

Banking, Commerce and Insurance Committee

Nebraska Legislature

Occupational Regulation Review

of the

Nebraska Residential Mortgage Licensing Act

(Mortgage Loan Originator)

Pursuant to the

Occupational Board Reform Act,

Neb. Rev. Stat. §§ 84-933 to 84-948

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 the Nebraska Residential Mortgage Licensing 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

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: Mortgage Loan Originator

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;**

Nebraska Residential Mortgage Licensing Act, Neb. Rev. Stat. §§ 45-727 to 45-736.

- 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 \$163,444

FY20-21 \$164,013

FY19-20 \$154,092

FY18-19 \$149,201

FY17-18 \$133,186

Spending Authority: Neb. Rev. Stat. § 8-601 (Director may employ as may be necessary for administration.)

- 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;**

Mortgage Loan Originator

<i>Period</i>	<i>Certs Issued</i>	<i>Individual Licenses</i>	<i>Firm Licenses</i>	<i>Revocation</i>
2017 to 2022	17,669			1

“Issued” in this context means license approved by the Department in Nationwide Mortgage Licensing System & Registry.

“Revoked” refers to situations where the Department has taken away a previously issued license in the National Mortgage Licensing System.

“Denied” refers to initial license applications that the Department directly denied and does not include abandoned or withdrawn license applications.

“Penalty” means instances where the Department took administrative action against a licensee or an applicant as a result of their professional conduct or failure to meet licensing requirements. This could include consent orders, suspensions, or other such actions.

Certs Denied: 98

Certs Penalties Against: 5

6,614 Current Approved Licenses (11/1/2022)

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

The licensure of "money lenders" orig. in Laws 1913, ch. 250, p. 778 (HR 460); bill included cap on maximum rate of legal interest; 8-139(6).

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:

45-727. Under the Nebraska Residential Mortgage Licensing Act, an individual, not otherwise exempted from licensing, cannot engage in, or offer to engage in, the business of a mortgage loan originator for residential real estate without first obtaining a license under the Nebraska Residential Mortgage Licensing Act.

The Director was given rule-making authority in the Nebraska Residential Mortgage Licensing Act at Section 45-727(3):

For the purposes of implementing an orderly and efficient licensing process, the director may adopt and promulgate licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures..

The Director was assigned Title 45 in the Nebraska Administrative Code (NAC) as the location for its properly promulgated rules related to Mortgage Loan Originators.

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

Following Statement from NDBF Deputy Director Darcy Bailar:

The Nebraska Residential Mortgage Licensing Act is designed to enhance consumer protection and reduce fraud by establishing minimum standards for the licensing of state-licensed mortgage loan originators. By establishing and following licensing standards under the Act, the State works in concert and coordination with other states to provide uniform license applications and reporting requirements for licensees. Licensing under the Act also improves the flow of communication between state regulators to make consumers safer. The licensing measures provide consumers with easily accessible information, at no charge, regarding employment, disciplinary, and enforcement history of licensed loan originators.

Individuals who act as mortgage loan originators are in a position of trust and have access to sensitive personal financial information about Nebraska consumers. The Department has a strong interest in monitoring the industry and removing bad actors. From the numbers provided in this survey, the limited number of license denials demonstrates a low barrier of entry into the profession. While most registrants meet minimum standards for licensure, the existing regulatory framework 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.

Licensing of mortgage loan originators provides increased integrity of the residential mortgage loan market. Thus, licensing of mortgage loan originators plays a vital role in helping prevent an economically perilous residential mortgage loan environment.

*What is the potential harm if this occupation is no longer licensed, certified, or regulated? Nebraska would lose its ability and authority monitor residential mortgage originators and remove bad actors. Mortgage loan originators have access to sensitive personal and financial information of Nebraska consumers. As such, must meet certain minimum requirements related to education, knowledge, and character. The ability to remove bad actors from the marketplace is an important protection for Nebraska consumers. **If Nebraska stopped licensing and regulating this occupation it would lose its accreditation status from the Conference of State Bank Supervisors.***

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

All States have mortgage loan originator licensing acts based around the Federal SAFE Act. Disciplinary actions and violations of one jurisdiction's laws and rules may be the basis for a denial of a registrant in another jurisdiction. The Department is able to share license information with other state or federal agencies.

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;**

Mortgage Loan Originators are licensed within the State.

- 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;**

Mortgage Loan Originators have a bonding requirement. See Neb. Rev. Stat. § 45-729(1)(f): "...a surety bond as required pursuant to section 45-724 or a supplemental surety bond as required pursuant to section 45-1007."

- 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;**

All States have mortgage loan originator licensing acts based around the Federal SAFE Act. Disciplinary actions and violations of one jurisdiction's laws and rules may be the basis for a denial of a registrant in another jurisdiction. The Department is able to share license information with other state or federal agencies.

- 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;**

Mortgage Loan Originators are subject to prelicensing education requirements (Neb. Rev. Stat. § 45-730) and continuing education requirements (Neb. Rev. Stat. § 45-733).

- 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.**

Mortgage Loan Originators are licensed within the State.

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 Nebraskans by enhancing consumer protection and reducing fraud in the area of mortgage loan origination. As a whole, this regulatory framework is appropriate and balanced and does not need modification at this time.