

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 161

Introduced by Schumacher, 22.

Read first time January 12, 2015

Committee:

1 A BILL FOR AN ACT relating to economic development; to amend section
2 84-612, Reissue Revised Statutes of Nebraska, and sections
3 8-1108.01, 8-1111, and 8-1118, Revised Statutes Cumulative
4 Supplement, 2014; to adopt the Pairing Equity to Enterprises Act; to
5 change provisions of the Securities Act of Nebraska; to transfer
6 funds; and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known and may be
2 cited as the Pairing Equity to Enterprises Act.

3 Sec. 2. The purpose of the Pairing Equity to Enterprises Act is to
4 create a statewide plan to support entrepreneurship and job creation and
5 to provide venture capital to qualified businesses whose activities are
6 compatible with such plan.

7 Sec. 3. For purposes of the Pairing Equity to Enterprises Act:

8 (1) Board means the Nebraska Entrepreneurial Board created under
9 section 4 of this act;

10 (2) Department means the Department of Economic Development;

11 (3) Qualified business means a business that, at the time of the
12 first qualified investment:

13 (a) Has its principal operations located in this state and intends
14 to maintain its principal operations in this state after receiving the
15 qualified investment;

16 (b) Has agreed to use the qualified investment primarily to
17 establish or expand business operations in this state; and

18 (c) Has no more than fifty employees; and

19 (4) Qualified investment means the direct or indirect investment of
20 cash by the board or the purchase by the board of any of the following:

21 (a) A share of stock or other equity interest;

22 (b) A debt instrument that is convertible into equity; or

23 (c) An equity participation instrument, including an option or
24 warrant.

25 Sec. 4. (1) The Nebraska Entrepreneurial Board is created within
26 the department. The board shall consist of:

27 (a) Nine voting members who shall be appointed by the Governor with
28 the approval of a majority of the Legislature. The nine voting members
29 shall be residents of this state, shall represent diverse geographic
30 regions of the state, and shall include:

31 (i) At least four members who have experience in working with

1 companies that have raised investment capital or that have provided
2 professional services to the venture capital industry, at least one of
3 whom shall have experience in higher education research and development
4 and technology transfer projects;

5 (ii) At least one member who has experience as a small business
6 owner;

7 (iii) At least one member who has experience as a business executive
8 in a business that raises venture capital investments; and

9 (iv) At least three members who are residents of rural counties in
10 the state; and

11 (b) Two members of the Legislature appointed by the Executive Board
12 of the Legislative Council who shall serve as ex-officio, nonvoting
13 members.

14 (2) No member of the board shall hold a financial interest in any
15 qualified business. Each appointed member shall disclose his or her
16 financial holdings to the Governor prior to appointment.

17 (3) The appointed members shall have terms of four years and until
18 their successors are appointed and qualified.

19 (4) Five voting members of the board shall constitute a quorum. The
20 board shall have the power to act by a majority of the voting members
21 present at any meeting at which a quorum is in attendance.

22 (5) Members of the board shall serve without compensation but shall
23 be reimbursed for their actual and necessary expenses as provided in
24 sections 81-1174 to 81-1177.

25 (6) A vacancy in the membership of the board shall be filled in the
26 same manner as the original appointment.

27 Sec. 5. (1) The Nebraska Entrepreneurial Fund is created. The fund
28 shall be administered by the board and shall be used to make qualified
29 investments in qualified businesses pursuant to the Pairing Equity to
30 Enterprises Act.

31 (2) The fund shall consist of a one-time appropriation from the

1 Legislature, transfers authorized by the Legislature, and funds raised
2 from private investors. Any such private investor shall receive a
3 nonvoting equity interest in the fund. The state shall have no equity,
4 debt, or other financial interest in the fund except as provided in
5 subsection (6) of this section.

6 (3) Dividends from the fund shall be made to private investors as
7 determined by the board.

8 (4) Investment returns resulting from the qualified investments made
9 by the board shall be deposited into the fund and used to make additional
10 qualified investments in qualified businesses.

11 (5) The assets of the Nebraska Entrepreneurial Fund shall at all
12 times be preserved, invested, and expended solely and only for the
13 purposes of the Pairing Equity to Enterprises Act.

14 (6) If XXX dollars of private equity in the fund have not been
15 subscribed to by January 1, 2017, all private investors with an equity
16 interest in the fund shall be refunded their investment in full and the
17 balance of the fund shall revert to the General Fund.

