

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 909

Introduced by Williams, 36.

Read first time January 10, 2020

Committee:

1 A BILL FOR AN ACT relating to finance; to amend sections 45-191.02,
2 45-191.09, 45-1017, 45-1033, and 59-1725.01, Reissue Revised
3 Statutes of Nebraska, sections 8-103, 8-141, 8-167, and 59-1722,
4 Revised Statutes Cumulative Supplement, 2018, sections 8-135,
5 8-143.01, 8-157.01, 8-183.04, 8-1,140, 8-318, 8-355, 8-1101,
6 8-1101.01, 8-1103, 8-1111, 8-1704, 8-1707, 21-17,115, 69-2103,
7 69-2104, and 69-2112, Revised Statutes Supplement, 2019, and section
8 4A-108, Uniform Commercial Code, Revised Statutes Supplement, 2019;
9 to change provisions relating to certain prohibited acts by
10 Department of Banking and Finance employees; to redefine a term
11 relating to loan limits; to update and change references to certain
12 federal provisions; to eliminate a reporting notice requirement and
13 exemption; to revise powers of state-chartered banks, building and
14 loan associations, and credit unions; to change obsolete civil
15 penalty provisions; to change the fund for remittance of loan broker
16 filing fees; to change provisions relating to examinations under the
17 Nebraska Installment Loan Act; to repeal the original sections; to
18 outright repeal section 8-167.01, Revised Statutes Supplement, 2019;
19 and to declare an emergency.
20 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

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

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

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

25 (b) Electronic means through:

26 (i) Preauthorized direct withdrawal;

27 (ii) An automatic teller machine;

28 (iii) A debit card;

29 (iv) A transfer by telephone;

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

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

1 electronic means.

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

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

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

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

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

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

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

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

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

1 fifteen percent of such unimpaired capital and unimpaired surplus.

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

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

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

31 (d) Obligations representing loans to any national banking

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

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

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

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

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

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

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

24 (6) For purposes of this section:

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

31 (b) Loan includes:

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

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

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

11 (c) Unimpaired capital and unimpaired surplus means:

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

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

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

21 (ii) For all other banks:

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

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

1 2020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (8) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 nondiscriminating basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (15) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

1 customer;

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

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

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

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

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

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

1 amended to read:

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

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

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

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

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

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

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

4 Sec. 9. Section 8-318, Revised Statutes Supplement, 2019, is amended
5 to read:

6 8-318 (1)(a) Shares of stock in any association, or in any federal
7 savings and loan association incorporated under the provisions of the
8 federal Home Owners' Loan Act, with its principal office and place of
9 business in this state, may be subscribed for, held, transferred,
10 surrendered, withdrawn, and forfeited and payments thereon received and
11 receipted for by any person, regardless of age, in the same manner and
12 with the same binding effect as though such person were of the age of
13 majority, except that a minor or his or her estate shall not be bound on
14 his or her subscription to stock except to the extent of payments
15 actually made thereon.

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

19 (i) Check or other instrument in writing. The check or other
20 instrument in writing constitutes a receipt or acquittance if the check
21 or other instrument in writing is signed by the shareholder and
22 constitutes a valid release in discharge to the building and loan
23 association for all payments so made; or

24 (ii) Electronic means through:

25 (A) Preauthorized direct withdrawal;

26 (B) An automatic teller machine;

27 (C) A debit card;

28 (D) A transfer by telephone;

29 (E) A network, including the Internet; or

30 (F) Any electronic terminal, computer, magnetic tape, or other
31 electronic means.

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

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

16 (3) Trustees created solely by the terms of a trust instrument may
17 invest in, acquire, hold, and transfer such shares, and make withdrawals,
18 in whole or in part, therefrom, without any order of court, unless
19 expressly limited, restricted, or prohibited therefrom by the terms of
20 such trust instrument.

21 (4) All building and loan associations referred to in this section
22 are qualified to act as trustee or custodian within the provisions of the
23 federal Self-Employed Individuals Tax Retirement Act of 1962, as amended,
24 or under the terms and provisions of section 408(a) of the Internal
25 Revenue Code, if the provisions of such retirement plan require the funds
26 of such trust or custodianship to be invested exclusively in shares or
27 accounts in the association or in other associations. If any such
28 retirement plan, within the judgment of the association, constitutes a
29 qualified plan under the federal Self-Employed Individuals Tax Retirement
30 Act of 1962, or under the terms and provisions of section 408(a) of the
31 Internal Revenue Code, and the regulations promulgated thereunder at the

1 time the trust was established and accepted by the association, is
2 subsequently determined not to be such a qualified plan or subsequently
3 ceases to be such a qualified plan, in whole or in part, the association
4 may continue to act as trustee of any deposits theretofore made under
5 such plan and to dispose of the same in accordance with the directions of
6 the member and beneficiaries thereof. No association, in respect to
7 savings made under this section, shall be required to segregate such
8 savings from other assets of the association. The association shall keep
9 appropriate records showing in proper detail all transactions engaged in
10 under the authority of this section.

11 Sec. 10. Section 8-355, Revised Statutes Supplement, 2019, is
12 amended to read:

13 8-355 Notwithstanding any of the provisions of Chapter 8, article 3,
14 or any other Nebraska statute, except as provided in section 8-345.02,
15 any association incorporated under the laws of the State of Nebraska and
16 organized under the provisions of such article shall have all the rights,
17 powers, privileges, benefits, and immunities which may be exercised as of
18 January 1, 2020 ~~2019~~, by a federal savings and loan association doing
19 business in Nebraska. Such rights, powers, privileges, benefits, and
20 immunities shall not relieve such association from payment of state taxes
21 assessed under any applicable laws of this state.

