Business and Labor Committee

Nebraska Legislature

LR 357

Interim Study to review Occupational Regulations for Locksmiths

Report as required by Neb. Rev. Stat. § 84-948

One Hundred Sixth Legislature Second Session

Committee Members

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Senator Ben Hansen, Vice Chair, District 16
Senator Ernie Chambers, District 11
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Occupational Board Reform Act

The Legislature passed the Occupational Board Reform Act in 2018 (Neb. Rev. Stat. §§ 84-901 to 84-920). The act requires that:

"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." (Neb. Rev. Stat. § 84-948)

There were five such occupational regulations identified under the jurisdiction of the Business and Labor Committee.¹ Therefore, the committee selects one occupational licensing regulation to review each year in the five year period. For 2020, the committee selected to review locksmith licenses and introduced LR 357 to conduct the study.

Locksmiths are required to register with the county clerk in the county where the locksmith's business is located (Neb. Rev. Stat. § 28-1402). The Nebraska Association of County Officials (NACO) sent out a survey to the county clerks to gather data for this report. The survey results are attached as an appendix to this report.

¹ (1) Employment Agent; (2) Boiler/Pressure Vessel Inspector; (3) Locksmith; (4) Professional Employer Organization; and (5) Contractor/Sub-Contractor

Committee Findings

Neb. Rev. Stat. § 84-948 requires the report to include the following with answers in bold:

- (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;

Locksmiths; No occupational board as they are instead licensed by the county clerk in which they are doing business.

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

Locksmith registration is required by Neb. Rev. Stat. §§ 28-1402 and 28-1403

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

No board exists.

(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;

N/A

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

N/A

(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;

Each county issues licenses independently. Many counties have not issued any locksmith licenses in the past five years, although several have indicated that they have issued one to four licenses, with a couple counties indicated they issued five to ten, and one county indicated that they issued more than 15 in the last five years. No counties have reported revoking any locksmith licenses, and it is not clear if the statute gives them the power to do so.

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

It is a Class III misdemeanor to sell or possess locksmith equipment unless a person is a locksmith or falls into another exemption. See Neb. Rev. Stat. § 28-1316. It is likely that this is to protect the public from potential theft.

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

N/A

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

Currently fifteen states license locksmiths: Alabama, California, Connecticut, Illinois, Louisiana, Maryland, Nebraska, New Jersey, Nevada, North Carolina, Oklahoma, Oregon, Tennessee, Texas, and Virginia.² Different states have different requirements for licensure.

(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 <u>84-946</u> considering the following recommended courses of action for meeting such policies:

The regulations appear to be consistent with Neb. Rev. Stat. § 84-946

(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;

N/A

² http://aloa.org/legislation/aloa-legislation.html

(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;

N/A

(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;

N/A

(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;

N/A

(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;

This is very similar to the current requirements except that the locksmiths register with the county clerk rather than the Secretary of State. This may be something worth changing in order to provide a central registry as opposed to the county-by-county approach.

(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

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 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.

N/A

(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 <u>71-6222</u>.

N/A

(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

(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 <u>84-946</u>.

Conclusion

Currently in order to be a registered locksmith in Nebraska an individual or business must pay a fee of five dollars and fill out a form with: (1) the name and social security number of the applicant, (2) the name of the applicant's business, (3) the address of such place of business, (4) whether the applicant has been convicted of violating the laws of any state, other than minor traffic violations, and (5) the name and address of three individuals who have knowledge of the applicant's character, experience, and ability. (Neb. Rev. Stat. § 28-1403).

Some counties also perform a background check on applicants in coordination with their county Sheriff's office, although this is not required by statute.

The current requirements are minimal and appear to be consistent with the policy goals of the statute. This report does not make any specific recommendations on changing the licensing for locksmiths but included below are some potential policy suggestions to update and clarify the statute from the experiences of the county clerks. They are provided for your independent consideration.