18 Sec. 6. (1) By January 1, 2016, the board shall develop a strategic
19 plan for the state to identify how best to invest the funds available in
20 the Nebraska Entrepreneurial Fund to support entrepreneurship, job
21 creation, and economic growth in the state. After the strategic plan is
22 developed, the board shall offer to private investors shares of the
23 Nebraska Entrepreneurial Fund and may issue shares of stock in the fund
24 under such terms and conditions as the board deems appropriate. The board
25 may also begin accepting applications from businesses seeking funding
26 under the Pairing Equity to Enterprises Act.

27 (2) The board may make a qualified investment only in qualified
28 businesses. In making investment decisions, the board shall consider the
29 strategic plan developed under subsection (1) of this section and shall
30 also take into consideration the following:

31 (a) The soundness of the applicant's proposal;

- 1 (b) The employment opportunities that would be created;
- 2 (c) The applicant's commitment to the state; and
- 3 (d) The potential for return on investment for the private investors
- 4 who hold an equity interest in the fund.

5 (3) The board may enter into contracts to carry out the purposes of
6 the Pairing Equity to Enterprises Act, including contracts to obtain the
7 services of an independent third party to:

8 (a) Review and evaluate the application, organizational documents,
9 and business history of applicants for funding under the act;

10 (b) Evaluate whether the applicant is likely to achieve the
11 investment criteria set forth in the strategic plan; and

12 (c) Recommend to the board which businesses should receive a
13 qualified investment.

14 Sec. 7. Any qualified business that receives a qualified investment
15 shall, within one hundred eighty days after the end of its fiscal year,
16 provide to the department an audited financial statement that includes
17 the opinion of an independent certified public accountant.

18 Sec. 8. (1) For any qualified business in which the board holds
19 more than a fifty percent ownership interest, such qualified business
20 shall not be moved from the state without the consent of the board.

21 (2) Any qualified business that has received a qualified investment
22 may merge with any other qualified business that has received a qualified
23 investment.

24 Sec. 9. The board may spin off, split off, or otherwise distribute
25 its interest in a qualified business to the private investors in the
26 Nebraska Entrepreneurial Fund in proportion to their equity interests in
27 the fund should the board find that the qualified business is
28 sufficiently developed to function independently in the financial markets
29 and that it would be in the best interest of the qualified business to
30 end the board's involvement in the qualified business.

31 Sec. 10. Not later than sixty days after the sale or other

1 disposition of any qualified investment, the board shall provide to the
2 department a report on the amount of interest sold or disposed of and the
3 consideration received for the sale or disposition.

4 Sec. 11. Beginning January 31, 2017, and each January 31
5 thereafter, the board shall report to the department:

6 (1) The amount of funds remaining in the Nebraska Entrepreneurial
7 Fund at the end of the preceding calendar year;

8 (2) The names and locations of all qualified businesses receiving
9 qualified investments during the preceding calendar year, including the
10 number of employees of each qualified business at the time the qualified
11 investment was made and, as of December 31 of such year, the cumulative
12 amount of the qualified investment received;

13 (3) The annual performance of each qualified investment, including
14 the investment's fair market value as calculated according to generally
15 accepted accounting principles;

16 (4) The classification of the qualified businesses receiving
17 qualified investments according to the North American Industry
18 Classification System and the size of such qualified businesses;

19 (5) The total number of jobs created in the state by the qualified
20 businesses receiving qualified investments and the average wages paid for
21 such jobs;

22 (6) The total number of jobs retained in the state as a result of
23 qualified investments and the average wages paid for such jobs;

24 (7) How the qualified investments are supporting the strategic plan
25 created by the board under section 6 of this act;

26 (8) For any qualified investment in which the board no longer has an
27 interest as of the end of the calendar year, the number of employees of
28 the qualified business as of the date the investment was terminated; and

29 (9) Any other information the department requires to ascertain the
30 economic impact of qualified investments made under the Pairing Equity to
31 Enterprises Act.

1 Sec. 12. Section 8-1108.01, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 8-1108.01 (1) Whenever it appears to the director that the sale of
4 any security is subject to registration under the Securities Act of
5 Nebraska and is being offered or has been offered for sale without such
6 registration, he or she may order the issuer or offerer of such security
7 to cease and desist from the further offer or sale of such security
8 unless and until it has been registered under the act.

