

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 299

Introduced by Ebke, 32.

Read first time January 12, 2017

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to professions and occupations; to amend
2 sections 84-906.01 and 84-910, Reissue Revised Statutes of Nebraska,
3 and sections 84-901.02, 84-901.04, 84-906.04, 84-907.06, 84-908, and
4 84-920, Revised Statutes Cumulative Supplement, 2016; to adopt the
5 Occupational Board Reform Act; to change provisions relating to
6 certain rules and regulations; to harmonize provisions; to provide
7 an operative date; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 25 of this act shall be known and may be
2 cited as the Occupational Board Reform Act.

3 Sec. 2. For purposes of the Occupational Board Reform Act, the
4 definitions in sections 3 to 13 of this act apply.

5 Sec. 3. Active supervision means supervision of an occupational
6 board provided by the Office of Supervision of Occupational Boards in
7 compliance with section 19 of this act.

8 Sec. 4. Certification means a voluntary program (1) in which either
9 a private organization or the state government grants nontransferable
10 recognition to an individual who meets personal qualifications
11 established by either the private organization or the Legislature, (2) by
12 which an individual receives approval and the authority to use the term,
13 certified, as a designated title to engage in a lawful occupation, and
14 (3) which is not required to engage in a lawful occupation but is
15 required in order to use the designated title of certified to engage in
16 the lawful occupation.

17 Sec. 5. Lawful occupation means a course of conduct, a pursuit, or
18 a profession that includes the sale of goods or services that are not
19 themselves illegal to sell irrespective of whether the individual selling
20 them is subject to an occupational regulation.

21 Sec. 6. Least restrictive regulation means one of the following
22 types of regulation, listed from least restrictive to most restrictive:

23 (1) Market competition;

24 (2) Third-party or consumer-created ratings and reviews;

25 (3) Private certification;

26 (4) Specific private civil cause of action to remedy consumer harm;

27 (5) Deceptive trade practices under the Uniform Deceptive Trade
28 Practices Act;

29 (6) Regulation of the process of providing the specific goods or
30 services to consumers;

31 (7) Inspection;

- 1 (8) Bonding or insurance;
- 2 (9) Registration;
- 3 (10) Government certification;
- 4 (11) Specialty occupational license for medical reimbursement; and
- 5 (12) Occupational licensure.

6 Sec. 7. Occupational board means a board, commission, department,
7 or other entity created by state law which regulates providers.

8 Sec. 8. Occupational license means a nontransferable authorization
9 in law (1) for an individual to perform exclusively a lawful occupation
10 for compensation based on meeting personal qualifications established by
11 the Legislature and (2) which is required in order to legally perform the
12 lawful occupation for compensation.

13 Sec. 9. (1) Occupational regulation means a statute, rule,
14 regulation, practice, policy, or other state law requiring an individual
15 to possess certain personal qualifications or to comply with registration
16 requirements to use an occupational title or work in a lawful occupation.

17 (2) Occupational regulation includes certification, registration,
18 and occupational license.

19 (3) Occupational regulation excludes a business license, facility
20 license, building permit, or zoning and land-use regulation except to the
21 extent that the same state laws that require a business license, facility
22 license, building permit, or zoning and land-use regulation also regulate
23 an individual's personal qualifications to perform a lawful occupation.

24 Sec. 10. Personal qualifications means criteria related to an
25 individual's personal background and characteristics, including
26 completion of an approved educational program, satisfactory performance
27 on an examination, work experience, other evidence of attainment of
28 requisite skills or knowledge, moral standing, criminal history, and
29 completion of continuing education.