22 Sec. 11. Section 8-1101, Revised Statutes Supplement, 2019, is
23 amended to read:

24 8-1101 For purposes of the Securities Act of Nebraska, unless the
25 context otherwise requires:

26 (1) Agent means any individual other than a broker-dealer who
27 represents a broker-dealer or issuer in effecting or attempting to effect
28 sales of securities, but agent does not include an individual who
29 represents (a) an issuer in (i) effecting a transaction in a security
30 exempted by subdivision (6), (7), or (8) of section 8-1110, (ii)
31 effecting certain transactions exempted by section 8-1111, (iii)

1 effecting transactions in a federal covered security as described in
2 section 18(b)(3) of the Securities Act of 1933, or (iv) effecting
3 transactions with existing employees, limited liability company members,
4 partners, or directors of the issuer or any of its subsidiaries if no
5 commission or other remuneration is paid or given directly or indirectly
6 for soliciting any person in this state or (b) a broker-dealer in
7 effecting transactions described in section 15(h)(2) of the Securities
8 Exchange Act of 1934. A partner, limited liability company member,
9 officer, or director of a broker-dealer is an agent only if he or she
10 otherwise comes within this definition;

11 (2) Broker-dealer means any person engaged in the business of
12 effecting transactions in securities for the account of others or for his
13 or her own account. Broker-dealer does not include (a) an issuer-dealer,
14 agent, bank, savings institution, or trust company, (b) an issuer
15 effecting a transaction in its own security exempted by subdivision (5)
16 (a), (b), (c), (d), (e), or (f) of section 8-1110 or which qualifies as a
17 federal covered security pursuant to section 18(b)(1) of the Securities
18 Act of 1933, (c) a person who has no place of business in this state if
19 he or she effects transactions in this state exclusively with or through
20 the issuers of the securities involved in the transactions, other broker-
21 dealers, or banks, savings institutions, credit unions, trust companies,
22 insurance companies, investment companies as defined in the Investment
23 Company Act of 1940, pension or profit-sharing trusts, or other financial
24 institutions or institutional buyers, whether acting for themselves or as
25 trustees, (d) a person who has no place of business in this state if
26 during any period of twelve consecutive months he or she does not direct
27 more than five offers to sell or to buy into this state in any manner to
28 persons other than those specified in subdivision (2)(c) of this section,
29 or (e) a person who is a resident of Canada and who has no office or
30 other physical presence in Nebraska if the following conditions are
31 satisfied: (i) The person must be registered with, or be a member of, a

1 securities self-regulatory organization in Canada or a stock exchange in
2 Canada; (ii) the person must maintain, in good standing, its provisional
3 or territorial registration or membership in a securities self-regulatory
4 organization in Canada, or stock exchange in Canada; (iii) the person
5 effects, or attempts to effect, (A) a transaction with or for a Canadian
6 client who is temporarily present in this state and with whom the
7 Canadian broker-dealer had a bona fide customer relationship before the
8 client entered this state or (B) a transaction with or for a Canadian
9 client in a self-directed tax advantaged retirement plan in Canada of
10 which that client is the holder or contributor; and (iv) the person
11 complies with all provisions of the Securities Act of Nebraska relating
12 to the disclosure of material information in connection with the
13 transaction;

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

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

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

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

24 (7) Investment adviser means any person who for compensation engages
25 in the business of advising others, either directly or through
26 publications or writings, as to the value of securities or as to the
27 advisability of investing in, purchasing, or selling securities or who
28 for compensation and as a part of a regular business issues or
29 promulgates analyses or reports concerning securities. Investment adviser
30 also includes financial planners and other persons who, as an integral
31 component of other financially related services, provide the foregoing

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

29 (8) Investment adviser representative means any partner, limited
30 liability company member, officer, or director or any person occupying a
31 similar status or performing similar functions of a partner, limited

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

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

27 (10) Issuer-dealer means (a) any issuer located in the State of
28 Nebraska or (b) any issuer which registered its securities by
29 qualification who proposes to sell to the public of the State of Nebraska
30 the securities that it issues without the benefit of another registered
31 broker-dealer. Such securities shall have been approved for sale in the

1 State of Nebraska pursuant to section 8-1104;

2 (11) Nonissuer means not directly or indirectly for the benefit of
3 the issuer;

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

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

23 (14) Securities Act of 1933, Securities Exchange Act of 1934,
24 Investment Advisers Act of 1940, Investment Company Act of 1940, and
25 Commodity Exchange Act, and the federal Interstate Land Sales Full
26 Disclosure Act means the acts as they existed on January 1, ~~2020~~ 2019;

27 (15) Security means any note, stock, treasury stock, bond,
28 debenture, units of beneficial interest in a real estate trust, evidence
29 of indebtedness, certificate of interest or participation in any profit-
30 sharing agreement, collateral-trust certificate, preorganization
31 certificate or subscription, transferable share, investment contract,

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

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

23 (17) Viatical settlement contract means an agreement for the
24 purchase, sale, assignment, transfer, devise, or bequest of all or any
25 portion of the death benefit or ownership of a life insurance policy or
26 contract for consideration which is less than the expected death benefit
27 of the life insurance policy or contract. Viatical settlement contract
28 does not include (a) the assignment, transfer, sale, devise, or bequest
29 of a death benefit of a life insurance policy or contract made by the
30 viator to an insurance company or to a viatical settlement provider or
31 broker licensed pursuant to the Viatical Settlements Act, (b) the

1 assignment of a life insurance policy or contract to a bank, savings
2 bank, savings and loan association, credit union, or other licensed
3 lending institution as collateral for a loan, or (c) the exercise of
4 accelerated benefits pursuant to the terms of a life insurance policy or
5 contract and consistent with applicable law.

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

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

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

12 (2) Fair practice or ethical rules or standards promulgated by the
13 Securities and Exchange Commission, the Financial Industry Regulatory
14 Authority, or a self-regulatory organization approved by the Securities
15 and Exchange Commission means such practice, rules, or standards as they
16 existed on January 1, 2020.