9 (2) Whenever it appears to the director that any person is acting as
10 a broker-dealer, issuer-dealer, agent, investment adviser, or investment
11 adviser representative without registration as such or acting as a
12 federal covered adviser without making a notice filing under the act, he
13 or she may order such person to cease and desist from such activity
14 unless and until he or she has been registered as such or has made the
15 required notice filing under the act.

16 (3) Whenever it appears to the director that any person is violating
17 section 8-1102, he or she may order the person to cease and desist from
18 such activity.

19 (4) The director may, after giving reasonable notice and an
20 opportunity for a hearing under this section, impose a fine not to exceed
21 twenty-five thousand dollars per violation, in addition to costs of the
22 investigation, upon a person found to have engaged in any act or practice
23 which would constitute a violation of the act or any rule, regulation, or
24 order issued under the act, except that the director shall not impose a
25 fine upon any person in connection with a transaction made pursuant to
26 subdivision (23) or (24) of section 8-1111 for any statement of a
27 material fact made or for an omission of a material fact required to be
28 stated or necessary to make the statement made not misleading unless such
29 statement or omission was made with the intent to defraud or mislead. The
30 fine and costs shall be in addition to all other penalties imposed by the
31 laws of this state. The director 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 Imposition of any fine and payment of costs under this subsection may be
5 appealed pursuant to section 8-1119. If a person fails to pay the fine or
6 costs of the investigation referred to in this subsection, a lien in the
7 amount of the fine and costs shall be imposed upon all of the assets and
8 property of such person in this state and may be recovered by suit by the
9 director and remitted to the State Treasurer. The State Treasurer shall
10 credit the costs to the Securities Act Cash Fund and distribute the fines
11 in accordance with Article VII, section 5, of the Constitution of
12 Nebraska. Failure of the person to pay a fine and costs shall also
13 constitute a forfeiture of his or her right to do business in this state
14 under the Securities Act of Nebraska.

15 (5) After such an order has been made under subsection (1), (2),
16 (3), or (4) of this section, if a request for a hearing is filed in
17 writing within fifteen business days of the issuance of the order by the
18 person to whom such order was directed, a hearing shall be held by the
19 director within thirty business days after receipt of the request, unless
20 both parties consent to a later date or the hearing officer sets a later
21 date for good cause. If no hearing is requested within fifteen business
22 days of the issuance of the order and none is ordered by the director,
23 the order shall automatically become a final order and shall remain in
24 effect until it is modified or vacated by the director. If a hearing is
25 requested or ordered, the director, after notice of and opportunity for
26 hearing, shall enter his or her written findings of fact and conclusions
27 of law and may affirm, modify, or vacate the order.

28 Sec. 13. Section 8-1111, Revised Statutes Cumulative Supplement,
29 2014, is amended to read:

30 8-1111 Except as provided in this section, sections 8-1103 to 8-1109
31 shall not apply to any of the following transactions:

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

3 (2)(a) Any nonissuer transaction by a registered agent of a
4 registered broker-dealer, and any resale transaction by a sponsor of a
5 unit investment trust registered under the Investment Company Act of
6 1940, in a security of a class that has been outstanding in the hands of
7 the public for at least ninety days if, at the time of the transaction:

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

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

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

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

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

24 (B) The names of the issuer's officers and the names of the issuer's
25 directors, if any, or, in the case of a non-United-States issuer, the
26 corporate equivalents of such persons in the issuer's country of
27 domicile;

28 (C) An audited balance sheet of the issuer as of a date within
29 eighteen months or, in the case of a reorganization or merger when
30 parties to the reorganization or merger had such audited balance sheet, a
31 pro forma balance sheet; and

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

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

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

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

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

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

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

27 (ii) The security is senior in rank to the common stock of the
28 issuer both as to payment of dividends or interest and upon dissolution
29 or liquidation of the issuer and such security has been outstanding at
30 least three years and the issuer or any predecessor has not defaulted
31 within the current fiscal year or the three immediately preceding fiscal

1 years in the payment of any dividend, interest, principal, or sinking
2 fund installment on the security when due and payable;

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

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

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

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

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

27 (8) Any offer or sale to a bank, savings institution, trust company,
28 insurance company, investment company as defined in the Investment
29 Company Act of 1940, pension or profit-sharing trust, or other financial
30 institution or institutional buyer, to an individual accredited investor,
31 or to a broker-dealer, whether the purchaser is acting for itself or in

