

LEGISLATIVE BILL 167

Approved by the Governor March 21, 1973

Introduced by Carpenter, 48

AN ACT to amend sections 8-1101, 8-1103, 8-1105, 8-1109, 8-1110, 8-1111, 8-1112, 8-1118, and 8-1120, Reissue Revised Statutes of Nebraska, 1943, relating to securities; to provide for the regulation of issuer-dealers; to increase fees; to change internal references; to eliminate exemptions; to eliminate a restriction on the use of a fund; and to repeal the original sections.

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

Section 1. That section 8-1101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1101. As used in sections 8-1101 to 8-1124, unless the context otherwise requires:

(1) Director shall mean the Director of Banking of the State of Nebraska, except as further provided in section 8-1120;

(2) Agent shall mean any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by subdivision (8), (9), or (10); ~~or (11)~~ of section 8-1110, (b) effecting transactions exempted by section 8-1111, or (c) effecting transactions with existing employees, partners or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer is an agent only if he otherwise comes within this definition;

(3) Broker-dealer shall mean any person engaged in the business of effecting transactions in securities for the account of others or for his own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the

transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies, as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months he does not direct more than fifteen offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (3) (b) of this section; ~~7--or~~ ~~(d)--a--person--effecting--a--transaction--in--a--security~~ ~~exempted--by--subdivision--(4)--of--section--8--1110;~~

(4) Guaranteed shall mean guaranteed as to payment of principal, interest, or dividends;

(5) Investment adviser shall mean any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. Investment adviser does not include (a) a bank, savings institution, or trust company; (b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (c) a broker-dealer; (d) an issuer-dealer; ~~(e)~~ ~~(d)~~ a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; ~~(e)~~ (f) a person whose advice, analyses, or reports relate only to securities exempted by subdivisions subdivision (1) and ~~(4)~~ of section 8-1110; ~~(f)~~ (g) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies, as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or during any period of twelve consecutive months he does not direct business communications into this state in any manner to more than five clients other than those specified in this subdivision (5); or ~~(f)~~; ~~or~~ (g) (h) such other persons not within the intent of this subdivision as the director may by rule or order designate;

(6) Issuer shall mean any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or

collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer shall mean the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued;

(7) Issuer-dealer shall mean an issuer located in the State of Nebraska who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(7) (8) Nonissuer shall mean not directly or indirectly for the benefit of the issuer;

(8) (9) Person shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

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

(10) (11) Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, and Investment Company Act of 1940 shall mean the federal statutes of those names as amended before or after August 18, 1965;

444) 112 Security shall mean any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an insurance company, any nontransferable interest in a bona fide general partnership or joint venture, or any nontransferable partnership interest in a bona fide limited partnership where a certificate is executed, filed and recorded as provided by section 67-202; and

442) 113 State shall mean any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico.

Sec. 2. That section 8-1103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1103. (1) It shall be unlawful for any person to transact business in this state as a broker-dealer, ~~issuer-dealer~~, or agent, except in transactions exempt under section 8-1111, unless he is registered under sections 8-1101 to 8-1124. It shall be unlawful for any broker-dealer to employ an agent unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as a ~~broker-dealer~~ and issuer-dealer and unless the agent is registered. It shall be unlawful for any person to transact business in this state as an investment adviser unless (a) he is so registered under sections 8-1101 to 8-1124, or (b) he is registered as a broker-dealer under sections 8-1101 to 8-1124, or (c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(2) A broker-dealer, ~~issuer-dealer~~, agent, or investment adviser may apply for registration by filing with the director an application together with a consent to service of process pursuant to section 8-1112 and payment of the fee prescribed in subsection (5) of this

section. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, officers or directors of such broker-dealer or issuer-dealer as agents, except any partner, officer or director whose registration as an agent is denied, suspended or revoked under subsection (7) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

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

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

(c) The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director;

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

(e) The applicant's financial condition and history.