Some suggestions on improving the law from the county clerks from the NACO survey are:

- Changing the licensure to the county Sheriff's office, or a state agency such as the Secretary of State.
- Increasing the fee or allowing the county to charge for the cost of a background check if one is done.
- Clarifying the ability to enforce or deny a permit.
- A renewal requirement so the county can know if the individual is still a locksmith and still practicing within the county.
- What kind of certificate could be clarified. For example, a certificate that hangs on the wall or a pocket card that locksmiths can show to their customers as a security measure. Some current state licensures require the holder to have a pocket card or to display a certificate at their place of business.

Appendix

Survey Results from NACO

Please feel free to share your thoughts about the process or experiences you have had.	County hasn't issued locksmith permits											I really have no opinion on this matter. Confused as to why	it is handled through the county cierk's office to begin with.	we have had the same one for year same area of this	transaction.	I have no opinion on repealing the statutes.	If I had to have an opinion I would say if it is working why	change it.	I have never understood why County Clerk's issue Locksmith	licenses, why not the Sheriff so criminal background checks	can be done.			Locksmith fee is only \$5.00. I agree to have increasing fees to	cover the cost of a background check.	
7. Do you see any harm in repealing locksmith licensing statutes?				No	No	No		No	No		No				No						No	No		:	No.	9
If yes, what do you do?		Ask sheriff or State	Patrol to conduct	background check		Other										Ask sheriff or State	Patrol to conduct	background check					Ask sheriff or State	Patrol to conduct	background check	
6. Locksmith license applications must include the name and address of three individuals who have knowledge of the applicant's character, experience, and ability. Some counties use this information to perform background checks on locksmith license applicants; others do not. Do you perform any kind of examination of a locksmith applicant's				0 Yes			No	O No			0 No				ON CO			Yes			0 No				Yes	0 No
5. Have any penalties been assessed against locksmiths in your county in the last five years?	0			0	don't know	0	don't know	0	0	0	0				o			0 don't know							don't know	
4. How many locksmith licenses have been denied in your county in the last five years?	0			0	don't know	0	don't know	0	0	0	0				C						0				1-4	0
3. How many locksmith licenses have been revoked in your county in the past five years?	0			0	don't know	0	don't know		0	0	0				c			0			0				don't know	0
2. How many locksmit h licenses has your county issued in the past five years?	0	Ì		0		0	1-4	0		0					Ç			1-4			1-4	0		more	than 15	1-4
1. How many licensed locksmiths are in your county?	don't know			0	5-10	0	don't know	1		0					-	-		14			1-4				more than 15	1-4

								For question #7, the current law may provide some
		*						protection for the public with the issuance of the
								certificates. First, we did background checks for several
								years and declined to issue a certificate on several occasions.
								One of the applicants had their legal counsel involved, and
						ж-		we were advised by our county attorney that we had no
								authority to decline to issue a locksmith certificate. It seems
								to me that it the locksmith licenses are to remain in statute,
								some changes should be made to allow for the denial of a
								certificate. Second, with the current law, there is no
								requirement to track the licenses once issued. It seems that
								it would be sensible to have a renewal component to insure
								that once issued, the county has a means to know if a
								certificate holder is still conducting business. Additionally, if
								there is a background check required with a change in the
								law, then by having a renewal component, we can determine
								if there are any potential issues that might arise after
								renewal that would result in non-renewal. Generally County
							_	Clerk's are not in a position to enforce or deny license and
								permits that we are responsible for as long as certain criteria
		-						are met. The denial of a locksmith license after background
								check, if required by statute, needs to clarify the Clerk's
	more	•	1					ability to deny a license based upon certain criteria that
more than 15	than 15	0	0	0	ON O		No	might occur with the background check.
								We have not had any applicants for locksmith licenses since I
C		Č		•				have been clerk (2007) and I do not know of any licensed
		5 (5	0			No	locksmiths in our county.
		0	0	ات	No	Other		I have never had anyone apply.
1-4	0 0	0	0) No		No	
2	5	O	0	٥	No			
0	0	0	0	0	No		No	
0	0	0	0	0	No		No	
								I've worked in the County Clerk's Office since 1985 and we
1-4	1-4	0	0	0	No		S S	have only issued 2 locksmith licenses during that time
0	0	0	0	0	No			
don't know	0	0	0	0			No	
								Two are life long born and raised individuals. The third
								license was a transfer in from another county and I had a
							3	copy of the license from the previous NE county. I have the
,		C					rd	ability to use Justice Public to do a criminal search of NE
4-1	7	5	5	0	No			records.