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

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

29 (b) If a seller (i) makes sales pursuant to this subdivision for
30 five consecutive twelve-month periods or (ii) makes sales of at least one
31 million dollars from an offering or offerings pursuant to this

1 subdivision, the seller shall, within ninety days after the earlier of
2 either such occurrence, file with the director audited financial
3 statements and a sales report which lists the names and addresses of all
4 purchasers and holders of the seller's securities and the amount of
5 securities held by such persons. Subsequent thereto, such seller shall
6 file audited financial statements and sales reports with the director
7 each time an additional one million dollars in securities is sold
8 pursuant to this subdivision or after the elapse of each additional
9 sixty-month period during which sales are made pursuant to this
10 subdivision;

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

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

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

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

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

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

17 (16) Any transaction in this state not involving a public offering
18 when (a) there is no general or public advertising or solicitation, (b)
19 no commission or remuneration is paid directly or indirectly for
20 soliciting any prospective buyer, except to a registered agent of a
21 registered broker-dealer or registered issuer-dealer, (c) a notice
22 generally describing the terms of the transaction and containing a
23 representation that the conditions of this exemption are met is filed by
24 the seller with the director within thirty days after the first sale for
25 which this exemption is claimed, except that failure to give such notice
26 may be cured by an order issued by the director in his or her discretion,
27 (d) a filing fee of two hundred dollars is paid at the time of filing the
28 notice, and (e) any such transaction is effected in accordance with rules
29 and regulations adopted and promulgated by the director relating to this
30 section when the director finds in adopting and promulgating such rules
31 and regulations that the applicability of sections 8-1104 to 8-1107 is

1 not necessary or appropriate in the public interest or for the protection
2 of investors. For purposes of this subdivision, not involving a public
3 offering means any offering in which the seller has reason to believe
4 that the securities purchased are taken for investment and in which each
5 offeree, by reason of his or her knowledge about the affairs of the
6 issuer or otherwise, does not require the protections afforded by
7 registration under sections 8-1104 to 8-1107 in order to make a
8 reasonably informed judgment with respect to such investment;

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

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

31 (19) Any transaction in which a United States Series EE Savings Bond

1 is given or delivered with or as a bonus on account of any purchase of
2 any item or thing;

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

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

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

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

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

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

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

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

30 (iv) An organization described in section 501(c)(3) of the Internal
31 Revenue Code as defined in section 49-801.01, or a corporation,

1 Massachusetts or similar business trust, or partnership with total assets
2 in excess of five million dollars according to its most recent audited
3 financial statements;

4 (b) The amount of the investment of any purchaser, except a
5 purchaser described in subdivision (a)(ii) of this subdivision, does not
6 exceed five percent of the net worth, as determined by this subdivision,
7 of that purchaser;

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

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

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

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

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

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

22 (E) If the issuer retains ownership or becomes the beneficiary of
23 the insurance policy, an audit report from an independent certified
24 public accountant together with a balance sheet and related statements of
25 income, retained earnings, and cash flows that reflect the issuer's
26 financial position, the results of the issuer's operations, and the
27 issuer's cash flows as of a date within fifteen months before the date of
28 the initial issuance of the securities described in this subdivision. The
29 financial statements shall be prepared in conformity with generally
30 accepted accounting principles. If the date of the audit report is more
31 than one hundred twenty days before the date of the initial issuance of

1 the securities described in this subdivision, the issuer shall provide
2 unaudited interim financial statements;

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

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

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

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

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

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

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

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

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

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

26 (D) If a group insurance policy, the name, address, and telephone
27 number of the group and, if applicable, the material terms and conditions
28 of converting the policy to an individual policy, including the amount of
29 increased premiums;

30 (E) If a term insurance policy, the term and the name, address, and
31 telephone number of the person who will be responsible for renewing the

1 policy if necessary;

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

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

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

7 (I) The name, address, and telephone number of the person who will
8 be the insurance policyowner and the person who will be responsible for
9 paying premiums;

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

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

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

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

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

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

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

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

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

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

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

26 (a) The proceeds from all sales of securities by the issuer in any
27 two-year period do not exceed two hundred fifty thousand dollars and at
28 least eighty percent of the proceeds are used in Nebraska;

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

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

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

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

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

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

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

26 (A) The name, address, telephone number, and email address of the
27 issuer;

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

30 (C) The amount of the offering; and

31 (D) The type of security being offered, the manner in which

1 purchasers will be solicited, and a statement made upon oath or
2 affirmation that the conditions of this exemption have been or will be
3 met.