17 Sec. 13. Section 8-1103, Revised Statutes Supplement, 2019, is
18 amended to read:

19 8-1103 (1) It shall be unlawful for any person to transact business
20 in this state as a broker-dealer, issuer-dealer, or agent, except in
21 certain transactions exempt under section 8-1111, unless he or she is
22 registered under the Securities Act of Nebraska. It shall be unlawful for
23 any broker-dealer to employ an agent for purposes of effecting or
24 attempting to effect transactions in this state unless the agent is
25 registered. It shall be unlawful for an issuer to employ an agent unless
26 the issuer is registered as an issuer-dealer and unless the agent is
27 registered. The registration of an agent shall not be effective unless
28 the agent is employed by a broker-dealer or issuer-dealer registered
29 under the act. When the agent begins or terminates employment with a
30 registered broker-dealer or issuer-dealer, the broker-dealer or issuer-
31 dealer shall promptly notify the director.

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

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

13 (c)(i) It shall be unlawful for any investment adviser required to
14 be registered under the Securities Act of Nebraska to employ an
15 investment adviser representative unless the investment adviser
16 representative is registered under the act.

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

22 (d) The registration of an investment adviser representative shall
23 not be effective unless the investment adviser representative is employed
24 by a registered investment adviser or a federal covered adviser. When an
25 investment adviser representative begins or terminates employment with an
26 investment adviser, the investment adviser shall promptly notify the
27 director. When an investment adviser representative begins or terminates
28 employment with a federal covered adviser, the investment adviser
29 representative shall promptly notify the director.

30 (3) A broker-dealer, issuer-dealer, agent, investment adviser, or
31 investment adviser representative may apply for registration by filing

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

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

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

15 (c) The qualifications and business history of the applicant and, in
16 the case of a broker-dealer or investment adviser, the qualifications and
17 business history of any partner, limited liability company member,
18 officer, director, person occupying a similar status or performing
19 similar functions of a partner, limited liability company member,
20 officer, or director, or person directly or indirectly controlling the
21 broker-dealer or investment adviser;

22 (d) Any injunction or administrative order or conviction of a
23 misdemeanor involving a security or any aspect of the securities business
24 and any conviction of a felony;

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

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

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

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

2 (i) That the applicant, except for renewal, and, in the case of a
3 corporation, partnership, or limited liability company, the officers,
4 directors, partners, or limited liability company members pass such
5 examination or examinations as the director may prescribe as evidence of
6 knowledge of the securities business;

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

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

26 (iv) That a broker-dealer have such minimum net capital as the
27 director may by rule and regulation or order require, subject to the
28 limitations provided in section 15 of the Securities Exchange Act of
29 1934. In lieu of any such minimum net capital requirement, the director
30 may by rule and regulation or order require a broker-dealer to post a
31 corporate surety bond with a surety company licensed to do business in

1 Nebraska in an amount equal to such capital requirement, subject to the
2 limitations of section 15 of the Securities Exchange Act of 1934. Every
3 such surety bond shall run in favor of Nebraska, shall provide for an
4 action thereon by any person who has a cause of action under section
5 8-1118, and shall provide that no action may be maintained to enforce any
6 liability on the bond unless brought within the time periods specified by
7 section 8-1118; and

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

24 (c) The director may waive the requirement of an examination for any
25 applicant who by reason of prior experience can demonstrate his or her
26 knowledge of the securities business. Registration of a broker-dealer,
27 agent, investment adviser, and investment adviser representative shall be
28 effective for a period of not more than one year and shall expire on
29 December 31 unless renewed. Registration of an issuer-dealer shall be
30 effective for a period of not more than one year and may be renewed as
31 provided in this section. Notice filings by a federal covered adviser

1 shall be effective for a period of not more than one year and shall
2 expire on December 31 unless renewed.

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

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

20 (6) The fee for initial or renewal registration shall be two hundred
21 fifty dollars for a broker-dealer, two hundred dollars for an investment
22 adviser, one hundred dollars for an issuer-dealer, forty dollars for an
23 agent, and forty dollars for an investment adviser representative. The
24 fee for initial or renewal filings for a federal covered adviser shall be
25 two hundred dollars. When an application is denied or withdrawn, the
26 director shall retain all of the fee.

27 (7)(a) Every registered broker-dealer, issuer-dealer, and investment
28 adviser shall make and keep such accounts, correspondence, memoranda,
29 papers, books, and other records as the director may prescribe by rule
30 and regulation or order, except as provided by section 15 of the
31 Securities Exchange Act of 1934, in connection with broker-dealers, and

1 section 222 of the Investment Advisers Act of 1940, in connection with
2 investment advisers. All records so required shall be preserved for such
3 period as the director may prescribe by rule and regulation or order.

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

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

21 (d) If any information contained in any document filed with the
22 director is or becomes inaccurate or incomplete in any material respect,
23 a broker-dealer, issuer-dealer, agent, investment adviser, or investment
24 adviser representative shall promptly file a correcting amendment or a
25 federal covered adviser shall file a correcting amendment when such
26 amendment is required to be filed with the Securities and Exchange
27 Commission.

28 (8) With respect to investment advisers, the director may require
29 that certain information be furnished or disseminated to clients as
30 necessary or appropriate in the public interest or for the protection of
31 investors and advisory clients. To the extent determined by the director

1 in his or her discretion, information furnished to clients of an
2 investment adviser that would be in compliance with the Investment
3 Advisers Act of 1940 and the rules and regulations under such act may be
4 used in whole or in part to satisfy the information requirement
5 prescribed in this subsection.

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

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

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

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

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

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

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

15 (vii) Has engaged in dishonest or unethical practices in the
16 securities or commodities business;

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

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

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

29 (xi) Has failed to reasonably supervise his or her agents or
30 employees, if he or she is a broker-dealer or issuer-dealer, or his or
31 her investment adviser representatives or employees, if he or she is an

1 investment adviser, to assure their compliance with the Securities Act of
2 Nebraska;

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

11 (xiii) Has refused to allow or otherwise impedes the department from
12 conducting an examination under subsection (7) of this section or has
13 refused the department access to a registrant's office to conduct an
14 examination under subsection (7) of this section.

