

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 226**

FINAL READING

Introduced by Coash, 27; Larson, 40; Mello, 5.

Read first time January 13, 2015

Committee: Banking, Commerce and Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 advertisements or solicitations are made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (C) The amount of the offering; and

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

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

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

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

19 (i) Has received the written disclosure statement;

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

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

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

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

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

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

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

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

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

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

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

31       (A) Make a notice filing with the Department of Banking and Finance

1 on a form prescribed by the director;

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

4 (C) Provide the director a copy of the disclosure document to be  
5 provided to prospective investors under subdivision (a)(xi) of this  
6 subdivision;

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

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

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

22 (vi) The issuer is not, either before or as a result of the  
23 offering, an investment company, as defined in section 3 of the  
24 Investment Company Act of 1940, 15 U.S.C. 80a-3, an entity that would be  
25 an investment company but for the exclusions provided in section 3(c) of  
26 the Investment Company Act of 1940, 15 U.S.C. 80a-3(c), or subject to the  
27 reporting requirements of section 13 or 15(d) of the Securities Exchange  
28 Act of 1934, 15 U.S.C. 78m or 15 U.S.C. 78o(d);

29 (vii) The issuer informs all prospective purchasers of securities  
30 offered under an exemption under this subdivision that the securities  
31 have not been registered under federal or state securities law and that

1 the securities are subject to limitations on resale. The issuer shall  
2 display the following legend conspicuously on the cover page of the  
3 disclosure document:

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

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

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

1 and losses of the company, whether or not I have sold or otherwise  
2 disposed of my investment or received any dividends or other  
3 distributions from the company.;

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

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

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

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

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

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

31 (D) The terms and conditions of the securities being offered and of

1 any outstanding securities of the company; the minimum and maximum amount  
2 of securities being offered, if any; either the percentage ownership of  
3 the company represented by the offered securities or the valuation of the  
4 company implied by the price of the offered securities; the price per  
5 share, unit, or interest of the securities being offered; any  
6 restrictions on transfer of the securities being offered; and a  
7 disclosure of any anticipated future issuance of securities that might  
8 dilute the value of securities being offered;

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

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

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

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

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

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

31 (xii) The offering or sale exempted under this subdivision is made

1 exclusively through one or more funding portals and each funding portal  
2 is subject to the following:

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

6 (B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision,  
7 the portal operator must register with the Department of Banking and  
8 Finance by filing a statement, accompanied by a two hundred dollar filing  
9 fee, that includes the following information:

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

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

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

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

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

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

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

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

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

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

4       (VII) It does not engage in any other activities that the Department  
5 of Banking and Finance, by rule, regulation, or order, determines are  
6 prohibited of the funding portal; and

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

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

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

26       (D) If any change occurs that affects the funding portal's  
27 registration exemption, the portal operator must notify the Department of  
28 Banking and Finance within thirty days after the change occurs;

29       (E) A registered broker-dealer who also serves as a portal operator  
30 must register with the Department of Banking and Finance as a portal  
31 operator pursuant to subdivision (a)(xii)(B) of this subdivision, except

1 that the fee for registration shall be waived;

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

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

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

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

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

1 copy of the report to any investor upon request. The report must contain  
2 all the following:

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

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

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

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

21 (e) The exemption under this subdivision does not apply if an issuer  
22 or any director, executive officer, general partner, managing member, or  
23 other person with management authority over the issuer, has been subject  
24 to any conviction, order, judgment, decree, or other action specified in  
25 Rule 506(d)(1) adopted under the Securities Act of 1933, 17 C.F.R.  
26 230.506(d)(1), that would disqualify an issuer under Rule 506(d) adopted  
27 under the Securities Act of 1933, 17 C.F.R. 230.506(d), from claiming an  
28 exemption specified in Rule 506(a) to Rule 506(c) adopted under the  
29 Securities Act of 1933, 17 C.F.R. 230.506(a) to 17 C.F.R. 230.506(c).  
30 However, this subdivision does not apply if both of the following are  
31 met:

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

4       (ii) The issuer establishes that it made a factual inquiry into  
5 whether any disqualification existed under this subdivision but did not  
6 know, and in the exercise of reasonable care, could not have known, that  
7 a disqualification existed under this subdivision. The nature and scope  
8 of the requisite inquiry will vary based on the circumstances of the  
9 issuer and the other offering participants.

10       (f) For purposes of this subdivision:

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

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

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

1 expectation of reaching the same income level in the current year; and  
2 (iv) Portal operator means an entity authorized to do business in  
3 this state which operates a funding portal and has registered with the  
4 Department of Banking and Finance as required by this subdivision.

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

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