

URBAN AFFAIRS COMMITTEE

NEBRASKA LEGISLATURE

LR 438: An interim study to review the occupational regulations
for fire alarm inspectors

Report as required pursuant to the Occupational Board Reform
Act (OBRA)

One Hundred Eighth Legislature
Second Session

Committee Members

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Introduction

In 2018, the Legislature passed the Occupational Board Reform Act (OBRA),¹ which became operative on July 1, 2019. OBRA's primary objective is to establish a well-organized system for the continuous assessment and examination of occupational regulations in Nebraska. The responsibility was assigned to the 14 standing committees of the Legislature.

Under OBRA, an occupational regulation is defined as a statute, rule, regulation, practice, policy or other state law requiring an individual to possess certain personal qualifications or to comply with registration requirements to use an occupational title or work in a lawful occupation.

As started in 2019 and continuing today, each standing committee is required to conduct an annual review and evaluation of approximately 20 percent of the occupational regulations that fall within their respective areas of jurisdiction. Following this assessment, the committees are then to prepare and submit an annual report to the Clerk of the Legislature by December 15. The report should include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

¹ Nebraska Revised Statute §84-933 to §84-948

In 2019, following an initial review of occupational regulations, the Executive Board of the Legislature identified three occupational regulations that fell under the jurisdiction of the Urban Affairs Committee.² With the passage of LB 423, an additional occupational regulation was implemented under the committee's purview.³

In 2024, the committee chose to review the regulations governing Fire Alarm Inspectors. LR 438, an interim study to review the occupation regulations for fire inspectors, was introduced facilitate this review.

The Executive Board of the Legislature created an electronic survey to help each committee accomplish the task of reviewing each occupational licensing agency. Survey responses for each agency are published on the Legislature's website.

The Nebraska State Fire Marshal is the agency that oversees the regulation of Fire Alarm Inspectors. The survey response from the Fire Marshal can be found at:

https://nebraskalegislature.gov/reports/committeesurvey_view.php#Urban%20Affair

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² Fire Alarm Inspector, Master Plumber, and Radon Specialist & Technician

³ Home Inspectors

Background & Legislative History

Nebraska has required certification of Fire Alarm Inspectors by the State Fire Marshal since 1977.⁴ The legislative history of the requirement's origins is somewhat unclear, as the statutory section that created the requirement⁵ was added as a floor amendment to an omnibus criminal code bill. The floor amendment does not appear to contain the contents of any legislative bill introduced in the 1977 legislative session, nor does there appear to be any record of a committee hearing on the contents of the floor amendment.

Since its adoption in 1977, the statutory language requiring certification of Fire Alarm Inspectors has only been amended twice: 1) in 1982,⁶ the fee charged by the Fire Marshal for certification examinations was increased from twenty-five dollars to one hundred dollars; and 2) in 1993,⁷ references to limited liability companies were added to the list of entities that were required to seek certification from the Fire Marshal.

Under Nebraska Revised Statute §28-1251, it is unlawful for any person, association, partnership, limited liability company, or corporation to conduct fire alarm tests and fire alarm inspections without prior written certification by the State Fire Marshal as to the qualification of the individuals conducting such tests and inspections. The Fire

⁴ LB 38 (1977)

⁵ Nebraska Revised Statute §28-1251

⁶ LB 928 (1982)

⁷ LB 121 (1993)

Marshall has the authority to formulate reasonable guidelines to determine qualifications for fire alarm inspectors and is required to administer an examination pursuant to such guidelines prior to certification of applicants. The Fire Marshall may charge a fee of one-hundred dollars to cover the costs of administering such examinations.

While state statute refers to the occupational regulation of Fire Alarm Inspectors as certification,⁸ the process currently utilized for such regulation more closely resembles an occupational license^{9,10}. The Nebraska State Fire Marshal agency, which is a code agency, is solely responsible for the certification and licensing of Fire Alarm Inspectors, and there is not a separate occupational board responsible for the enforcement of these occupational regulations.

⁸ Nebraska Revised Statute §84-935 defines a “government certification” as a nontransferable recognition granted to an individual by an occupational board through a voluntary program in which the individual meets personal qualifications established by the Legislature.

⁹ Nebraska Revised Statute §84-939 defines an “occupational license” as a nontransferable authorization in law (1) for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications established by the Legislature and (2) which is required in order to legally perform the lawful occupation for compensation.

¹⁰ In fact, the State Fire Marshal agency refers to the certification as a license.

Committee Findings

Pursuant to Nebraska Revised Statute §84-948, each report issued by a standing committee of the Legislature must contain the following information (*responses in italics*):

- 1) The title of the regulated occupation and the name of the occupational board responsible for the enforcement of the occupational regulations;

Title of Regulated Occupation: Fire Alarm Inspectors

Name of Occupational Board: There is no separate occupational board for the regulation of Fire Alarm Inspectors. The Nebraska State Fire Marshal agency is responsible for the certification and licensing of Fire Alarm Inspectors.

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

Nebraska Revised Statute §28-1251

- 3) The number of members of the occupational board and how the members are appointed;

Not applicable

- 4) The qualifications for membership on the occupational board;

Not applicable

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

Not applicable

- 6) Annual budget information for the occupational board for the five most recently completed fiscal years;

The State Fire Marshal agency employs one shared support staff to oversee the certification and licensing of Fire Alarm Inspectors. The annual budget for the certification and licensing program, which is funded using General Funds through LB 814 (2023), is as follows:

Fiscal Year 2023-2022 Budget: \$2,110

Fiscal Year 2022-2021 Budget: \$2,010

Fiscal Year 2021-2020 Budget: \$1,913

Fiscal Year 2020-2019 Budget: \$1,822

Fiscal Year 2019-2018 Budget: \$1,735

- 7) 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;

Since 2015, there have been a total of 530 Fire Alarm Inspector licenses issued by the State Fire Marshal agency.¹¹ Each license is valid for a four-year period, and the licenses issued each year are a combination of renewals and new licenses.

