 or other financial institution or institutional buyer, to an
25 individual accredited investor, or to a broker-dealer, whether the

1 purchaser is acting for itself or in some fiduciary capacity. For
2 purposes of this subdivision, the term "individual accredited
3 investor" means (a) any director, executive officer, or general
4 partner of the issuer of the securities being offered or sold, or any
5 director, executive officer, or general partner of a general partner
6 of that issuer, (b) any manager of a limited liability company that
7 is the issuer of the securities being offered or sold, (c) any
8 natural person whose individual net worth, or joint net worth with
9 that person's spouse, at the time of his or her purchase, exceeds one
10 million dollars, or (d) any natural person who had an individual
11 income in excess of two hundred thousand dollars in each of the two
12 most recent years or joint income with that person's spouse in excess
13 of three hundred thousand dollars in each of those years and has a
14 reasonable expectation of reaching the same income level in the
15 current year;

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

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

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

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

24 (11) Any transaction pursuant to an offer to existing
25 security holders of the issuer, including persons who at the time of

1 the transaction are holders of convertible securities,
2 nontransferable warrants, or transferable warrants exercisable within
3 not more than ninety days of their issuance, if (a) no commission or
4 other remuneration, other than a standby commission, is paid or given
5 directly or indirectly for soliciting any security holder in this
6 state or (b) the issuer first files a notice specifying the terms of
7 the offer and the director does not by order disallow the exemption
8 within the next five full business days;

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

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

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

24 (15) Any transaction involving the issuance for cash of
25 any evidence of ownership interest or indebtedness by an agricultural

1 cooperative formed as a corporation under section 21-1301 or 21-1401
2 if the issuer has first filed a notice of intention to issue with the
3 director and the director has not by order, mailed to the issuer by
4 certified or registered mail within ten business days after receipt
5 thereof, disallowed the exemption;

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

1 investment and in which each offeree, by reason of his or her
2 knowledge about the affairs of the issuer or otherwise, does not
3 require the protections afforded by registration under sections
4 8-1104 to 8-1107 in order to make a reasonably informed judgment with
5 respect to such investment;

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

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

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

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

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

1 solicitation;

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

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

23 (a) Sales of such securities are made only to the
24 following purchasers:

25 (i) A natural person who, either individually or jointly

1 with the person's spouse, (A) has a minimum net worth of two hundred
2 fifty thousand dollars and had taxable income in excess of one
3 hundred twenty-five thousand dollars in each of the two most recent
4 years and has a reasonable expectation of reaching the same income
5 level in the current year or (B) has a minimum net worth of five
6 hundred thousand dollars. Net worth shall be determined exclusive of
7 home, home furnishings, and automobiles;

8 (ii) A corporation, partnership, or other organization
9 specifically formed for the purpose of acquiring securities offered
10 by the issuer in reliance upon this exemption if each equity owner of
11 the corporation, partnership, or other organization is a person
12 described in subdivision ~~(22)~~(22)(a)(i) of this section;

13 (iii) A pension or profit-sharing trust of the issuer, a
14 self-employed individual retirement plan, or an individual retirement
15 account, if the investment decisions made on behalf of the trust,
16 plan, or account are made solely by persons described in subdivision
17 ~~(22)~~(22)(a)(i) of this section; or

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

23 (b) The amount of the investment of any purchaser, except
24 a purchaser described in subdivision (a)(ii) of this subdivision,
25 does not exceed five percent of the net worth, as determined by this

1 subdivision, of that purchaser;

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

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

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

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

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

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

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

1 principles. If the date of the audit report is more than one hundred
2 twenty days before the date of the initial issuance of the securities
3 described in this subdivision, the issuer shall provide unaudited
4 interim financial statements;

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

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

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

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

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

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

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

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

5 (A) The name, address, and telephone number of the
6 issuing insurance company and the name, address, and telephone number
7 of the state or foreign country regulator of the insurance company;

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

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

11 (D) If a group insurance policy, the name, address, and
12 telephone number of the group and, if applicable, the material terms
13 and conditions of converting the policy to an individual policy,
14 including the amount of increased premiums;

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

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

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

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

24 (I) The name, address, and telephone number of the person
25 who will be the insurance policyowner and the person who will be

1 responsible for paying premiums;

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

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

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

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

25 (i) The issuer's name, the issuer's type of organization,

1 the state in which the issuer is organized, the date the issuer
2 intends to begin selling securities within or from this state, and
3 the issuer's principal business;

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

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

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

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

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

22 Sec. 3. Section 8-1704, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 8-1704 CFTC rule shall mean any rule, regulation, or
25 order of the Commodity Futures Trading Commission in effect on

1 January 1, ~~1993~~. 2011.

2 Sec. 4. Section 8-1707, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 8-1707 Commodity Exchange Act shall mean the act of
5 Congress known as the Commodity Exchange Act, 7 U.S.C. 1, as amended
6 on January 1, ~~1993~~. 2011.