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

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

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

24 (c)(i) For purposes of subdivisions (9)(a)(vii) and (9)(b)(ii) of
25 this section, the director may, by rule and regulation or order,
26 determine that a violation of any provision of the fair practice or
27 ethical rules or standards promulgated by the Securities and Exchange
28 Commission, the Financial Industry Regulatory Authority, or a self-
29 regulatory organization approved by the Securities and Exchange
30 Commission, ~~in effect on January 1, 2019,~~ constitutes a dishonest or
31 unethical practice in the securities or commodities business.

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

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

28 (10)(a) If the director finds that any registrant or applicant for
29 registration is no longer in existence or has ceased to do business as a
30 broker-dealer, issuer-dealer, agent, investment adviser, or investment
31 adviser representative, is subject to an adjudication of mental

1 incompetence or to the control of a committee, conservator, or guardian,
2 or cannot be located after reasonable search, the director may by order
3 cancel the registration or application.

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

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

22 Sec. 14. Section 8-1111, Revised Statutes Supplement, 2019, is
23 amended to read:

24 8-1111 Except as provided in this section, sections 8-1103 to 8-1109
25 shall not apply to any of the following transactions:

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

28 (2)(a) Any nonissuer transaction by a registered agent of a
29 registered broker-dealer, and any resale transaction by a sponsor of a
30 unit investment trust registered under the Investment Company Act of
31 1940, in a security of a class that has been outstanding in the hands of

1 the public for at least ninety days if, at the time of the transaction:

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

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

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

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

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

18 (B) The names of the issuer's officers and the names of the issuer's
19 directors, if any, or, in the case of a non-United-States issuer, the
20 corporate equivalents of such persons in the issuer's country of
21 domicile;

22 (C) An audited balance sheet of the issuer as of a date within
23 eighteen months or, in the case of a reorganization or merger when
24 parties to the reorganization or merger had such audited balance sheet, a
25 pro forma balance sheet; and

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

31 (v) The issuer of the security has a class of equity securities

1 listed on a national securities exchange registered under the Securities
2 Exchange Act of 1934 unless:

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

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

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

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

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

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

26 The director may by order deny or revoke the exemption specified in
27 subdivision (a) or (b) of subdivision (2) of this section with respect to
28 a specific security. Upon the entry of such an order, the director shall
29 promptly notify all registered broker-dealers that such order has been
30 entered and the reasons for such order and that within fifteen business
31 days after receipt of a written request the matter will be set for

1 hearing. If no hearing is requested within fifteen business days of the
2 issuance of the order and none is ordered by the director, the order
3 shall automatically become a final order and shall remain in effect until
4 modified or vacated by the director. If a hearing is requested or
5 ordered, the director shall, after notice of and opportunity for hearing
6 to all interested persons, enter his or her written findings of fact and
7 conclusions of law and may affirm, modify, or vacate the order. No such
8 order shall operate retroactively. No person may be considered to have
9 violated the Securities Act of Nebraska by reason of any offer or sale
10 effected after the entry of any such order if he or she sustains the
11 burden of proof that he or she did not know, and in the exercise of
12 reasonable care could not have known, of the order;

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

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

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

1 15 U.S.C. 1701 et seq., ~~as such act existed on January 1, 2019;~~

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

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

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

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

10 (ii) An insurance company;

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

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

14 (v) A broker-dealer;

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

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

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

24 (ix) A trust with total assets in excess of five million dollars,
25 not formed for the specific purpose of acquiring the securities, whose
26 purchase is directed by a person who has such knowledge and experience in
27 financial and business matters that he or she is capable of evaluating
28 the merits and risks of the prospective investment;

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

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

3 (xii) An individual accredited investor.

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

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

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

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

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

29 (12) Any offer, but not a sale, of a security for which registration
30 statements have been filed under both the Securities Act of Nebraska and
31 the Securities Act of 1933 if no stop order or refusal order is in effect

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

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

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

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

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

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

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

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

31 (d) Insurance agents who are exclusive insurance agents of the

1 issuer, or the issuer's subsidiaries or parents, or who derive more than
2 fifty percent of their annual income from those organizations;

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

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

23 (20) Any transaction in this state not involving a public offering
24 by a Nebraska issuer selling solely to Nebraska residents, when (a) any
25 such transaction is effected in accordance with rules and regulations of
26 the director relating to this section when the director finds in adopting
27 and promulgating such rules and regulations that the applicability of
28 sections 8-1104 to 8-1107 is not necessary or appropriate in the public
29 interest or for the protection of investors, (b) no commission or
30 remuneration is paid directly or indirectly for soliciting any
31 prospective buyer, except to a registered agent of a registered broker-

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

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

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

30 (a) Sales of such securities are made only to the following
31 purchasers:

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (G) A description of any order, judgment, or decree that is final as
26 to the issuing entity of any state, federal, or foreign governmental
27 agency or administrator, or of any state, federal, or foreign court of
28 competent jurisdiction (I) revoking, suspending, denying, or censuring
29 for cause any license, permit, or other authority of the issuer or of any
30 director, officer, partner, member, trustee, or person owning or
31 controlling, directly or indirectly, ten percent or more of the

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

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

21 (I) A statement to the effect that any projected rate of return to
22 the purchaser from the purchase of a viatical settlement contract or any
23 fractionalized or pooled interest therein is based on an estimated life
24 expectancy for the person insured under the life insurance policy; that
25 the return on the purchase may vary substantially from the expected rate
26 of return based upon the actual life expectancy of the insured that may
27 be less than, may be equal to, or may greatly exceed the estimated life
28 expectancy; and that the rate of return would be higher if the actual
29 life expectancy were less than, and lower if the actual life expectancy
30 were greater than, the estimated life expectancy of the insured at the
31 time the viatical settlement contract was closed;