30 Sec. 11. Provider means a provider of goods or services engaged in
31 a lawful occupation regulated by an occupational board, including, but

1 not limited to:

2 (1) Abstracters;

3 (2) Accountants;

4 (3) Acupuncturists;

5 (4) Agricultural engineers;

6 (5) Aircraft and civil aviation mechanics;

7 (6) Alcohol and drug counselors;

8 (7) Architects;

9 (8) Architectural engineers;

10 (9) Asbestos workers;

11 (10) Athlete agents;

12 (11) Athletic coaches;

13 (12) Athletic trainers;

14 (13) Attorneys;

15 (14) Audiologists;

16 (15) Audiology or speech-language pathology assistants;

17 (16) Bank executive officers;

18 (17) Barbers;

19 (18) Barber instructors;

20 (19) Bill and account collectors;

21 (20) Body branders;

22 (21) Body piercers;

23 (22) Boiler and pressure vessel inspectors;

24 (23) Boxers and seconds;

25 (24) Boxing promoters;

26 (25) Broker-dealer agents;

27 (26) Broker-dealers;

28 (27) Bulk milk haulers and samplers;

29 (28) Certified legal video specialists;

30 (29) Certified special population specialists;

31 (30) Chemical engineers;

- 1 (31) Chiropractors;
- 2 (32) Civil engineers;
- 3 (33) Clinical nurse specialists;
- 4 (34) Commercial dog or cat breeders;
- 5 (35) Commercial dog or cat dealers;
- 6 (36) Contractors and subcontractors;
- 7 (37) Control systems engineers;
- 8 (38) Cosmetologists;
- 9 (39) Cosmetology instructors;
- 10 (40) Counselors;
- 11 (41) County assessors;
- 12 (42) County highway and city street superintendents;
- 13 (43) Court reporters;
- 14 (44) Credit counselors;
- 15 (45) Credit union loan officers;
- 16 (46) Dental assistants;
- 17 (47) Dental hygienists;
- 18 (48) Dentists;
- 19 (49) Driver safety course instructors;
- 20 (50) Education administrators;
- 21 (51) Electrical and computer engineers;
- 22 (52) Electricians;
- 23 (53) Electrologists;
- 24 (54) Electrology instructors;
- 25 (55) Elementary school teachers;
- 26 (56) Elevator inspectors and elevator inspection supervisors;
- 27 (57) Employment agents;
- 28 (58) Environmental engineers;
- 29 (59) Environmental health specialists;
- 30 (60) Estheticians;
- 31 (61) Esthetician instructors;

- 1 (62) Farm labor contractors;
- 2 (63) Fire alarm inspectors;
- 3 (64) Fire protection engineers;
- 4 (65) Fire sprinkler contractors;
- 5 (66) Fireworks operators;
- 6 (67) Funeral directors and embalmers;
- 7 (68) Genetic counselors;
- 8 (69) Geologists;
- 9 (70) Hearing instrument specialists;
- 10 (71) Horse trainers;
- 11 (72) Industrial engineers;
- 12 (73) Industrial hygienists;
- 13 (74) Insurance producers and consultants;
- 14 (75) Investment advisers and adviser representatives;
- 15 (76) Jockeys;
- 16 (77) Kindergarten teachers;
- 17 (78) Land surveyors;
- 18 (79) Landscape architects;
- 19 (80) Law enforcement officers;
- 20 (81) Lead-based paint licensees;
- 21 (82) Licensed practical nurses;
- 22 (83) Livestock dealers;
- 23 (84) Lobbyists;
- 24 (85) Marriage and family therapists;
- 25 (86) Massage therapists;
- 26 (87) Master plumbers;
- 27 (88) Mechanical engineers;
- 28 (89) Medical nutrition therapists;
- 29 (90) Medication aides;
- 30 (91) Mental health practitioners;
- 31 (92) Metallurgical and materials engineers;