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

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

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

15 (i) Has received the written disclosure statement;

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

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

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

23 (24) Any offer or sale of an interest in the Nebraska
24 Entrepreneurial Fund created under section 5 of this act or any security
25 issued or distributed pursuant to section 9 of this act.

26 The director may by order deny or revoke the exemption specified in
27 subdivision (2) of this section with respect to a specific security. Upon
28 the entry of such an order, the director shall promptly notify all
29 registered broker-dealers that it has been entered and of the reasons
30 therefor and that within fifteen business days of the receipt of a
31 written request the matter will be set down for hearing. If no hearing is

1 requested within fifteen business days of the issuance of the order and
2 none is ordered by the director, the order shall automatically become a
3 final order and shall remain in effect until it is modified or vacated by
4 the director. If a hearing is requested or ordered, the director, after
5 notice of and opportunity for hearing to all interested persons, shall
6 enter his or her written findings of fact and conclusions of law and may
7 affirm, modify, or vacate the order. No such order may operate
8 retroactively. No person may be considered to have violated the
9 provisions of the Securities Act of Nebraska by reason of any offer or
10 sale 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. In any proceeding
13 under the act, the burden of proving an exemption from a definition shall
14 be upon the person claiming it.

15 Sec. 14. Section 8-1118, Revised Statutes Cumulative Supplement,
16 2014, is amended to read:

17 8-1118 (1) Any person who offers or sells a security in violation of
18 section 8-1104 or offers or sells a security by means of any untrue
19 statement of a material fact or any omission to state a material fact
20 necessary in order to make the statements made in the light of the
21 circumstances under which they are made not misleading, the buyer not
22 knowing of the untruth or omission, and who does not sustain the burden
23 of proof that he or she did not know and in the exercise of reasonable
24 care could not have known of the untruth or omission, shall be liable to
25 the person buying the security from him or her, who may sue either at law
26 or in equity to recover the consideration paid for the security, together
27 with interest at six percent per annum from the date of payment, costs,
28 and reasonable attorney's fees, less the amount of any income received on
29 the security, upon the tender of the security, or for damages if he or
30 she no longer owns the security, except that in actions brought based on
31 a transaction exempt from registration under subdivision (23) or (24) of

1 section 8-1111, no person shall be liable for any statement of a material
2 fact made or for an omission of a material fact required to be stated or
3 necessary to make the statement made not misleading unless such statement
4 or omission was made with the intent to defraud or mislead, with the
5 burden of proof in such cases being on the claimant. Damages shall be the
6 amount that would be recoverable upon a tender less (a) the value of the
7 security when the buyer disposed of it and (b) interest at six percent
8 per annum from the date of disposition.

9 (2) Any investment adviser who provides investment adviser services
10 to another person which results in a willful violation of subsection (2),
11 (3), or (4) of section 8-1102, subsection (2) of section 8-1103, or
12 section 8-1114 or any investment adviser who employs any device, scheme,
13 or artifice to defraud such person or engages in any act, practice, or
14 course of business which operates or would operate as a fraud or deceit
15 on such person shall be liable to such person. Such person may sue either
16 at law or in equity to recover the consideration paid for the investment
17 adviser services and any loss due to such investment adviser services,
18 together with interest at six percent per annum from the date of payment
19 of the consideration plus costs and reasonable attorney's fees, less the
20 amount of any income received from such investment adviser services and
21 any other economic benefit.

22 (3) Every person who directly or indirectly controls a person liable
23 under subsections (1) and (2) of this section, including every partner,
24 limited liability company member, officer, director, or person occupying
25 a similar status or performing similar functions of a partner, limited
26 liability company member, officer, or director, or employee of such
27 person who materially aids in the conduct giving rise to liability, and
28 every broker-dealer, issuer-dealer, agent, investment adviser, or
29 investment adviser representative who materially aids in such conduct
30 shall be liable jointly and severally with and to the same extent as such
31 person, unless able to sustain the burden of proof that he or she did not

1 know, and in the exercise of reasonable care could not have known, of the
2 existence of the facts by reason of which the liability is alleged to
3 exist. There shall be contribution as in cases of contract among the
4 several persons so liable.

