

# **Banking, Commerce and Insurance Committee**

## **Nebraska Legislature**

### **Occupational License Review**

#### **Department of Insurance**

**December 2019**

##### Committee Members

Senator Matt Williams, Chair, District 36

Senator Brett Lindstrom, Vice Chair, District 18

Senator Tim Gragert, District 40

Senator Sara Howard, District 9

Senator Mark Kolterman, District 24

Senator Andrew La Grone, District 49

John McCollister, District 20

Senator Dan Quick, District 35

##### Committee Staff

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## **Occupational Board Reform Act**

The legislature passed and the Governor approved the Occupational Board Reform Act, Neb. Rev. Stat. Secs. 84-933 to 84-948 as LB299 (Laws, 2018) with an operative date of July 1, 2019.

### **Governing Statutory Provisions**

Duties of the standing committees of the Legislature under the Occupational Board Reform Act are set forth in section 84-948, which provides as follows:

84-948. Standing committee of Legislature; duties; report; contents.

(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.

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

(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;

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

(c) The number of members of the occupational board and how the members are appointed;

(d) The qualifications for membership on the occupational board;

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

(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 certifications, 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;

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

(i) A statement from the occupational board on the effectiveness of the occupational regulations; and

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

(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 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 goods or services;

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

(c) If the need is to protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the likely recommendation will be to require that providers be bonded;

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

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

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

(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 inability 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.

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

(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.

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

## 2019 Survey

For 2019, the agency within the jurisdiction of the Banking, Commerce and Insurance Committee selected for review was the Department of Insurance. The department identified 11 license types as follows:

1. **Insurance Producers.** The Insurance Producers Licensing Act, Neb. Rev. Stat. Secs. 44-4047 to 44-4067. "A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with the Insurance Producers Licensing Act." Neb. Rev. Stat. Sec. 44-4050.
2. **Burial Preneed Agents.** The Burial Pre-Need sale Act, Neb. Rev. Stat. Secs. 12-1101 to 12-1121. "No pre-need seller shall make or offer to make a pre-need sale without first obtaining a license from the director." Neb. Rev. Stat. Sec. 12-1108.
3. **Surplus Lines.** The Surplus Lines Act, Neb. Rev. Stat. Secs. 44-5501 to 44-5515. "The department, in consideration of the payment of the license fee, may issue a surplus lines license, revocable at any time, to any individual who currently holds an insurance producer license or to a foreign or domestic corporation." Neb. Rev. Stat. Sec. 45-5503. "No person, other than an exempt commercial purchaser, shall place, procure, or effect insurance for or on behalf of an insured whose home state is the State of Nebraska in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503. Neb. Rev. Stat. Sec. 44-504(1).
4. **Insurance Consultants.** Neb. Rev. Stat. Secs. 44-2607 to 44-2635. "Insurance consultant shall mean any person who, for a fee, engages in the business of offering to the public any advice, counsel, opinion, or service with respect to insurable risks, or concerning the benefits, coverages, or provisions under any policy of insurance that could be issued in this state, or involving the advantages or disadvantages of any such policy of insurance, or any formal plan of managing pure risk. Neb. Rev. Stat. Sec. 44-2607. "No person shall, in or on advertisements, cards, signs, circulars, letterheads, or elsewhere or in any other manner by which public announcements are made, use the title insurance consultant or any similar title or any title or word, combination of words, or abbreviations indicating that he or she gives or is engaged in the business of offering to the public any advice, counsel, opinion, or service with respect to insurable risks, concerning the benefits, coverages, or provisions under any policy of insurance that could be issued in this state, or involving the advantages or disadvantages of any such policy of insurance, unless such person holds a license as an insurance consultant under sections 44-2606 to 44-2635." Neb. Rev. Stat. Sec. 44-2614.
5. **Managing General Agents.** The Managing General Agents Act, Neb. Rev. Stat. Secs. 44-4901 to 44-4910. "Managing general agent means any person who manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as an agent for such insurer,..." Neb. Rev. Stat. Sec. 44-4902 (5). "No person shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless such person is licensed in accordance with the Insurance Producers Licensing Act." Neb. Rev. Stat. Sec. 44-4903.