- 1 (93) Middle school teachers;
- 2 (94) Milk producers and field representatives;
- 3 (95) Mining and mineral engineers;
- 4 (96) Mixed martial artists;
- 5 (97) Mortgage loan originators;
- 6 (98) Motor vehicle salespersons;
- 7 (99) Motor vehicle, trailer, and motorcycle dealers;
- 8 (100) Motorcycle-only dealers;
- 9 (101) Nail technicians;
- 10 (102) Nail technology instructors;
- 11 (103) Notaries public;
- 12 (104) Nuclear engineers;
- 13 (105) Nurse anesthetists;
- 14 (106) Nurse midwives;
- 15 (107) Nurse practitioners;
- 16 (108) Nursery stock distributors;
- 17 (109) Nursing assistants;
- 18 (110) Nursing home administrators;
- 19 (111) Occupational therapists;
- 20 (112) Occupational therapy assistants;
- 21 (113) Optometrists;
- 22 (114) Osteopathic physicians and surgeons;
- 23 (115) Out-of-hospital emergency care providers;
- 24 (116) Paid dining assistants;
- 25 (117) Perfusionists;
- 26 (118) Permanent color technicians;
- 27 (119) Personal trainers;
- 28 (120) Pesticide applicators;
- 29 (121) Pesticide dealers;
- 30 (122) Petroleum engineers;
- 31 (123) Pharmacists;

- 1 (124) Pharmacy technicians;
- 2 (125) Physical therapists;
- 3 (126) Physical therapist assistants;
- 4 (127) Physician assistants;
- 5 (128) Physicians and surgeons;
- 6 (129) Pilots;
- 7 (130) Podiatrists;
- 8 (131) Polygraph examiners;
- 9 (132) Private detectives;
- 10 (133) Professional engineers;
- 11 (134) Psychologists;
- 12 (135) Race horse identifiers and tatoosers;
- 13 (136) Race horse owners;
- 14 (137) Race horse stable attendants;
- 15 (138) Race track workers;
- 16 (139) Radiographers;
- 17 (140) Radon specialists and technicians;
- 18 (141) Real estate brokers;
- 19 (142) Real estate salespersons;
- 20 (143) Real property appraisers;
- 21 (144) Registered nurses;
- 22 (145) Respiratory care practitioners;
- 23 (146) School counselors;
- 24 (147) Secondary school teachers;
- 25 (148) Sign language interpreters;
- 26 (149) Social workers and master social workers;
- 27 (150) Software engineers;
- 28 (151) Special education teachers;
- 29 (152) Speech-language pathologists;
- 30 (153) Strength and conditioning specialists;
- 31 (154) Structural engineers;

- 1 (155) Surgical first assistants;
- 2 (156) Swimming pool operators;
- 3 (157) Tactical strength and conditioning facilitators;
- 4 (158) Tattoo artists;
- 5 (159) Teachers and substitute teachers;
- 6 (160) Trailer-only dealers;
- 7 (161) Truck drivers for heavy trucks;
- 8 (162) Truck drivers for light and delivery services trucks;
- 9 (163) Veterinarians;
- 10 (164) Veterinary technicians;
- 11 (165) Viatical settlement brokers;
- 12 (166) Vocational education teachers;
- 13 (167) Voice stress examiners;
- 14 (168) Wastewater treatment operators;
- 15 (169) Wastewater treatment system professionals;
- 16 (170) Water treatment plant operators;
- 17 (171) Water well drillers; and
- 18 (172) Wrecker and salvage dealers.

19 Sec. 12. (1) Registration means (a) a requirement to give notice to
20 the government that may include the individual's name and address, the
21 individual's agent for service of process, the location of the activity
22 to be performed, and a description of the service the individual
23 provides, (b) upon receipt of the notice by the government, the
24 individual may use the term, registered, as a designated title to engage
25 in a lawful occupation, and (c) such notice is required to engage in the
26 lawful occupation for compensation and is required in order to use the
27 designated title of registered to engage in the lawful occupation.

28 (2) Registration does not include personal qualifications but may
29 require a bond or insurance.

30 (3) Registration is not transferable.

31 Sec. 13. (1) Specialty occupational license for medical

1 reimbursement means a nontransferable authorization in law for an
2 individual to qualify for payment or reimbursement from a government
3 agency for the nonexclusive provision of medical services based on
4 meeting personal qualifications established by the Legislature.

5 (2) Specialty occupational license for medical reimbursement may be
6 recognized by a private company.