No Fire Alarm Inspector licenses have been revoked, denied, or assessed penalties against by the State Fire Marshal agency since 2015.

- 8) A review of the basic assumptions underlying the creation of the occupational regulations;

Fire alarms help save lives and are an important component of public safety. The importance of making sure those systems are functioning correctly is vital to the general public. These systems can be very complex and specialized training and expertise is needed to ensure the proper working functions are maintained. Having the individuals who inspect these systems licensed in Nebraska ensures that they are up to date on items and conditions specific in Nebraska.

¹¹ OCCUPATIONAL BOARD REFORM ACT REPORTS- URBAN AFFAIRS NEBRASKA LEGISLATURE, https://nebraskalegislature.gov/reports/committeesurvey_view.php#Urban%20Affairs (last visited Jul 18, 2024).

- 9) A statement from the occupational board on the effectiveness of the occupational regulations; and

The public has come to rely on the safety provided by these Fire Alarm systems, and they must be maintained correctly. The licensing in Nebraska helps to ensure that systems installed and then inspected here are going to meet the unique topography and weather conditions for our state, as well as just maintaining the correct functionality. Many of these systems work collaboratively with fire suppression systems and maintaining accurate interplay is vital for life safety.

The certification requirement for Fire Alarm System Inspectors has been very effective because it ensures that persons performing the inspections are qualified to understand and utilized the code requirements for the systems. The Agency has adopted a new set of code standards and the continued testing program ensures that inspectors are up to date on the requirements. The Agency has created new test questions and continue to update with more questions. We have also started accepting a second nationally recognized licensing system (CFAT) to go along with the previous program, a NICET certification. These updates have allowed the maximum flexibility to companies to meet their hiring needs, but still maintain the needed level of safety.

- 10) A comparison of whether and how other states regulate the occupation.

The National Fire Prevention Association (NFPA) 72, National Fire Alarm and Signaling Code Handbook provides the requirements that must be met for Fire Alarm systems and includes inspection requirements. This is the adopted standard in many jurisdictions and is referenced in other codes, such as the International Fire Code. NFPA 101 details the facilities that are required to have a sprinkler system and then NFPA 72 governs the systems.

There is no national standard for how States license Fire Alarm Inspectors, and not all States have a licensing requirement. Some states only require a registration showing qualifications and certifications from other entities. For those State that have licensing requirements there are a variety of models for how the license will be issued and the interplay between State/Local entities for the various code types and provisions. Listed below is information regarding how the licensing/registration works in the surrounding states.

Iowa

- <https://dial.iowa.gov/i-need/licenses/alarms-fire>

Kansas

- <https://firemarshal.ks.gov/185/Licensing>
- <https://firemarshal.ks.gov/DocumentCenter/View/421/Sprinkler-Alarm-Registration-Form-PDF>
- <https://www.firemarshal.ks.gov/DocumentCenter/View/397/Fire-Fact-060---Fire-Alarm-PDF>

South Dakota

- <https://dps.sd.gov/emergency-services/state-fire-marshal/fire-laws>

Colorado

- <https://www.sos.state.co.us/CCR/DisplayRule.do?action=ruleinfo&ruleId=2792&deptID=17&agencyID=43&deptName=Department%20of%20Public%20Safety&agencyName=Division%20of%20Fire%20Prevention%20and%20Control&seriesNum=8%20CCR%201507-11>
- <https://dfpc.colorado.gov/FLS>
- <https://dfpc.colorado.gov/FLScerts-and-regs>

Missouri

- <https://dfs.dps.mo.gov/programs/inspections/fire-safety.php>

In addition, each report issued by a standing committee of the Legislature must analyze whether the occupational regulations meet the policy goals established under OBRA and consider the following recommended courses of action for meeting such policy goals (*responses in italics*):

- 1) 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;

Not applicable

- 2) 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;

Periodic inspection of fire alarm systems is required under NFPA Pamphlet #64 and referenced in the Nebraska State Fire Code. Certification and licensing of Fire

Alarm Inspectors is designed to ensure the qualifications of the individuals conducting such periodic inspections.

- 3) 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;

Not applicable

- 4) 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;

Not applicable

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

Not applicable

- 6) 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.

Not applicable

Conclusion & Recommendations

Among the policy goals established under OBRA¹² is the goal to use the least restrictive regulation which is necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest. In the case of Fire Alarm Inspectors, the occupational regulations are designed to ensure that fire alarm systems are properly inspected and functioning correctly in order to save lives. A fire alarm system malfunction could result in a significant loss of life in the event of a fire emergency.

Fire alarm systems can be quite complex, and having licensed, certified inspectors ensures that these complex systems are maintained correctly. According to the State Fire Marshal agency, the public has come to rely on the safety provided by these systems.

The Urban Affairs Committee finds that the current occupational regulations for Fire Alarm Inspectors appear to be consistent with the policy goals established under OBRA, and recommends that the certification and licensing of Fire Alarm Inspectors by the State Fire Marshal agency be continued with no modifications.

¹² Nebraska Revised Statute §84-946