(3) If no denial order is in effect and no proceeding is pending under subsection (7) of this section, registration shall become effective at noon of the thirtieth day after an application is filed. The director may specify an earlier effective date and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. The director shall require as conditions of registration:

(a) That the applicant, except for renewal, and, in the case of a corporation or partnership, the officers, directors or partners, pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business; and

(b) That an issuer-dealer and its agents pass an examination prescribed and administered by the Department of Banking. Such examination shall be administered upon request and upon payment of an examination fee of five dollars. Any applicant for issuer-dealer registration who has satisfactorily passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory

completion of such examination to the director:

(b) (c) That a broker-dealer or issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of minimum net capital requirements of twenty-five thousand dollars, the director may require a broker-dealer to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirements. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based; provided, that no written examination shall be required of any applicant who immediately prior to August 18, 1965 had an effective license as a broker or salesman under the provisions of sections 81-302 to 81-349, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto; and provided further, that the director may waive the requirements of examination for any applicant who by reason of prior experience can demonstrate his knowledge of the securities business.

Registration of a broker-dealer, issuer-dealer, agent or investment adviser shall be effective for a period of one year and may be renewed as provided in this section. The registration of an agent shall not be effective during any period when he is not associated with a registered broker-dealer or issuer-dealer specified in his application or a notice filed with the director. When an agent begins or terminates a connection with a registered broker-dealer or issuer-dealer, the agent and the broker-dealer or issuer-dealer shall promptly notify the director.

(4) Registration of a broker-dealer, issuer-dealer, agent or investment adviser may be renewed by filing with the director prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent or investment adviser filed with the director by the applicant, payment of the prescribed fee and, in the case of a broker-dealer or issuer-dealer, a financial statement showing the financial condition of such broker-dealer or issuer-dealer as of a date within ninety days.

(5) The fee for initial or renewal registration shall be fifty one hundred dollars for a broker-dealer or issuer-dealer, twenty-five fifty dollars for an

investment adviser, and ten fifteen dollars for an agent. When an application is denied or withdrawn the director shall retain all of the fee.

(6) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under subdivision (1) of section 8-1110, as the director shall prescribe. All records so required shall be preserved for three years unless the director shall prescribe otherwise for particular types of records. All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the director, within or without this state, as the director shall deem necessary or appropriate in the public interest or for the protection of investors.

(7) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, officer, or director:

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

(b) Has willfully violated or willfully failed to comply with any provision of sections 8-1101 to 8-1124 or a predecessor act or any rule or order under the provisions of sections 8-1101 to 8-1124 or a predecessor act;

(c) Has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

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

(e) Is the subject of an order of the director denying, suspending, or revoking registration as a

broker-dealer, issuer-dealer, agent, or investment adviser;

(f) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer or agent, or the substantial equivalent of those terms as defined in sections 8-1101 to 8-1124, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post-office fraud order; but the director may not institute a revocation or suspension proceeding under this subdivision (7) (f) more than one year from the date of the order relied on, and he may not enter any order under this subdivision (7) (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) Has engaged in dishonest or unethical practices in the securities business;

(h) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision (7) (h) without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(i) Has not complied with a condition imposed by the director under subsection (3) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

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

(k) Has been denied the right to do business or his respective authority to do business has been revoked by any other governmental agency for cause.

The director may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective. The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of



the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, opportunity for hearing, and written findings of fact and conclusions of law.