7 Sec. 14. For purposes of the Occupational Board Reform Act:

8 (1) Certification and registration are not synonymous with
9 occupational license;

10 (2) When certification and certified are used outside of the
11 Occupational Board Reform Act to mean a requirement that an individual
12 meet certain personal qualifications to work legally, those terms in that
13 context shall be interpreted for purposes of the Occupational Board
14 Reform Act as requiring an individual to meet the requirements for an
15 occupational license; and

16 (3) When registration and registered are used outside of the
17 Occupational Board Reform Act to mean a requirement that an individual
18 meet certain personal qualifications to work legally, those terms in that
19 context shall be interpreted for purposes of the Occupational Board
20 Reform Act as requiring an individual to meet the requirements for an
21 occupational license.

22 Sec. 15. (1) Occupational regulations shall be construed and
23 applied to increase economic opportunities, promote competition, and
24 encourage innovation.

25 (2) It is the policy of the State of Nebraska:

26 (a) To protect the fundamental right of an individual to pursue an
27 occupation;

28 (b) To use the least restrictive regulation to protect consumers
29 from present, significant, and substantiated harms that threaten public
30 health and safety when it is necessary to displace competition;

31 (c) To enforce an occupational regulation against an individual only

1 to the extent that the individual sells goods and services that are
2 included explicitly in the statute that governs the lawful occupation's
3 scope of practice;

4 (d) To provide active supervision of occupational boards through the
5 Office of Supervision of Occupational Boards; and

6 (e) To provide ongoing legislative review of occupational regulation
7 and legislation related to occupational regulation.

8 Sec. 16. The purposes of the Occupational Board Reform Act are (1)
9 to require occupational boards to respect the fundamental right of an
10 individual to pursue an occupation and (2) to ensure that occupational
11 boards and individual members of occupational boards avoid liability
12 under federal antitrust laws.

13 Sec. 17. (1) The fundamental right of an individual to pursue an
14 occupation includes the right of an individual with a criminal history to
15 obtain an occupational license, a specialty occupational license for
16 medical reimbursement, or government certification or state recognition
17 of the individual's personal qualifications.

18 (2) An individual with a criminal history may petition the
19 appropriate occupational board at any time, including prior to obtaining
20 required education or paying any fee, for a determination as to whether
21 the individual's criminal history would disqualify the individual from
22 obtaining an occupational license, a specialty occupational license for
23 medical reimbursement, or government certification or state recognition
24 of the individual's personal qualifications from that occupational board.

25 (3) Upon receipt of a petition under subsection (2) of this section
26 and a fee if required under subsection (7) of this section, the
27 appropriate occupational board shall make a determination of whether the
28 individual's criminal history would disqualify the individual from
29 obtaining an occupational license, a specialty occupational license for
30 medical reimbursement, or government certification or state recognition
31 of the individual's personal qualifications from that occupational board.

1 In making such determination, an individual's criminal history would
2 disqualify the individual only if:

3 (a) The individual has a felony conviction;

4 (b) The felony conviction is expressly listed as a disqualifying
5 offense in the statutes governing occupational licensure by the
6 occupational board; and

7 (c) The occupational board concludes that the state has an important
8 interest in protecting public safety that is superior to the individual's
9 right to pursue an occupation. The occupational board may come to this
10 conclusion only if it determines, by clear and convincing evidence at the
11 time of the petition, that (i) the specific offense for which the
12 individual was convicted is substantially related to the state's
13 interest, (ii) based on the nature of the specific offense for which the
14 individual was convicted and the individual's circumstances at the time
15 of the petition, the individual is more likely to re-offend by virtue of
16 having the license than if the individual did not have the license, and
17 (iii) another offense by the individual will cause greater harm than it
18 would if the individual did not have the license.

