

Banking, Commerce, and Insurance Committee

Nebraska Legislature

Occupational Regulation Review

of the

The Securities Act of Nebraska

(Investment Advisors and Investment Advisor Representatives)

Pursuant to the

Occupational Board Reform Act,

Neb. Rev. Stat. §§ 84-933 to 84-948

and

Interim Study Resolution LR 371 (Williams) (107th 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 Investment Advisors and Investment Advisor Representatives under the Securities Act of Nebraska 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

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: Investment Advisor; Investment Advisor Representatives;

Name of Occupational Board: N/A (Regulated by Nebraska Department of Banking & Finance, Securities Bureau, except insurance securities oversight which is handled by Nebraska Department of Insurance)

Neb. Rev. Stat. §8-1120. (1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such deputies, examiners, assistants, or counsel as may be reasonably necessary for the purpose thereof. The employment of any person for the administration of the act is subject to section 49-1499.07. The director may delegate to a deputy director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, 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 or her under the act or with respect to any litigation to which the director is a party under the act.

(2) A 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 act, and as pertains to the administration and enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

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

The Securities Act of Nebraska. Neb. Rev. Stat. §§8-1101 to 8-1123

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 \$102,875

FY20-21 \$94,767

FY19-20 \$82,915

FY18-19 \$83,344

FY17-18 \$120,872

- 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;**

Investment Adviser Representatives

<i>Period</i>	<i>Certs Issued</i>	<i>Individual Licenses</i>	<i>Firm Licenses</i>	<i>Revocation</i>
2017 to 2022	21,700			15

Government Certificate Denials: 0

Government Certificate Penalties Against: 4

"Issued" in this context means registration by the Department.

"Revoked" refers to situations where the Department has taken away a previously issued license.

"Denied" refers to initial license applications that were denied by the Department

"Penalties Against" refers to situations when an existing license holder had a license suspended and/or a fine levied against them.

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

LB 848 (1965) introduced by Bowen at request of Gov.; Committee statement from Banking, Commerce and Insurance hearing on May 12, 1965 noted that bill is uniform bill already adopted by eighteen other states and DC (seems to have been the Uniform Securities Act of 1956); previous "Blue Sky" law in Nebraska was passed in 1937, and original version was passed in 1913; 1965 bill imposed minimum capital requirement for broker-dealer and salesmen registered to be licensed, but committee statement noted "certain exemptions both as to registration and security transactions where experience has shown that registration or regulation is not necessary in the public interest."; In 1913, Governor John Morehead included in his inaugural address a proposal for a "Blue Sky Law" and cited Kansas's example in having "to a large degree excluded from the state companies of no merit or of a small likelihood of success and through which in the past large sums of the people's savings have been lost. After due examination, by the banking department' a license to sell stocks and securities is issued to such companies only as can furnish evidence of merit and honest intentions."; 1913 law (SF 4) included permit requirement for any securities seller (other than persons selling to a dealer as

defined in the law), with \$25 examination and permit fee in first year, and \$10 annual renewal fee thereafter; agent permits registered at \$1/year;

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:

8-1103. (2)(a) *It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless he or she is registered under the act.*

Source: Laws 1965, c. 549, § 3, p. 1768; Laws 1973, LB 167, § 2; Laws 1977, LB 263, § 2; Laws 1989, LB 60, § 2; Laws 1990, LB 956, § 7; Laws 1991, LB 305, § 3; Laws 1993, LB 216, § 3; Laws 1993, LB 121, § 97; Laws 1994, LB 884, § 12; Laws 1997, LB 335, § 2; Laws 1997, LB 752, § 60; Laws 2000, LB 932, § 19; Laws 2001, LB 53, § 20; Laws 2003, LB 217, § 23; Laws 2017, LB148, § 4; Laws 2019, LB259, § 3; Laws 2020, LB909, § 14.

The Director was given rule-making authority in Neb. Rev. Stat. § 8-1120(4) of the Securities Act of Nebraska:

8-1120(4) *The director may adopt and promulgate rules and regulations and prescribe forms to carry out the act.*

The Director was assigned Title 48 in the Nebraska Administrative Code (NAC) as the location for its properly promulgated rules. **As indicated in 8-1102 the basic assumption underlying the creation of regulations includes the establishment of regulations to maintain a high level of investor protection and prevention of fraud within the market of professional advisement in securities sales.**

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

Following Statement from the Deputy Director Claire McHenry of the Nebraska Department of Banking and Finance; Securities Bureau:

The securities industry is a highly regulated industry. Persons who receive compensation for the sales of securities sold directly by the issuer, similar to broker-dealer agents, are in a position of trust and have access to sensitive personal financial information about Nebraska consumers. The Department and the State have a strong interest in monitoring the industry and removing bad actors. As can be seen from the numbers provided, the limited number of license denials demonstrates a low barrier of entry into the profession. Further, the numbers of licenses revoked or given penalties is very low in comparison to the number of registrants. While most registrants are of high integrity, the existing regulatory frame work gives the Department the necessary authority to remove bad actors from taking advantage of the sensitive information and position of power they have access to.

Although not every state has the specific issuer-dealer and issuer-dealer agent registration requirement, many states have an agent of issuer registration requirement

for those persons receiving sales-based compensation for the sale of securities. Additionally, the Department would share such registration information with other state or federal securities agencies.

What is the potential harm if this occupation is no longer licensed, certified, or regulated? Primarily, Nebraska would lose its authority to monitor the Nebraska securities industry and remove bad actors. As noted above, issuer-dealer agents have access to sensitive personal financial information of Nebraska consumers and, as such, must meet certain minimum requirements related to education, knowledge, and integrity. The ability to remove bad actors from the marketplace is an important protection for Nebraska consumers.

Most state securities regulators have securities laws and regulations based on the Uniform Securities Act of 1956 or 2002, and model rules promulgated by the North American Securities Administrators Association (NASAA), of which Nebraska is a member. Disciplinary actions and violations of one jurisdiction's securities laws and rules may be the basis for denial of a registrant in another jurisdiction. Although not every state has the specific issuer-dealer and issuer-dealer agent registration requirement, many states have an agent of issuer registration requirement for those persons receiving sales-based compensation for the sale of securities. Additionally, the Department would share such registration information with other state or federal securities agencies.

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

See above

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;**
No recommendation on strengthening powers under UDTPA or disclosure requirements. The field is already highly regulated and monitored, at both the State and Federal level.
 - b. **I 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;**

Investment Advisors have a minimum net capital requirement or bonding requirement under Neb. Rev. Stat. § 8-1103.

- 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;**

N/A

- 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;**

Investment Advisors and Investment Adviser Representatives are required to register with the Nebraska Department of Banking and Finance.

- 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;**

N/A

- 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.**

Investment Advisors and Investment Adviser Representatives are required to register with the Nebraska Department of Banking and Finance.

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 monitoring and registering the above occupations was established by the Legislature and administered by the Nebraska Department of Banking and Finance. It is serving the expectations of Nebraskans where the advisements in sale of securities in the state are concerned. As a whole, this regulatory framework is appropriate and balanced and does not need modification at this time.