5 (4) Any tender specified in this section may be made at any time
6 before entry of judgment. Every cause of action under the Securities Act
7 of Nebraska shall survive the death of any person who might have been a
8 plaintiff or defendant. No person may sue under this section more than
9 three years after the contract of sale or the rendering of investment
10 advice. No person may sue under this section (a) if the buyer received a
11 written offer, before suit and at a time when he or she owned the
12 security, to refund the consideration paid together with interest at six
13 percent per annum from the date of payment, less the amount of any income
14 received on the security, and the buyer failed to accept the offer within
15 thirty days of its receipt, or (b) if the buyer received such an offer
16 before suit and at a time when he or she did not own the security, unless
17 the buyer rejected the offer in writing within thirty days of its
18 receipt.

19 (5) No person who has made or engaged in the performance of any
20 contract in violation of any provision of the act or any rule or order
21 under the act, or who has acquired any purported right under any such
22 contract with knowledge of the facts by reason of which its making or
23 performance was in violation, may base any suit on the contract. Any
24 condition, stipulation, or provision binding any person acquiring any
25 security or receiving any investment advice to waive compliance with any
26 provision of the act or any rule or order under the act shall be void.

27 Sec. 15. Section 84-612, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 84-612 (1) There is hereby created within the state treasury a fund
30 known as the Cash Reserve Fund which shall be under the direction of the
31 State Treasurer. The fund shall only be used pursuant to this section.

1 (2) The State Treasurer shall transfer funds from the Cash Reserve
2 Fund to the General Fund upon certification by the Director of
3 Administrative Services that the current cash balance in the General Fund
4 is inadequate to meet current obligations. Such certification shall
5 include the dollar amount to be transferred. Any transfers made pursuant
6 to this subsection shall be reversed upon notification by the Director of
7 Administrative Services that sufficient funds are available.

8 (3) In addition to receiving transfers from other funds, the Cash
9 Reserve Fund shall receive federal funds received by the State of
10 Nebraska for undesignated general government purposes, federal revenue
11 sharing, or general fiscal relief of the state.

12 (4) On July 7, 2009, the State Treasurer shall transfer five million
13 dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The
14 Department of Roads shall use such funds to provide the required state
15 match for federal funding made available to the state through
16 congressional earmarks.

17 (5) The State Treasurer shall transfer a total of sixty-eight
18 million dollars from the Cash Reserve Fund to the General Fund on or
19 before June 30, 2013, on such dates and in such amounts as directed by
20 the budget administrator of the budget division of the Department of
21 Administrative Services.

22 (6) The State Treasurer shall transfer ten million dollars from the
23 Cash Reserve Fund to the General Fund on or before June 30, 2013, on such
24 date as directed by the budget administrator of the budget division of
25 the Department of Administrative Services.

26 (7) The State Treasurer, at the direction of the budget
27 administrator of the budget division of the Department of Administrative
28 Services, shall transfer not to exceed forty-three million fifteen
29 thousand four hundred fifty-nine dollars in total from the Cash Reserve
30 Fund to the Nebraska Capital Construction Fund between July 1, 2013, and
31 June 30, 2017.

1 (8) The State Treasurer shall transfer fourteen million five hundred
2 thousand dollars from the Cash Reserve Fund to the Nebraska Capital
3 Construction Fund on or before June 30, 2015, on such date as directed by
4 the budget administrator of the budget division of the Department of
5 Administrative Services.

6 (9) The State Treasurer shall transfer fifty million five hundred
7 thousand dollars from the Cash Reserve Fund to the General Fund on or
8 before December 31, 2014, on such date as directed by the budget
9 administrator of the budget division of the Department of Administrative
10 Services.

11 (10) The State Treasurer shall transfer XXX million dollars from the
12 Cash Reserve Fund to the Nebraska Entrepreneurial Fund on or before
13 December 15, 2015, on such date as directed by the budget administrator
14 of the budget division of the Department of Administrative Services.

15 Sec. 16. Original section 84-612, Reissue Revised Statutes of
16 Nebraska, and sections 8-1108.01, 8-1111, and 8-1118, Revised Statutes
17 Cumulative Supplement, 2014, are repealed.