If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, ~~issuer-dealer~~, investment adviser or agent, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

Sec. 3. That section 8-1105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1105. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 8-1106:

(a) Any security whose issuer and any predecessors have been in continuous operation for at least five years if:

(i) There has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer or any predecessor with a fixed maturity or a fixed interest or dividend provision; and

(ii) The issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which equal at least five per

cent of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed, as measured by the maximum offering price or the market price on a day selected by the registrant within thirty days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety days of the date of filing the registration statement, or if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three full fiscal years, equal to at least five per cent of the amount, as measured by the maximum public offering price, of such securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued; and

(b) Any security, other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if any security of the same class has never been registered under sections 8-1101 to 8-1124 or a predecessor act, or the security being registered was originally issued pursuant to an exemption under the provisions of sections 8-1101 to 8-1124 or a predecessor act.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) A statement demonstrating eligibility for registration by notification;

(b) With respect to the issuer: Its name, address, and form of organization; the state, or foreign jurisdiction, and the date of its organization; and the general character and location of its business;

(c) A description of the securities being registered;

(d) Total amount of securities to be offered and amount of securities to be offered in this state;

(e) The price at which the securities are to be offered for sale to the public; any variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees including cash, securities, or anything else of value;

(f) Names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) Description of any security options outstanding or to be created in connection with the offering;

(h) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(i) A copy of any offering circular or prospectus to be used in connection with the offering; and

(j) In the case of any registration under subdivision (1) ~~(a)~~ (b) of this section which does not also satisfy the conditions of subdivision (1) ~~(b)~~ (a) of this section, a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two years.

(3) If no stop order is in effect and no proceeding is pending under section 8-1109, a registration statement under this section shall automatically become effective at three o'clock Central Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the director shall determine.

Sec. 4. That section 8-1109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1109. The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement to register

securities by notification or coordination if he finds that the order is in the public interest and that:

(1) Any registration statement registering securities under sections 8-1106 and 8-1109 to 8-1109.02, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of sections 8-1101 to 8-1124 or any rule, order, or condition lawfully imposed under sections 8-1101 to 8-1124 has been willfully violated, in connection with the offering by the person filing the registration statement, the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but the director may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on, and he may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless the injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) When a security is sought to be registered by notification, it is not eligible for such registration;

(5) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (2) (a) of section 8-1106;

(6) The applicant or registrant has failed to pay the proper registration fee; but the director may enter only a denial order under this subdivision and he shall vacate any such order when the deficiency has been corrected. The director may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective; or

(7) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency.

Sec. 5. That section 8-1110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1110. Sections 8-1104 to 8-1109 shall not apply to any of the following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institutions, or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan and investment company, or similar association organized and supervised under the laws of this state;

(6) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to the jurisdiction of the Interstate Commerce Commission; (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d)

regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(7) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or the Midwest Stock Exchange or any other stock exchange approved by the director, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing;

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;

(9) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal; or

(10) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan if the director is notified in writing thirty days before the inception of the plan or, with respect to plans which are in effect on August 18, 1965, within sixty days thereafter or within thirty days before they are reopened if they are closed on August 18, 1965, ~~or~~

~~(11) Any leasehold or other interests in oil, gas or other minerals in the State of Nebraska;~~

Sec. 6. That section 8-1111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

(2) Any nonissuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the name of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

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

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

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit; Provided, that such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 et seq., 15 U.S.C. 1701 et seq.;

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading sections 8-1101 to 8-1124;

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

company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer directed by the offerer to not more than ten persons, other than those designated in subdivision (8) of this section in this state during any period of twelve consecutive months, whether or not the offerer or any of the offerees is then present in this state, if (a) the seller reasonably believes that all the buyers are purchasing for investment, and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer, except to a broker-dealer registered under the provisions of sections 8-1101 to 8-1124;

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

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

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both sections 8-1101 to 8-1124 and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either sections 8-1101 to 8-1124 or the Securities Act of 1933;

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



stock; or

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation or sale of assets.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No such order may operate retroactively. No person may be considered to have violated the provisions of sections 8-1101 to 8-1124 by reason of any offer or sale effected after the entry of any such order if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order. In any proceeding under sections 8-1101 to 8-1124, the burden of proving an exemption from a definition is upon the person claiming it.