19 (4) The occupational board shall issue its determination in writing
20 within ninety days after receiving a petition under subsection (2) of
21 this section. The determination shall include findings of fact and
22 conclusions of law. If the occupational board determines that the state's
23 interest is superior to the individual's right, the occupational board
24 may advise the individual of any action the individual may take to remedy
25 the disqualification. If the occupational board finds that the individual
26 has committed a subsequent felony, the occupational board may rescind a
27 determination upon finding that the subsequent felony would be
28 disqualifying under subsection (3) of this section.

29 (5) The individual may appeal the determination of the occupational
30 board. The appeal shall be in accordance with the Administrative
31 Procedure Act.

1 (6) An individual may file another petition under this section with
2 the same occupational board two years after the final decision on the
3 previous petition, except that if the individual has taken action to
4 remedy the disqualification as advised by the occupational board, the
5 individual may file another petition under this section with the same
6 occupational board six months after the final decision on the previous
7 petition.

8 (7) An occupational board may charge a fee not to exceed one hundred
9 dollars for each petition filed pursuant to this section. The fee is
10 intended to offset the administrative costs incurred under this section.

11 Sec. 18. (1) The Office of Supervision of Occupational Boards is
12 created. The Governor shall appoint the executive director of the office.
13 The executive director shall employ one or more attorneys who do not
14 otherwise provide general counsel to an occupational board.

15 (2) The office shall provide active supervision to occupational
16 boards pursuant to section 19 of this act to ensure compliance with the
17 policies stated in section 15 of this act. The office shall review and
18 approve or reject any proposed rule, regulation, policy, enforcement
19 action, or other regulatory action prior to its adoption, promulgation,
20 or implementation. The office shall explicitly approve or reject such
21 occupational regulation or enforcement action. A failure to respond or
22 act shall not be deemed approval.

23 (3) The office shall evaluate each provider listed in section 11 of
24 this act and determine what type of occupational regulation as defined by
25 the Occupational Board Reform Act is being used to regulate the provider
26 regardless of the terminology of the statutes, rules, and regulations
27 applicable to the occupation of the provider.

28 (4) The office may assess each occupational board the administrative
29 costs incurred pursuant to sections 18 to 21 of this act. Within the
30 statutory authorization for fees, each occupational board may increase
31 fees for occupational regulation to pay such assessment.

1 Sec. 19. (1) The Office of Supervision of Occupational Boards shall
2 independently:

3 (a) Play a substantial role in the development of an occupational
4 board's rules and regulations to ensure that the rules and regulations
5 benefit consumers and do not serve the private interests of the providers
6 that the occupational board regulates;

7 (b) Disapprove the use by an occupational board of any rule or
8 regulation that fails to comply with the policies stated in section 15 of
9 this act and terminate any enforcement action pending for such rule or
10 regulation on the effective date of this act or at any subsequent time;

11 (c) Exercise control over an occupational board by reviewing and
12 affirmatively approving the occupational board's rules, regulations, and
13 enforcement action to ensure compliance with the policies stated in
14 section 15 of this act; and

15 (d) Review the legislative history of the authorizing legislation
16 for each occupational board and its rules, regulations, and enforcement
17 actions, including analysis under section 23 of this act, and conduct a
18 reasonable investigation to gain additional information, including less
19 restrictive regulatory approaches, to reduce the occupational board's
20 exposure to antitrust litigation.

21 (2) The Legislature finds that the provision of general counsel to
22 an occupational board by a government or private attorney does not meet
23 the definition of or requirement for active supervision.

24 Sec. 20. (1) A person may file a complaint with the Office of
25 Supervision of Occupational Boards regarding an occupational regulation
26 or enforcement action of an occupational board if the person believes it
27 is inconsistent with the policies stated in section 15 of this act.

28 (2) Within ninety days after receiving a complaint, the office shall
29 investigate the complaint, identify possible remedies, instruct the
30 affected occupational board to take action if appropriate, and respond in
31 writing to the person who filed the complaint. There is no right to

1 appeal any action or decision by the office under this section.