1 (J) A statement that the purchaser should consult with his or her
2 tax advisor regarding the tax consequences of the purchase of the
3 viatical settlement contract or any fractionalized or pooled interest
4 therein; and

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

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

9 (A) The name, address, and telephone number of the issuing insurance
10 company and the name, address, and telephone number of the state or
11 foreign country regulator of the insurance company;

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

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

15 (D) If a group insurance policy, the name, address, and telephone
16 number of the group and, if applicable, the material terms and conditions
17 of converting the policy to an individual policy, including the amount of
18 increased premiums;

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

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

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

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

27 (I) The name, address, and telephone number of the person who will
28 be the insurance policyowner and the person who will be responsible for
29 paying premiums;

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (c) The issuer, any partner or limited liability company member of
27 the issuer, any officer, director, or any person occupying a similar
28 status of the issuer, any person performing similar functions for the
29 issuer, or any person holding a direct or indirect ownership interest in
30 the issuer or in any way a beneficial interest in such sale of securities
31 of the issuer, has not been:

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

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

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

13 (iv) Temporarily or preliminarily restrained or enjoined by a court
14 of competent jurisdiction from engaging in or continuing any conduct or
15 practice in connection with the purchase or sale of any security or
16 involving the making of any false filing with any state or with the
17 Securities and Exchange Commission;

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

20 (A) The name, address, telephone number, and email address of the
21 issuer;

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

24 (C) The amount of the offering; and

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

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

31 (e) Prior to payment of consideration for the securities, the

1 offeree receives a written disclosure statement containing (i) a
2 description of the proposed use of the proceeds of the offering; (ii) the
3 name of each partner or limited liability company member of the issuer,
4 officer, director, or person occupying a similar status of the issuer or
5 performing similar functions for the issuer; and (iii) the financial
6 condition of the issuer;

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

9 (i) Has received the written disclosure statement;

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

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

13 (g) The issuer, within thirty days after the completion of the
14 offering, files with the department a statement indicating the number of
15 investors, the total dollar amount raised, and the use of the offering
16 proceeds; or

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

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

22 (ii) The transaction meets the requirements of the federal exemption
23 for intrastate offerings in section 3(a)(11) of the Securities Act of
24 1933 and Rule 147 adopted under the Securities Act of 1933, or complies
25 with Rule 147A adopted under the Securities Act of 1933;

26 (iii) Except as provided in subdivision (c) of this subdivision, the
27 sum of all cash and other consideration to be received for all sales of
28 the security in reliance on the exemption under this subdivision,
29 excluding sales to any accredited investor, does not exceed the following
30 amount:

31 (A) If the issuer has not undergone, and made available to each

1 prospective investor and the director the documentation resulting from, a
2 financial audit of its most recently completed fiscal year that complies
3 with generally accepted accounting principles, one million dollars, less
4 the aggregate amount received for all sales of securities by the issuer
5 within the twelve months before the first offer or sale made in reliance
6 on the exemption under this subdivision; or

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

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

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

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

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

25 (C) Provide the director a copy of the disclosure document to be
26 provided to prospective investors under subdivision (a)(xi) of this
27 subdivision;

28 (D) Provide the director a copy of an escrow agreement with a bank,
29 regulated trust company, savings bank, savings and loan association, or
30 credit union authorized to do business in Nebraska in which the issuer
31 will deposit the investor funds or cause the investor funds to be

1 deposited. The bank, regulated trust company, savings bank, savings and
2 loan association, or credit union in which the investor funds are
3 deposited is only responsible to act at the direction of the party
4 establishing the escrow agreement and does not have any duty or
5 liability, contractual or otherwise, to any investor or other person;

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

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

12 (vi) The issuer is not, either before or as a result of the
13 offering, an investment company, as defined in section 3 of the
14 Investment Company Act of 1940, an entity that would be an investment
15 company but for the exclusions provided in section 3(c) of the Investment
16 Company Act of 1940, or subject to the reporting requirements of section
17 13 or 15(d) of the Securities Exchange Act of 1934;

18 (vii) The issuer informs all prospective purchasers of securities
19 offered under an exemption under this subdivision that the securities
20 have not been registered under federal or state securities law and that
21 the securities are subject to limitations on resale. The issuer shall
22 display the following legend conspicuously on the cover page of the
23 disclosure document:

24 IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN
25 EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE
26 MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY
27 ANY FEDERAL OR STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR
28 OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE
29 NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT.
30 ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE
31 SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND

1 MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF
2 SEC RULE 147 OR SUBSECTION (e) OF RULE 147A ADOPTED UNDER THE SECURITIES
3 ACT OF 1933 AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO
4 REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY
5 WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN
6 INDEFINITE PERIOD OF TIME.;

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

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

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

28 (x) All payments for purchase of securities offered under an
29 exemption under this subdivision are directed to and held by the
30 financial institution specified in subdivision (a)(v)(D) of this
31 subdivision. The director may request from the financial institutions

1 information necessary to ensure compliance with this section. This
2 information is not a public record and is not available for public
3 inspection;

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

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

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

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

20 (D) The terms and conditions of the securities being offered and of
21 any outstanding securities of the company; the minimum and maximum amount
22 of securities being offered, if any; either the percentage ownership of
23 the company represented by the offered securities or the valuation of the
24 company implied by the price of the offered securities; the price per
25 share, unit, or interest of the securities being offered; any
26 restrictions on transfer of the securities being offered; and a
27 disclosure of any anticipated future issuance of securities that might
28 dilute the value of securities being offered;

29 (E) The identity of any person who has been or will be retained by
30 the issuer to assist the issuer in conducting the offering and sale of
31 the securities, including any portal operator but excluding persons