6. **Viatical Settlement Provider.** The Viatical Settlements Act, Neb. Rev. Stat. Secs. 44-1101 to 44-1117. “Viatical Settlement provider means a person, other than a viator, that enters into or effectuates a viatical settlement contract.” Neb. Rev. Stat. Sec. 44-1102 (16). “A person shall not operate as a viatical settlement provider or a viatical settlement broker without first obtaining a license from the director or the chief insurance regulatory official of the state of residence of the viator.” Neb. Rev. Stat. Sec. 44-1103 (1)(a).
7. **Reinsurance Intermediary Manager.** Reinsurance Intermediary Act, Neb. Rev. Stat. Secs. 44-5601 to 44-5613. “Reinsurance intermediary manager shall mean any person, firm, association, or corporation which has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, departments, or underwriting office, and acts as an agent for such reinsurer whether known as a reinsurance intermediary manger, manager or similar term.” Neb. Rev. Stat. Sec. 45-5602 (9). “The director may issue a reinsurance intermediary license to any person, firm, association, or corporation which has complied with the requirements of the Reinsurance Intermediary Act.” Neb. Rev. Stat. Sec. 44-5603(4).
8. **Reinsurance Intermediary Broker.** The Reinsurance Intermediary Act, Neb. Rev. Stat. Secs. 44-5601 to 44-5613. “Reinsurance Intermediary – broker shall mean any person other than an officer or employee of the ceding insurer, firm, associations, or corporation which solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insure.” Neb. Rev. Stat. Sec. 44-5602(8). “The director may issue a reinsurance intermediary license to any person, firm, association, or corporation which has complied with the requirements of the Reinsurance Intermediary Act.” Neb. Rev. Stat. Sec. 44-5603 (4).
9. **Navigator.** Health Insurance Exchange Navigator Registration Act, Neb. Rev. Stat. Secs. 44-8801 to 44-8808. “Navigator means any individual or entity, other than an insurance producer or consultant, that receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform the duties identified in 42 U.S.C. 18031(i)(3), as such section existed on January 1, 2013.” Neb. Rev. Stat. Sec. 44-8802(3). Navigators facilitate enrollment in qualified health plans under the Federal Patient Protection and Affordable Care Act. “No individual or entity shall perform, or advertise any source as a navigator in this stat unless registered as a navigator by the director.” Neb. Rev. Stat. Sec. 44-8803(1).
10. **Motor Club Representative.** The Motor Club Services Act, Neb. Rev. Stat. Secs. 44-3701 to 44-3721. “Club representative shall mean any person in this state designated by the club who acts or aids in any manner in the solicitation, negotiation, or renewal of motor club service contracts, except it shall not mean any person performing only work of a clerical nature in the office of a club or providing an application to a potential club member.” Neb. Rev. Stat. Sec. 44-3704. “No individual shall act as a club representative in Nebraska without the club having registered such individual with the director within thirty days after the date of designation as a club representative.” Neb. Rev. Stat. Sec. 44-3716(1).

11. **Public Adjuster.** The Public Adjusters Licensing Act, Neb. Rev. Stat. Secs. 44-9201 to 44-9219. "Public adjuster means any person who for compensation, does any of the following: (a) Acts for or aids an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured; (b) Advertises for employment as a public adjuster of first party claims or otherwise solicits business or represents to the public that the person is a public adjuster of first party claims for loss or damage to real or personal property of an insured; or (c) directly or indirectly solicits the business of investigating or adjusting losses or of advising an insured about first-party claims for loss or damage to real or personal property of the insured." Neb. Rev. Stat. Sec. 44-9203(9). "A person shall not operate as or represent that such person is a public adjuster in this state unless such person is licensed as a public adjuster in accordance with the Public Adjusters Licensing Act." Neb. Rev. Stat. Sec. 44-9204 (1).

## Five – Year History

<u>License Type</u>	# of Support Staff	FY Budget 2018-19	FY Budget 2017-18	FY Budget 2016-17	FY Budget 2015-16	FY Budget 2014-15
Insurance Producers	4	\$440,055.8 2	\$375,717.0 6	\$559,562.3 5	\$418,018.4 4	\$537,428.0 4
Burial Preneed Agents	4	549.96	586.39	1,286.75	868.70	723.02
Surplus Lines	4	3,391.39	2,931.93	5,030.04	4,647.55	4,838.69
Insurance Consultants	4	229.15	547.29	935.82	564.66	1,112.34
Managing General Agents	4	0.00	78.18	58.49	86.87	111.23
Viatical Settlement Provider	4	45.83	78.18	233.96	86.87	55.62
Reinsurance Intermediary Manager	4	18.33	15.64	0.00	0.00	0.00
Reinsurance Intermediary Broker	4	41.25	39.09	0.00	0.00	55.62
Navigator	4	320.81	273.65	584.89	608.09	945.49
Motor Club Representative	4	11,182.42	9,538.55	16,786.29	9,425.40	10,845.33
Public Adjuster	4	2,199.82	0.00	0.00	0.00	0.00