2 Sec. 21. A member of the Legislature may request that the Attorney
3 General review (1) a rule, regulation, policy, or enforcement action of
4 an occupational board if the member believes it is inconsistent with the
5 policies stated in section 15 of this act, (2) the active supervision of
6 an occupational board provided by the Office of Supervision of
7 Occupational Boards, or (3) any response by the office provided pursuant
8 to section 20 of this act.

9 Sec. 22. The Legislative Office of Occupational Regulations is
10 created. The Executive Board of the Legislative Council shall appoint the
11 Legislative Regulatory Analyst as the director of the office.

12 Sec. 23. The Legislative Office of Occupational Regulations shall:

13 (1) Review proposed legislation to enact or modify occupational
14 regulations to ensure compliance with the policies stated in section 15
15 of this act;

16 (2) Determine whether the legislation meets the requirements of the
17 policies stated in section 15 of this act by using the least restrictive
18 regulation necessary to protect consumers from present, significant, and
19 substantiated harm;

20 (3) Evaluate the effects of the legislation on opportunities for
21 workers, consumer choices and costs, general unemployment, market
22 competition, governmental costs, and any other relevant issues;

23 (4) Compare the legislation with occupational regulation in other
24 states; and

25 (5) Issue a report regarding the legislation to the relevant
26 committee in a timely fashion in order that the committee may review the
27 report prior to voting on the legislation which would enact or modify
28 occupational regulations.

29 Sec. 24. The Legislative Office of Occupational Regulations may:

30 (1) Require proponents of legislation which would enact or modify
31 occupational regulations to submit evidence of present, significant, and

1 substantiated harm to consumers in Nebraska; and

2 (2) Require information from sources other than proponents who are
3 knowledgeable regarding the proposed occupational regulations, the effect
4 on labor economics, and other relevant factors.

5 Sec. 25. The Legislative Office of Occupational Regulations shall
6 annually review the occupational regulations of approximately twenty
7 percent of the providers listed in section 11 of this act to improve
8 compliance with the Occupational Board Reform Act. The office shall
9 complete its review of all providers every five years. The office may
10 require the submission of information by the affected occupational board,
11 members or employees of the board, and other affected parties. The office
12 shall provide an electronic report of its findings and suggested changes
13 to the Clerk of the Legislature and the Attorney General.

14 Sec. 26. Section 84-901.02, Revised Statutes Cumulative Supplement,
15 2016, is amended to read:

16 84-901.02 The Legislature finds that:

17 (1) The regulatory authority given to agencies has a significant
18 impact on the people of the state;

19 (2) When agencies create substantive standards by which Nebraskans
20 are expected to abide, it is essential that those standards be adopted
21 through the rules and regulations process to enable the public to be
22 aware of the standards and have an opportunity to participate in the
23 approval or repeal process; ~~and~~

24 (3) Agencies should be encouraged to advise the public of current
25 opinions, interpretations, approaches, and likely courses of action by
26 means of guidance documents; and -

27 (4) Oversight of the regulatory authority over occupations and
28 professions given to agencies is required to ensure respect for the
29 fundamental right of an individual to pursue an occupation and to ensure
30 that occupational boards avoid liability under federal antitrust laws.

31 Sec. 27. Section 84-901.04, Revised Statutes Cumulative Supplement,

1 2016, is amended to read:

2 84-901.04 (1) If an agency determines that the adoption, amendment,
3 or repeal of a rule or regulation is necessitated by an emergency
4 situation, the agency may adopt, amend, or repeal a rule or regulation
5 upon approval of the Governor. Such agency's request shall be submitted
6 to the Governor in writing and include a justification as to why the
7 emergency rule or regulation is necessary. Factors for the justification
8 shall include:

9 (a) Imminent peril to the public health, safety, or welfare; or

10 (b) The unforeseen loss of federal funding for an agency program.

11 (2) Any agency may use the emergency rule or regulation procedure as
12 provided in this section. However, no agency shall use such procedure to
13 avoid the consequences for failing to timely adopt and promulgate rules
14 and regulations.