1 acting solely as accountants or attorneys and employees whose primary job
2 responsibilities involve the operating business of the issuer rather than
3 assisting the issuer in raising capital;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (VII) It does not engage in any other activities that the director,
25 by rule and regulation or order, determines are prohibited of the funding
26 portal; and

27 (VIII) Neither the portal operator, nor any director, executive
28 officer, general partner, managing member, or other person with
29 management authority over the portal operator, has been subject to any
30 conviction, order, judgment, decree, or other action specified in Rule
31 506(d)(1) adopted under the Securities Act of 1933, that would disqualify

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

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

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

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

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

22 (F) The issuer and the portal operator must maintain records of all
23 offers and sales of securities effected through the funding portal and
24 must provide ready access to the records to the department, upon request.
25 The records of a portal operator under this subdivision are subject to
26 the reasonable periodic, special, or other audits or inspections by a
27 representative of the director, in or outside Nebraska, as the director
28 considers necessary or appropriate in the public interest and for the
29 protection of investors. An audit or inspection may be made at any time
30 and without prior notice. The director may copy, and remove for audit or
31 inspection copies of, all records the director reasonably considers

1 necessary or appropriate to conduct the audit or inspection. The director
2 may assess a reasonable charge for conducting an audit or inspection
3 under this subdivision;

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

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

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

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

22 (i) Compensation received by each director and executive officer,
23 including cash compensation earned since the previous report and on an
24 annual basis and any bonuses, stock options, other rights to receive
25 securities of the issuer or any affiliate of the issuer, or other
26 compensation received; and

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

29 (c) An offer or a sale under this subdivision to an officer,
30 director, partner, trustee, or individual occupying similar status or
31 performing similar functions with respect to the issuer or to a person

1 owning ten percent or more of the outstanding shares of any class or
2 classes of securities of the issuer does not count toward the monetary
3 limitations in subdivision (a)(iii) of this subdivision.

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

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

18 (i) On a showing of good cause and without prejudice to any other
19 action by the Director of Banking and Finance, the director determines
20 that it is not necessary under the circumstances that an exemption is
21 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 (f) For purposes of this subdivision:

29 (i) Accredited investor means a bank, a savings institution, a trust
30 company, an insurance company, an investment company as defined in the
31 Investment Company Act of 1940, a pension or profit-sharing trust or

1 other financial institution or institutional buyer, an individual
2 accredited investor, or a broker-dealer, whether the purchaser is acting
3 for itself or in some fiduciary capacity;

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

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

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

23 Sec. 15. Section 8-1704, Revised Statutes Supplement, 2019, is
24 amended to read:

25 8-1704 CFTC rule shall mean any rule, regulation, or order of the
26 Commodity Futures Trading Commission in effect on January 1, 2020 ~~2019~~.

27 Sec. 16. Section 8-1707, Revised Statutes Supplement, 2019, is
28 amended to read:

29 8-1707 Commodity Exchange Act shall mean the act of Congress known
30 as the Commodity Exchange Act, 7 U.S.C. 1, as amended on January 1, 2020
31 ~~2019~~.

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

3 21-17,115 Notwithstanding any of the other provisions of the Credit
4 Union Act or any other Nebraska statute, any credit union incorporated
5 under the laws of the State of Nebraska and organized under the
6 provisions of the act shall have all the rights, powers, privileges,
7 benefits, and immunities which may be exercised as of January 1, 2020
8 ~~2019~~, by a federal credit union doing business in Nebraska on the
9 condition that such rights, powers, privileges, benefits, and immunities
10 shall not relieve such credit union from payment of state taxes assessed
11 under any applicable laws of this state.

12 Sec. 18. Section 45-191.02, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 45-191.02 (1) Before advertising or making any oral or written
15 representation or acting as a loan broker in this state a loan broker
16 shall file with the department one copy of the disclosure statement and
17 one copy of any loan brokerage agreement.

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

22 (3) The loan broker shall pay a one-hundred-fifty-dollar filing fee
23 upon filing the initial disclosure statement and a one-hundred-dollar
24 filing fee upon the filing of a renewal of the disclosure statement. The
25 loan broker shall pay a fifty-dollar filing fee for each amendment filed.
26 All funds collected by the department under this section shall be
27 remitted to the State Treasurer for credit to the Securities Act
28 ~~Financial Institution Assessment~~ Cash Fund.

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

1 Sec. 19. Section 45-191.09, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 45-191.09 (1) The director may summarily order a loan broker to
4 cease and desist from acting as a loan broker or from the use of certain
5 forms or practices relating to the loan broker's activities if the order
6 is in the public interest and the director finds:

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

11 (b) The loan broker has willfully violated or willfully failed to
12 comply with any provision of sections 45-189 to 45-191.11;

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

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

18 (e) Any person identified in the required disclosure statement has
19 been convicted of an offense described in subdivision (2)(i)(i) of
20 section 45-191.01 or is subject to an order or has had a civil judgment
21 entered against him or her as described in subdivision (2)(i)(ii) or (2)
22 (i)(iii) of section 45-191.01 and the involvement of such person in the
23 loan broker's business creates an unreasonable risk to prospective
24 borrowers.

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

30 (a) Issue a cease and desist order;

31 (b) Impose a fine not to exceed one thousand dollars per violation,

1 in addition to costs of the investigation; or

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

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

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

19 (b) If a person fails to pay the fine or costs of the investigation
20 referred to in this subsection, a lien in the amount of the fine and
21 costs may be imposed upon all of the assets and property of such person
22 in this state and may be recovered by suit by the department. Failure of
23 the person to pay a fine and costs shall constitute a separate violation
24 of sections 45-189 to 45-191.11.