Sec. 7. That section 8-1112, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1112. Every nonresident applicant for registration as a broker-dealer, ~~\_\_\_ issuer-dealer~~, or investment adviser under sections 8-1101 to 8-1124 and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the director, in such form as he shall by rule prescribe, an irrevocable consent appointing the director or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor or administrator which arises under sections 8-1101 to 8-1124 or any rule or order under sections 8-1101 to 8-1124 after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need

not file another. Service may be made by leaving a copy of the process in the office of the director, but it shall not be effective unless (1) the plaintiff, who may be the director, in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the director and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court may allow.

Sec. 8. That section 8-1118, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1118. (1) Any person who offers or sells a security in violation of section 8-1104 or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six per cent per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six per cent per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1) of this section, every partner, officer, or director, or person occupying a similar status or performing similar functions, or employee of such a seller who materially aids in the sale, and every broker-dealer, ~~issuer-dealer~~ or agent who materially aids in the sale shall also be liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several

persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under sections 8-1101 to 8-1124 shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than two years after the contract of sale. No person may sue under this section (a) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at six per cent per annum from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty days of its receipt.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of sections 8-1101 to 8-1124 or any rule or order under sections 8-1101 to 8-1124, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of sections 8-1101 to 8-1124 or any rule or order under sections 8-1101 to 8-1124 shall be void.

Sec. 9. That section 8-1120, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1120. (1) Sections 8-1101 to 8-1124 shall be administered by the Director of Banking who may employ such assistant or assistants or counsel as may be reasonably necessary for the purpose thereof, and may designate one of such assistants as an assistant director; and the director may delegate to such assistant director or counsel any and all powers, authority and duties by sections 8-1101 to 8-1124 imposed upon or granted to the director, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him under sections 8-1101 to 8-1124, or with respect to any litigation to which the director is a party under sections 8-1101 to 8-1124; Provided, that security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109,

with the Director of Insurance who shall as to such registrations administer and enforce the provisions of sections 8-1101 to 8-1124; and as pertains to the administration and enforcement of such registration of such securities all references in sections 8-1101 to 8-1124 to director shall mean the Director of Insurance.

(2) It shall be unlawful for the director or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. No provision of sections 8-1101 to 8-1124 shall authorize the director or any of his officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under the provisions of sections 8-1101 to 8-1124. No provision of sections 8-1101 to 8-1124 shall either create or derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his officers or employees.

(3) The director may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of sections 8-1101 to 8-1124. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 8-1101 to 8-1124.

In prescribing rules and forms the director may cooperate with the securities administrator of the other states and the Securities and Exchange Commission with a view to effectuating the policy of sections 8-1101 to 8-1124 to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the director shall be published and mailed to each registered broker-dealer.

(4) No provision of sections 8-1101 to 8-1124 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(5) Every hearing in an administrative proceeding shall be public unless the director in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(6) All filing fees, registration fees and all other fees and all money collected by or paid to the director under any of the provisions of sections 8-1101 to 8-1124 shall be paid into the state treasury and by the State Treasurer credited to the Securities Act Cash Fund; Provided, that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of sections 8-1101 to 8-1124 shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used exclusively for the purpose of administering and enforcing the provisions of sections 8-1101 to 8-1124 and all of such money is appropriated and shall be appropriated for such purposes. Any money in the Securities Act Cash Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259.

(7) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under sections 8-1101 to 8-1124 and all denial, suspension, or revocation orders which have ever been entered under the provisions of sections 8-1101 to 8-1124. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the director shall prescribe.

(8) Upon request and at such reasonable charges as he shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under sections 8-1101 to 8-1124, any copy so certified shall be *prima facie* evidence of the contents of the entry or document certified.

(9) The director in his discretion may honor requests from interested persons for interpretative opinions.

Sec. 10. That original sections 8-1101, 8-1103, 8-1105, 8-1109, 8-1110, 8-1111, 8-1112, 8-1118, and 8-1120, Reissue Revised Statutes of Nebraska, 1943, are repealed.