15 (3) Rules and regulations adopted, amended, or repealed under this
16 section shall be exempt ~~exempted~~ from the notice and hearings
17 requirements of section 84-907, ~~and~~ the review process required under
18 section 84-905.01, and the Occupational Board Reform Act and shall be
19 valid upon approval of the Governor. An emergency rule or regulation
20 shall remain in effect for a period of ninety calendar days and is
21 renewable once for a period not to exceed ninety calendar days.

22 (4) Any agency which adopts, amends, or repeals a rule or regulation
23 under this section shall file such rule or regulation with the Secretary
24 of State. The agency shall also publish such rule or regulation on the
25 agency's web site.

26 Sec. 28. Section 84-906.01, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 84-906.01 (1) An agency shall maintain an official rulemaking or
29 regulationmaking record for each rule or regulation it adopts or proposes
30 by publication of a notice. The record and materials incorporated by
31 reference shall be available for public inspection and shall be

1 maintained for at least four years after the effective date of the rule
2 or regulation.

3 (2) The record shall contain:

4 (a) Copies of all publications with respect to the rule or
5 regulation;

6 (b) Copies of any portions of the public rulemaking or
7 regulationmaking docket containing entries relating to the rule or
8 regulation;

9 (c) All written petitions, requests, submissions, and comments
10 received by the agency and all other written materials prepared by or for
11 the agency in connection with the proposal or adoption of the rule or
12 regulation;

13 (d) Any official transcript of oral presentations made in a
14 proceeding about the proposed rule or regulation or, if not transcribed,
15 any tape recording or stenographic record of those presentations, and any
16 memorandum prepared by the hearing officer summarizing the contents of
17 those presentations;

18 (e) A copy of the rule or regulation and the concise explanatory
19 statement filed with the Secretary of State;

20 (f) All petitions for adoption of, exceptions to, amendments of, or
21 repeal or suspension of, the rule or regulation;

22 (g) A copy of any comments on the rule or regulation filed by a
23 legislative committee or the Legislative Office of Occupational
24 Regulations; and

25 (h) A description, including an estimated quantification, of the
26 fiscal impact on state agencies, political subdivisions, and regulated
27 persons.

28 (3) Upon judicial review, the record required by this section shall
29 constitute the official agency rulemaking or regulationmaking record with
30 respect to a rule or regulation. Except as provided in section 84-907.04
31 or as otherwise required by law, the agency rulemaking or

1 regulationmaking record need not constitute the exclusive basis for
2 agency action on that rule or regulation or for judicial review thereof.

3 Sec. 29. Section 84-906.04, Revised Statutes Cumulative Supplement,
4 2016, is amended to read:

5 84-906.04 (1) The Secretary of State shall maintain a current public
6 rulemaking or regulationmaking docket for each pending rulemaking or
7 regulationmaking proceeding. A rulemaking or regulationmaking proceeding
8 is pending from the time it is commenced by publication of a notice of
9 proposed rule or regulation making to the time it is terminated by
10 publication of a notice of termination or the rule or regulation becoming
11 effective.

12 (2) For each rulemaking or regulationmaking proceeding, the docket
13 shall indicate:

14 (a) The subject matter of the proposed rule or regulation;

15 (b) The time, date, and location of the public hearing regarding the
16 proposed rule or regulation;

17 (c) The name and address of agency personnel with whom people may
18 communicate regarding the proposed rule or regulation;

19 (d) Where written comments on the proposed rule or regulation may be
20 inspected;

21 (e) The time during which written comments may be made;

22 (f) Where the description of the fiscal impact may be inspected and
23 obtained;

24 (g) The current status of the proposed rule or regulation and any
25 agency determinations or determinations of the Office of Supervision of
26 Occupational Boards, if any, with respect thereto;

27 (h) Any known timetable for agency decisions or other action in the
28 proceeding;

29 (i) The date of the rule's or regulation's adoption;

30 (j) The date of the rule's or regulation's filing, indexing, and
31 publication; and

1 (k) The operative date of the rule or regulation if such date is
2 later than the effective date prescribed in sections 84-906 and 84-911.

