

**Banking, Commerce and Insurance Committee**

Nebraska Legislature

Occupational Regulation Review

of the

Nebraska Banking Act

*(Executive Officer License)*

Pursuant to the

Occupational Board Reform Act,

*Neb. Rev. Stat. §§ 84-933 to 84-948*

Interim Study Resolution LR 371 (Williams) (107<sup>th</sup> Legislature)

**December 2023**

**Committee Members**

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The Occupational Board Reform Act (OBRA), *Neb. Rev. Stat.* §§ 84-933 to 84-948, was enacted in 2018 to provide for legislative review of occupational regulations.

*Neb. Rev. Stat.* § 84-948(1) provides as follows:

1. Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

*The Banking, Commerce and Insurance Committee's recommendation is that the occupational regulations related to Executive Officer Licenses under the Nebraska Banking Act should be:*

- Terminated*
- Continued*
- Modified*

*Neb. Rev. Stat.* § 84-948(2) provides as follows:

2. Each committee may require the submission of information by the affected occupational board and other affected or interested parties.

*Banking, Commerce and Insurance Committee staff sent out a request for the submission of information by the Nebraska Department of Banking and Finance in the summer of 2022. The Department submitted the requested information on November 15, 2022. The information found in this report is directly related to answers provided in that submission. A link to the submitted information can be found below:*

[https://nebraskalegislature.gov/reports/committeesurvey\\_view.php](https://nebraskalegislature.gov/reports/committeesurvey_view.php)

*Neb. Rev. Stat.* § 84-948(3) provides as follows:

3. A committee's report shall include, but not be limited to, the following:
  - a. **The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;**

*Title of Regulated Occupation: Executive Officer License*

*Name of Occupational Board: N/A (Regulated by Nebraska Department of Banking & Finance, Financial Institutions Division)*

- b. The statutory citation or other authorization for the creation of the occupational regulations and occupation board;**

*The Nebraska Banking Act. Neb. Rev. Stat §§ 8-101.02 to 8-1,143. Specifically, Neb. Rev. Stat. § 8-139.*

- c. The number of members of the occupational board and how the members are appointed;**

*N/A*

- d. The qualifications for membership on the occupational board;**

*N/A*

- e. The number of times the occupational board is required to meet during the year and the number of times it actually met.**

*Required FY21-22 0 Held 0*

*Required FY20-21 0 Held 0*

*Required FY19-20 0 Held 0*

*Required FY18-19 0 Held 0*

*Required FY17-18 0 Held 0*

- f. Annual budget information for the occupational board for the five most recently completed fiscal years**

*Shared Budget. Other funding sources: none.*

*FY21-22 \$492,590*

*FY20-21 \$573,627*

*FY19-20 \$539,630*

*FY18-19 \$541,486*

*FY17-18 \$473,931*

*Spending Authority: Neb. Rev. Stat. § 8-601 (Administration). Neb. Rev. Stat. § 84-1116.01 (Authority beyond budget).*

- g. For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certificates, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;**

*Executive Officer Licensee*

<i>Period</i>	<i>Certs Issued</i>	<i>Individual Licenses</i>	<i>Firm Licenses</i>	<i>Revocation</i>
2017 to 2022	437			0

*“Issued” in this context means Executive Officer Licenses issued to individuals.*

*“Revoked” refers to situations where the Department has taken away a previously issued license.*

*“Denied” refers to initial license applications denied by the Director and does not include withdrawn applications.*

*“Penalty” refers to any Executive Officer Licensee fined by Department.*

*Certs Denied: 0*

*Certs Penalties Against: 1*

**h. A review of the basic assumptions underlying the creation of the occupational regulations;**

*HR 65, §7, included requirement for executive officer approval of each loan, and then provided character and experience requirements for such executives; requirement for banks to apply for license for each "active executive officer"; felony penalty provided for operating without a license; original oversight authority vested in Department of Trade and Commerce; licensure of "money loaners" orig. in Laws 1913, ch. 250, p. 778 (HR 460). In 2017, LB140 was passed which added subsection (6) to 8-139 allowing banks to seek exemption of the executive officer licensee requirement:*

*8-139(6). A bank has the right, on or after August 24, 2017, to elect for its active executive officers to be exempt from the requirement to apply for and obtain a license from the department. An election, once made, shall remain in effect with respect to all active executive officers of the bank until and unless the election is revoked by the bank. An election or revocation shall be made in a form and manner established by the department. Within thirty days after revoking such election, such bank shall apply for and obtain from the department a license for any person acting or desiring to act as an active executive officer of the bank.*

*There is not a stated legislative purpose found in the Act, but the basic assumption behind its purpose can be identified from certain statutes within the Act.*