### Licenses Issued\*

<u>License Type</u>	FY 2018-19	FY2017-18	FY2016-17	FY2015-16	FY2014-15
Insurance Producers	21066	22669	18277	18211	17454
Burial Preneed Agents	26	36	42	38	23
Surplus Lines	162	178	164	202	158
Insurance Consultants	11	34	30	25	37
Managing General Agents	0	5	2	4	4
Viatical Settlement Provider	3	5	7	3	1
Reinsurance Intermediary Manager	1	1	0	0	0
Reinsurance Intermediary Broker	2	3	0	0	1
Navigator	15	16	19	27	31
Motor Club Representative	536	621	549	411	352
Public Adjuster	105	0	0	0	0



**Denied License Applications\***

<b>License Type</b>	<b>FY 2018-19</b>	<b>FY2017-18</b>	<b>FY2016-17</b>	<b>FY2015-16</b>	<b>FY2014-15</b>
Insurance Producers	9	9	10	2	1
Burial Preneed Agents	0	0	0	0	0
Surplus Lines	0	0	0	0	0
Insurance Consultants	0	9	3	0	0
Managing General Agents	0	0	0	0	0
Viatical Settlement Provider	0	0	0	0	0
Reinsurance Intermediary Manager	0	0	0	0	0
Reinsurance Intermediary Broker	0	0	0	0	0
Navigator	0	0	0	0	0
Motor Club Representative	0	0	0	0	0
Public Adjuster	1	0	0	0	0

**Denied License Renewals\***

<b>License Type</b>	<b>FY 2018-19</b>	<b>FY2017-18</b>	<b>FY2016-17</b>	<b>FY2015-16</b>	<b>FY2014-15</b>
Insurance Producers	0	1	1	0	2
Burial Preneed Agents	0	0	0	0	0
Surplus Lines	0	0	0	0	0
Insurance Consultants	0	1	1	0	0
Managing General Agents	0	0	0	0	0
Viatical Settlement Provider	0	0	0	0	0
Reinsurance Intermediary Manager	0	0	0	0	0
Reinsurance Intermediary Broker	0	0	0	0	0
Navigator	0	0	0	0	1
Motor Club Representative	0	0	0	0	0
Public Adjuster	0	0	0	0	0

**Denied License Revoked\***

<b>License Type</b>	<b>FY 2018-19</b>	<b>FY2017-18</b>	<b>FY2016-17</b>	<b>FY2015-16</b>	<b>FY2014-15</b>
Insurance Producers	44	18	12	9	8
Burial Preneed Agents	0	0	0	0	0
Surplus Lines	0	0	1	0	0
Insurance Consultants	0	1	0	0	0
Managing General Agents	0	0	0	0	0
Viatical Settlement Provider	0	0	0	0	0
Reinsurance Intermediary Manager	0	0	0	0	0

Reinsurance Intermediary Broker	0	0	0	0	0
Navigator	0	0	0	0	0
Motor Club Representative	0	0	0	0	0
Public Adjuster	0	0	0	0	0

**Penalties Against\***

<u>License Type</u>	<b>FY 2018-19</b>	<b>FY2017-18</b>	<b>FY2016-17</b>	<b>FY2015-16</b>	<b>FY2014-15</b>
Insurance Producers	21	17	11	8	3
Burial Preneed Agents	0	0	0	0	0
Surplus Lines	0	0	0	0	0
Insurance Consultants	0	0	0	0	0
Managing General Agents	0	0	0	0	0
Viatical Settlement Provider	0	0	0	0	0
Reinsurance Intermediary Manager	0	0	0	0	0
Reinsurance Intermediary Broker	0	0	0	0	0
Navigator	0	0	0	0	0
Motor Club Representative	0	0	0	0	0
Public Adjuster	0	0	0	0	0

**Definitions:**

**Issued** – license was given by the Department

**Denied License Applications** – a new request for a license was rejected by the Department

**Denied License Renewals** – a party with an existing license was turned down for a renewal of that license

**Revoked** – person with an existing license had that license taken away by the Department

**Penalties Against** – an existing license holder had a license suspended or had a fine levied against them

## **Agency Explanation and Discussion**

The following responses were offered by the Department of Insurance. Their focus is on producer licenses which comprises the overwhelming bulk of license issued by the department.