3 Sec. 30. Section 84-907.06, Revised Statutes Cumulative Supplement,
4 2016, is amended to read:

5 84-907.06 Whenever an agency proposes to adopt, amend, or repeal a
6 rule or regulation, the agency shall, (1) at least thirty days before the
7 public hearing, when notice of a proposed rule or regulation is sent out,
8 or (2) at the same time the agency requests approval from the Governor
9 for an emergency rule or regulation under section 84-901.04, ~~the agency~~
10 shall send to the Executive Board of the Legislative Council for purposes
11 of section 84-907.07, if applicable, and the Legislative Office of
12 Occupational Regulations and the Office of Supervision of Occupational
13 Boards for purposes of the Occupational Boards Reform Act, if applicable,
14 ~~(a)~~ a copy of the hearing notice required by section 84-907, ~~(b)~~ a draft
15 copy of the rule or regulation, and ~~(c)~~ the information provided to the
16 Governor pursuant to section 84-907.09.

17 Sec. 31. Section 84-908, Revised Statutes Cumulative Supplement,
18 2016, is amended to read:

19 84-908 (1) Except as provided in section 84-901.04, no adoption,
20 amendment, or repeal of any rule or regulation shall become effective
21 until the same has been approved by the Office of Supervision of
22 Occupational Boards, if applicable, and the Governor and filed with the
23 Secretary of State after a hearing has been set on such rule or
24 regulation pursuant to section 84-907. When determining whether to
25 approve the adoption, amendment, or repeal of any rule or regulation
26 relating to an issue of unique interest to a specific geographic area,
27 the Governor's considerations shall include, but not be limited to: (a)
28 Whether adequate notice of hearing was provided in the geographic area
29 affected by the rule or regulation. Adequate notice shall include, but
30 not be limited to, the availability of copies of the rule or regulation
31 at the time notice was given pursuant to section 84-907; and (b) whether

1 reasonable and convenient opportunity for public comment was provided for
2 the geographic area affected by the rule or regulation. If a public
3 hearing was not held in the affected geographic area, reasons shall be
4 provided by the agency to the Governor. Any rule or regulation properly
5 adopted by any agency shall be filed with the Secretary of State.

6 (2) Except as provided in section 84-901.04, no agency shall
7 utilize, enforce, or attempt to enforce any rule or regulation or
8 proposed rule or regulation unless the rule, regulation, or proposed rule
9 or regulation has been approved by the Governor and filed with the
10 Secretary of State after a hearing pursuant to section 84-907.

11 Sec. 32. Section 84-910, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 84-910 On or before July 1 of each year, each agency shall notify
14 the Legislative Performance Audit Committee and the Legislative Office of
15 Occupational Regulations, if applicable, of the status of all rules and
16 regulations pending before the agency which have not been adopted and
17 promulgated. If an additional appropriation was made with respect to
18 legislation enacted to provide funding for or additional staff to
19 implement a program for which rules and regulations are required to be
20 adopted, the notification shall include what the funding has been used
21 for and what functions the staff have been performing while such rules
22 and regulations are pending. The format of the notification shall be
23 established by the committee and the office ~~no later than June 1, 2011,~~
24 and shall be updated periodically thereafter.

25 Sec. 33. Section 84-920, Revised Statutes Cumulative Supplement,
26 2016, is amended to read:

27 84-920 Sections 84-901 to 84-920 and the Occupational Board Reform
28 Act shall be known and may be cited as the Administrative Procedure Act.

29 Sec. 34. This act becomes operative on January 1, 2018.

30 Sec. 35. Original sections 84-906.01 and 84-910, Reissue Revised
31 Statutes of Nebraska, and sections 84-901.02, 84-901.04, 84-906.04,

- 1 84-907.06, 84-908, and 84-920, Revised Statutes Cumulative Supplement,
- 2 2016, are repealed.