25 (5) Upon entry of an order pursuant to this section, the director
26 shall promptly notify all persons to whom such order is directed that it
27 has been entered and of the reasons for such order and that any person to
28 whom the order is directed may request a hearing in writing within
29 fifteen business days of the issuance of the order. Upon receipt of a
30 written request, the matter shall be set down for hearing to commence
31 within thirty business days after the receipt unless the parties consent

1 to a later date or the hearing officer sets a later date for good cause.
2 If a hearing is not requested within fifteen business days from the
3 issuance of the order and none is ordered by the director, the order
4 shall automatically become final and shall remain in effect until it is
5 modified or vacated by the director. If a hearing is requested or
6 ordered, the director, after notice and hearing, shall enter his or her
7 written findings of fact and conclusions of law and may affirm, modify,
8 or vacate the order.

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

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

15 Sec. 20. Section 45-1017, Reissue Revised Statutes of Nebraska, is
16 amended to read:

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

31 (2) Upon receipt by a licensee of a notice of investigation or

1 inquiry request for information from the department, the licensee shall
2 respond within twenty-one calendar days. Each day a licensee fails to
3 respond as required by this subsection constitutes a separate violation.

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

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

27 Sec. 21. Section 45-1033, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 45-1033 (1) The director may, following a hearing under the
30 Administrative Procedure Act and the rules and regulations adopted and
31 promulgated by the department under the act, suspend or revoke any

1 license issued pursuant to the Nebraska Installment Loan Act. The
2 director may also impose an administrative fine on the licensee for each
3 separate violation of the act. The director may take one or more of these
4 actions if the director finds:

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

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

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

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

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

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

29 (g) The licensee knowingly has employed any individual or knowingly
30 has maintained a contractual relationship with any individual acting as
31 an agent, if such individual has been convicted of, pleaded guilty to, or

1 was found guilty after a plea of nolo contendere to (i) a misdemeanor
2 under any state or federal law which involves dishonesty or fraud or
3 which involves any aspect of the mortgage banking business, financial
4 institution business, or installment loan business or (ii) any felony
5 under state or federal law;

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

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

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

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

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

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

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

4 (5) Revocation, suspension, cancellation, or expiration of a license
5 shall not affect civil or criminal liability for acts committed before
6 the revocation, suspension, cancellation, or expiration or liability for
7 any fines which may be imposed against the licensee or any of its
8 officers, directors, shareholders, partners, or members pursuant to this
9 section or section 45-1069 for acts committed before the surrender.

10 Sec. 22. Section 59-1722, Revised Statutes Cumulative Supplement,
11 2018, is amended to read:

12 59-1722 (1) Any transaction involving the sale of a franchise as
13 defined in 16 C.F.R. 436.1(h), as such regulation existed on January 1,
14 2020 in which the seller has complied with the Federal Trade Commission
15 trade regulation rule titled Disclosure Requirements and Prohibitions
16 Concerning Franchising, 16 C.F.R. 436, shall be exempt from the Seller-
17 Assisted Marketing Plan Act, except that such transactions shall be
18 subject to subdivision (1)(d) of section 59-1757, those provisions
19 regulating or prescribing the use of the phrase buy-back or secured
20 investment or similar phrases as set forth in sections 59-1726 to 59-1728
21 and 59-1751, and all sections which provide for their enforcement. The
22 exemption shall only apply if:

23 (a) The franchise is offered and sold in compliance with the
24 requirements of 16 C.F.R. part 436, Disclosure Requirements and
25 Prohibitions Concerning Franchising, as such part existed on January 1,
26 2020 ~~The seller uses a disclosure document prepared in accordance with~~
27 ~~either the Federal Trade Commission trade regulation rule titled~~
28 ~~Disclosure Requirements and Prohibitions Concerning Franchising, 16~~
29 ~~C.F.R. 436, or the then current guidelines for the preparation of the~~
30 ~~Uniform Franchise Offering Circular adopted by the North American~~
31 ~~Securities Administrators Association;~~

1 (b) Before placing any advertisement in a Nebraska-based
2 publication, offering for sale to any prospective purchaser in Nebraska,
3 or making any representations in connection with such offer or sale to
4 any prospective purchaser in Nebraska, the seller files a notice with the
5 Department of Banking and Finance which contains (i) the name, address,
6 and telephone number of the seller and the name under which the seller
7 intends to do business and (ii) a brief description of the plan offered
8 by the seller; and

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

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

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

18 (4) The Director of Banking and Finance may by order deny or revoke
19 an exemption specified in this section with respect to a particular
20 offering of one or more business opportunities if the director finds that
21 such an order is in the public interest or is necessary for the
22 protection of purchasers. An order shall not be entered without
23 appropriate prior notice to all interested parties, an opportunity for
24 hearing, and written findings of fact and conclusions of law. If the
25 public interest or the protection of purchasers so requires, the director
26 may by order summarily deny or revoke an exemption specified in this
27 section pending final determination of any proceedings under this
28 section. An order under this section shall not operate retroactively.

29 Sec. 23. Section 59-1725.01, Reissue Revised Statutes of Nebraska,
30 is amended to read:

31 59-1725.01 (1) The Director of Banking and Finance may summarily

1 order a seller or any officer, director, employee, or agent of such
2 seller to cease and desist from the further offer or sale of any seller-
3 assisted marketing plan by the seller if the director finds:

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

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

8 (c) Any person identified in the required disclosure document has
9 been convicted of an offense described in subdivision (2)(a) of section
10 59-1735 or is subject to an order or has had a civil judgment entered
11 against him or her as described in subdivision (2)(b) or (c) of section
12 59-1735, and the involvement of such person in the sale or management of
13 the seller-assisted marketing plan creates an unreasonable risk to
14 prospective purchasers.