*8-139(3). Except as provided in subsection (6) of this section, no person shall act as an **active executive officer** of any bank until such bank has applied for and obtained from the department a license for such person to act as an active executive officer. If the director, upon investigation, is satisfied that any active executive officer of a bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors of the bank, the department*

*may revoke the license of such active executive officer or suspend the ability of such active executive officer to continue to act as an active executive officer.*

*The Director was given rule-making authority in Nebraska Banking Act Section 8-139(8):*

*8-139. (8) The director may adopt and promulgate rules and regulations and prescribe forms to be used to carry out the intent of this section.*

*The Director was assigned Title 45 in the Nebraska Administrative Code (NAC) as the location for its properly promulgated rules related to Executive Officer Licensees.*

**i. A statement from the occupational license board on the effectiveness of the occupational regulations, and**

*Following Statement from NDBF Deputy Director Darcy Bailar:*

*Executive loan officers who interact and work with loan and bank product customers are in a position of trust and have access to sensitive personal financial information about Nebraska consumers. Executive loan officers also are given authority by their institutions to make loans and/or investments of certain amounts without Board approval and therefore can put a financial institution at risk. Community bank loan officers generally have more authority to make executive credit decisions than larger institution loan officers. The Department and the State have a strong interest in monitoring the industry and removing bad actors. The low amount of license denials demonstrates a low barrier to entry into the profession. Banks are quasi-public financial institutions. The number of licenses revoked or given penalties is very low in comparison to the number of registrants. The existing regulatory framework gives the Department the necessary authority to remove bad actors who misuse customer and bank funds or take advantage of the sensitive information they have access to or their position of power. The Department would share information with relevant Federal regulators in order to maintain a cohesive supervisory network.*

*Establishing minimum requirements for executive loan officers helps protect communities from illegal and possibly predatory practices and may promote local economic growth.*

*What is the potential harm if this occupation is no longer licensed, certified, or regulated? Nebraska would lose some of its authority to monitor individuals working in banks and remove bad actors and reduce risk to banks. The Department would not be able to ensure that loan officers in banks meet minimum standards related to character and experience. The ability to remove bad actors is an important protection for Nebraska consumers.*

**j. A comparison of whether and how other states regulate the occupation.**

*All states, and relevant Federal banking agencies, have regulatory processes to monitor banking institutions and provide for their safety and soundness. Violation of any other state's banking regulations may disqualify an individual from working in other states.*

Neb. Rev. Stat. § 84-948(4) provides as follows:

4. Subject to subsection (5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 84-946 considering the following recommended courses of action for the meeting such policies:

**a. If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific good or service;**

*Not necessary. Nebraska currently has regulatory processes to monitor banking institutions and provide for their safety and soundness.*

**b. If the need is to protect consumers against unclean facilities or to promote general health and safety, the likely recommendations will be to require periodic inspections of such facilities;**

*N/A*

**c. If the need is to protect consumers against potential damages and failure by providers to complete a contract fully or up to standards, the likely recommendations will to require that be bonded;**

*Banks have a bonding requirement, which includes acts of their officers and employees. See Neb. Rev. Stat. § 8-110.*

**d. If the need is to protect a person who is not party to contract between the provider and consumer, the likely recommendation will be to require that he provider have insurance;**

*Errors and omissions insurance and directors and officers insurance are not mandatory. As a matter of practicality, nearly all banks maintain both types of insurance, and thus a requirement to be so insured would be unnecessary.*

**e. If the need is to protect consumers against a potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;**

*Not necessary. Nebraska currently has regulatory processes to monitor banking institutions and provide for their safety and soundness.*

**f. If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods and services relative to the providers' knowledge, the likely recommendation will be to enact government certifications, and;**

*Not necessary. Nebraska currently has regulatory processes to monitor banking institutions and provide for their safety and soundness.*

- g. If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's ability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.**

*Not necessary. Nebraska currently has regulatory processes to monitor banking institutions and provide for their safety and soundness.*

Neb. Rev. Stat. § 84-948(5) provides as follows:

5. If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under section (4) of this section shall be made using the least restrictive method of regulation as set out in section 71-6222.

*N/A*

Neb. Rev. Stat. § 84-948(6) provides as follows:

6. In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

*N/A*

Neb. Rev. Stat. § 84-948(7) provides as follows:

7. If the committee finds that it is necessary to change professional regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 84-946.

*The regulatory framework for issuance of certificates and permits is established by the Legislature and administered by the Nebraska Department of Banking and Finance. It is serving the expectations of Nebraska's loan and credit product customers when they utilize bank executive loan officers. As a whole, this regulatory framework is appropriate and balanced and does not need modification at this time.*