### **Provide an explanation for why you believe or do not believe that the occupational regulations overseen by your board have been effective:**

The business of insurance is a highly regulated industry. The existing statutory and regulatory requirements, as well as coordination with other states through the National Association of Insurance Commissioners (NAIC), has allowed the Department to effectively monitor the industry and remove bad actors. Insurance licensees are in a position of trust and have access to sensitive personal health and financial information about Nebraska consumers. 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 producers. While most insurance producers 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.

Generally speaking, insurance producers are first licensed in their home state and then apply for non-resident licenses in other state in which they do business. Due to telephonic call centers and especially the internet, it is common for producers to be licensed in several states at the same time. Due to this situation, all 50 states and five US territories are members of the NAIC. Membership in the NAIC allows for sharing of agent licensing records among the various state members. Such sharing allows the states to keep each other informed when an agent has violated a law or had an insurance license revoked in another state. This multi-state mechanism allows Nebraska to protect its citizens against rogue or dishonest producers.

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 insurance industry and remove bad actors. As noted above, insurance producers have access to sensitive personal health and 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.

Further, removal of this licensure would have an impact on nationwide uniformity. Producers must comply with various state laws and regulations governing their activities. There are

currently more than 2 million individuals and more than 236,000 business entities licensed to provide insurance services in the United States. State insurance departments oversee producer activities as part of a comprehensive regulatory framework designed to protect insurance consumer interests in insurance transactions.

Traditionally, each state had its own licensing requirements. A producer licensed in one state generally had to meet the separate nonresident licensing requirements in other states in order to sell, solicit or negotiate insurance in such other states. As licensing requirements varied from state to state, producers had to submit the same (or similar) information each time but in different formats or different information, depending on each state's requirements. This imposed significant time and monetary costs on producers, their affiliated agencies and each state insurance department.

A provision in the federal Gramm-Leach-Bliley Act of 1999 (GLBA) sought to streamline producer licensing by requiring the states to enact certain reforms to the insurance producer-licensing process. The provision was designed to create a new organization called the National Association of Registered Agents and Brokers (NARAB) if greater state producer-licensing uniformity or reciprocity was not achieved (the federal statute required at least 29 jurisdictions to achieve either reciprocity or uniformity in nonresident producer licensing by November 2002). The GLBA enactment sparked a nationwide movement to implement sweeping reforms to simplify and bring more efficiency to the producer-licensing process.

After many discussions, state insurance regulators opted to pursue reciprocity among the states for nonresident agent licensing first, followed by actions to improve uniformity in the producer licensing process. The states, through the National Association of Insurance Commissioners (NAIC), adopted the NAIC Producer Licensing Model Act (#218) in February 2000 to help states comply with GLBA's reciprocity provisions. Nebraska has adopted a version of this model. Subsequently, the NAIC membership determined 35 jurisdictions had met the nonresident producer licensing reciprocity requirements under GLBA and, as a result, the GLBA version of NARAB was not created. Removal of Nebraska's licensing requirements would have an impact on the nationwide reciprocity effort.

**Provide a comparison of whether and how other states regulate the occupation:**

See above. All other states and US territories have a similar producer licensing structure as Nebraska.

Committee staff would add that all but three of these acts which give rise to a license requirement from the Department of Insurance are based on model acts developed by the National Association of Insurance Commissioners (NAIC). The model acts from the NAIC are adopted by most all of the states.

## **Conclusion**

The licenses and registrations from the Department of Insurance are intended by the Legislature to provide for regulatory oversight to protect the financial interests of Nebraska consumers. Most of the licenses are issued to insurance producers who handle the insurance needs of the public. Navigators and motor club representatives also help provide insurance to the public. Burial pre-need services involve placing money of service purchasers in trust and are subject to examination by the Department of Insurance. As a whole, regulation is appropriate and balanced and does not need modification at this time.