15 (2) If the director believes, whether or not based upon an
16 investigation conducted under section 59-1725, that any person has
17 engaged in or is about to engage in any act or practice constituting a
18 violation of any provision of the Seller-Assisted Marketing Plan Act or
19 any rule, regulation, or order of the director, the director may:

20 (a) Issue a cease and desist order;

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

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

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

29 (4)(a) Any fines and costs imposed under this section shall be in
30 addition to all other penalties imposed by the laws of this state. The
31 Department of Banking and Finance shall collect the fines and costs and

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

9 (b) If a person fails to pay the administrative fine or
10 investigation costs referred to in this section, a lien in the amount of
11 such fine and costs may be imposed upon all assets and property of such
12 person in this state and may be recovered by suit by the director.
13 Failure of the person to pay such fine and costs shall constitute a
14 separate violation of the act.

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

30 (6) The director may vacate or modify a cease and desist order if he
31 or she finds that the conditions which caused its entry have changed or

1 that it is otherwise in the public interest to do so.

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

5 Sec. 24. Section 69-2103, Revised Statutes Supplement, 2019, is
6 amended to read:

7 69-2103 For purposes of the Consumer Rental Purchase Agreement Act:

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

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

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

17 (4) Consumer rental purchase agreement means an agreement which is
18 for the use of property by a consumer primarily for personal, family, or
19 household purposes, which is for an initial period of four months or
20 less, whether or not there is any obligation beyond the initial period,
21 which is automatically renewable with each payment, and which permits the
22 consumer to become the owner of the property. A consumer rental purchase
23 agreement in compliance with the act shall not be construed to be a lease
24 or agreement which constitutes a credit sale as defined in 12 C.F.R.
25 1026.2(a)(16), as such regulation existed on January 1, 2020 ~~2019~~, and 15
26 U.S.C. 1602(h), as such section existed on January 1, 2020 ~~2019~~, or a
27 lease which constitutes a consumer lease as defined in 12 C.F.R. 1013.2,
28 as such regulation existed on January 1, 2020 ~~2019~~. Consumer rental
29 purchase agreement does not include:

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

31 (b) Any lease made to an organization;

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

3 (d) A security interest as defined in subdivision (35) of section
4 1-201, Uniform Commercial Code; and

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

6 (5) Consummation means the occurrence of an event which causes a
7 consumer to become contractually obligated on a consumer rental purchase
8 agreement;

9 (6) Department means the Department of Banking and Finance;

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

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

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

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

24 (11) Total of payments to acquire ownership means the total of all
25 charges imposed by the lessor and payable by the consumer as a condition
26 of acquiring ownership of the property. Total of payments to acquire
27 ownership includes lease payments and any initial nonrefundable
28 administrative fee or required delivery charge but does not include
29 taxes, late charges, reinstatement fees, or charges for optional products
30 or services.

31 Sec. 25. Section 69-2104, Revised Statutes Supplement, 2019, is

1 amended to read:

2 69-2104 (1) Before entering into any consumer rental purchase
3 agreement, the lessor shall disclose to the consumer the following items
4 as applicable:

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

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

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

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

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

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

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

25 (h) A statement of the cash price of the property. When the
26 agreement involves a lease for two or more items, a statement of the
27 aggregate cash price of all items shall satisfy the requirement of this
28 subdivision;

29 (i) The total amount of the initial payments required to be paid
30 before consummation of the agreement or delivery of the property,
31 whichever occurs later, and an itemization of the components of the

1 initial payment, including any initial nonrefundable administrative fee
2 or delivery charge, lease payment, taxes, or fee or charge for optional
3 products or services;

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

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

17 (1) The date of the transaction and the names of the lessor and the
18 consumer.

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

23 (3) Subsection (1) of this section shall not apply to a lessor who
24 complies with the disclosure requirements of the federal Consumer Credit
25 Protection Act, 15 U.S.C. 1667a, as such section existed on January 1,
26 2020 ~~2019~~, with respect to a consumer rental purchase agreement entered
27 into with a consumer.

28 Sec. 26. Section 69-2112, Revised Statutes Supplement, 2019, is
29 amended to read:

30 69-2112 (1) Any advertisement for a consumer rental purchase
31 agreement which refers to or states the amount of any payment or the

1 right to acquire ownership for any specific item shall also state clearly
2 and conspicuously the following if applicable:

3 (a) That the transaction advertised is a consumer rental purchase
4 agreement;

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

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

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

11 (3) Subsection (1) of this section shall not apply to an
12 advertisement which does not refer to a specific item of property, which
13 does not refer to or state the amount of any payment, or which is
14 published in the yellow pages of a telephone directory or any similar
15 directory of business.

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

20 Sec. 27. Section 4A-108, Uniform Commercial Code, Revised Statutes
21 Supplement, 2019, is amended to read:

22 4A-108 Relationship to Electronic Fund Transfer Act.

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

27 (b) This article applies to a funds transfer that is a remittance
28 transfer as defined in the federal Electronic Fund Transfer Act, 15
29 U.S.C. 1693o-1, as such section existed on January 1, 2020 ~~2019~~, unless
30 the remittance transfer is an electronic fund transfer as defined in the
31 federal Electronic Fund Transfer Act, 15 U.S.C. 1693a, as such section

1 existed on January 1, ~~2020~~ 2019.

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

7 Sec. 28. Original sections 45-191.02, 45-191.09, 45-1017, 45-1033,
8 and 59-1725.01, Reissue Revised Statutes of Nebraska, sections 8-103,
9 8-141, 8-167, and 59-1722, Revised Statutes Cumulative Supplement, 2018,
10 sections 8-135, 8-143.01, 8-157.01, 8-183.04, 8-1,140, 8-318, 8-355,
11 8-1101, 8-1101.01, 8-1103, 8-1111, 8-1704, 8-1707, 21-17,115, 69-2103,
12 69-2104, and 69-2112, Revised Statutes Supplement, 2019, and section
13 4A-108, Uniform Commercial Code, Revised Statutes Supplement, 2019, are
14 repealed.

15 Sec. 29. The following section is outright repealed: Section
16 8-167.01, Revised Statutes Supplement, 2019.

17 Sec. 30. Since an emergency exists, this act takes effect when
18 passed and approved according to law.