7 Sec. 5. Section 69-2103, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 69-2103 For purposes of the Consumer Rental Purchase
10 Agreement Act:

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

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

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

20 (4) Consumer rental purchase agreement means an agreement
21 which is for the use of property by a consumer primarily for
22 personal, family, or household purposes, which is for an initial
23 period of four months or less, whether or not there is any obligation
24 beyond the initial period, which is automatically renewable with each
25 payment, and which permits the consumer to become the owner of the

1 property. A consumer rental purchase agreement in compliance with the
2 act shall not be construed to be a lease or agreement which
3 constitutes a credit sale as defined in 12 C.F.R. 226.2(a)(16), as
4 such regulation existed on ~~September 1, 2001,~~ January 1, 2011, and 15
5 U.S.C. 1602(g), as such section existed on ~~September 1, 2001,~~ January
6 1, 2011, or a lease which constitutes a consumer lease as defined in
7 12 C.F.R. 213.2(e), as such regulation existed on ~~September 1, 2001.~~
8 January 1, 2011. Consumer rental purchase agreement does not include:

9 (a) Any lease for agricultural, business, or commercial
10 purposes;

11 (b) Any lease made to an organization;

12 (c) A lease or agreement which constitutes an installment
13 sale or installment contract as defined in section 45-335;

14 (d) A security interest as defined in subdivision (35) of
15 section 1-201, Uniform Commercial Code; and

16 (e) A home solicitation sale as defined in section
17 69-1601;

18 (5) Consummation means the occurrence of an event which
19 causes a consumer to become contractually obligated on a consumer
20 rental purchase agreement;

21 (6) Department means the Department of Banking and
22 Finance;

23 (7) Lease payment means a payment to be made by the
24 consumer for the right of possession and use of the property for a
25 specific lease period but does not include taxes imposed on such

1 payment;

2 (8) Lease period means a week, month, or other specific
3 period of time, during which the consumer has the right to possess
4 and use the property after paying the lease payment and applicable
5 taxes for such period;

6 (9) Lessor means a person who in the ordinary course of
7 business operates a commercial outlet which regularly leases, offers
8 to lease, or arranges for the leasing of property under a consumer
9 rental purchase agreement;

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

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

20 Sec. 6. Section 69-2104, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 69-2104 (1) Before entering into any consumer rental
23 purchase agreement, the lessor shall disclose to the consumer the
24 following items as applicable:

25 (a) A brief description of the leased property sufficient

1 to identify the property to the consumer and lessor;

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

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

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

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

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

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

21 (h) A statement of the cash price of the property. When
22 the agreement involves a lease for two or more items, a statement of
23 the aggregate cash price of all items shall satisfy the requirement
24 of this subdivision;

25 (i) The total amount of the initial payments required to

1 be paid before consummation of the agreement or delivery of the
2 property, whichever occurs later, and an itemization of the
3 components of the initial payment, including any initial
4 nonrefundable administrative fee or delivery charge, lease payment,
5 taxes, or fee or charge for optional products or services;

6 (j) A statement clearly summarizing the terms of the
7 consumer's options to purchase, including a statement that at any
8 time after the first periodic payment is made the consumer may
9 acquire ownership of the property by tendering an amount which may
10 not exceed fifty-five percent of the difference between the total of
11 payments to acquire ownership and the total of lease payments the
12 consumer has paid on the property at that time;

13 (k) A statement identifying the party responsible for
14 maintaining or servicing the property while it is being leased,
15 together with a description of that responsibility and a statement
16 that if any part of a manufacturer's warranty covers the leased
17 property at the time the consumer acquires ownership of the property,
18 such warranty shall be transferred to the consumer if allowed by the
19 terms of the warranty; and

20 (1) The date of the transaction and the names of the
21 lessor and the consumer.

22 (2) With respect to matters specifically governed by the
23 Consumer Credit Protection Act, 15 U.S.C. ~~1635-1601~~ et seq., as such
24 act existed on ~~September 1, 2001,~~ January 1, 2011, compliance with
25 such act shall satisfy the requirements of this section.

1 (3) Subsection (1) of this section shall not apply to a
2 lessor who complies with the disclosure requirements of the Consumer
3 Credit Protection Act, 15 U.S.C. 1667a, as such section existed on
4 ~~September 1, 2001, January 1, 2011,~~ with respect to a consumer rental
5 purchase agreement entered into with a consumer.

6 Sec. 7. Section 69-2112, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 69-2112 (1) Any advertisement for a consumer rental
9 purchase agreement which refers to or states the amount of any
10 payment or the right to acquire ownership for any specific item shall
11 also state clearly and conspicuously the following if applicable:

12 (a) That the transaction advertised is a consumer rental
13 purchase agreement;

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

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

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

20 (3) Subsection (1) of this section shall not apply to an
21 advertisement which does not refer to a specific item of property,
22 which does not refer to or state the amount of any payment, or which
23 is published in the yellow pages of a telephone directory or any
24 similar directory of business.

25 (4) With respect to matters specifically governed by the

1 Consumer Credit Protection Act, 15 U.S.C. ~~1635-1601~~ et seq., as such
2 act existed on ~~September 1, 2001,~~ January 1, 2011, compliance with
3 such act shall satisfy the requirements of this section.

4 Sec. 8. Original sections 8-1101, 8-1704, 8-1707,
5 69-2103, 69-2104, and 69-2112, Reissue Revised Statutes of Nebraska,
6 and section 8-1111, Revised Statutes Cumulative Supplement, 2010, are
7 repealed.

8 Sec. 9. Since an emergency exists, this act takes effect
9 when passed and approved according to law.