		Our county has never issued or recalled any of these permits.	There should probably be more to the process than the	County Clerk issuing the permit for \$5.00. We have no	County Clerk issuing the permit for \$5.00. We have no record of who is deceased or if their license should be revoked.	County Clerk issuing the permit for \$5.00. We have no record of who is deceased or if their license should be revoked. I did find a file in the office with a license filed in 1991 and 2009. I could not find that either of these businesses are still	/ Clerk issuing the permit for >>.uv. we nave no of who is deceased or if their license should be sd. 3d. find a file in the office with a license filed in 1991 and I could not find that either of these businesses are still iness in our county.	County Clerk issuing the permit for \$5.00. We have no record of who is deceased or if their license should be revoked. I did find a file in the office with a license filed in 1991 and 2009. I could not find that either of these businesses are still in business in our county. I answered Yes on #7. I didn't really know what way to go on that question. Our County Sheriff does not do background checks and they send them to the Federal Processing Center Pennsylvania. I have only issued one license with a recent	County Clerk issuing the permit for \$5.00. We have no record of who is deceased or if their license should be revoked. I did find a file in the office with a license filed in 1991 and 2009. I could not find that either of these businesses are still in business in our county. I answered Yes on #7. I didn't really know what way to go on that question. Our County Sheriff does not do background checks and they send them to the Federal Processing Center Pennsylvania. I have only issued one license with a recent inquiry for another. I am becoming more apprehensive about issuing because there are so many things that can be wrong if we don't have a background check. There is a local investigative company that can do background checks for	County Clerk issuing the permit for \$5.00. We have no record of who is deceased or if their license should be revoked. I did find a file in the office with a license filed in 1991 and 2009. I could not find that either of these businesses are still in business in our county. I answered Yes on #7. I didn't really know what way to go on that question. Our County Sheriff does not do background checks and they send them to the Federal Processing Center Pennsylvania. I have only issued one license with a recent inquiry for another. I am becoming more apprehensive about issuing because there are so many things that can be wrong if we don't have a background check. There is a local investigative company that can do background checks for \$85 to \$140 per person. Is there a state agency that can issue the certificates instead of County Clerks? The state	County Clerk issuing the permit for \$5.00. 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	1-4			n 15 1-4		_	W	3	3	3										
				more than 15			don't know	No.	NO PORTION OF THE POR	Q CIO	know	kn V	khow high	know	kng	don't know 1-4 5-10 1-4 don't know 0 0		kng	kuổ	Jan't know 1.4 5-10 6 on't know 0 5-10 5-10

	5	0	0	0	O No		No	
	0	0	0	0	O NO		No	To date we have no Locksmiths in our county
	0	0	0	0	0	-	No	
						Ask sheriff or State		
1-4	14		0	0	0 Yes		<u>8</u>	
								I've been Clerk for 28 years and have not issued a locksmith
J	0	0	0	0	0 No			license.
1-4	1-4		0	0	O No		No	
	0	0	0	0	O No	4	No	
		0	0	0	ON O	<i>></i>	Yes	We feel it should be regulated through law enforcement.
								I've worked in the office for 20 years and have never had an
	5 0	5 0	0 0	0 0	0 Yes	Other	No	application.
ı		0	0		ON O			
don't know		0	0					
J	0	0	0		O NO	V	No	
								We have had absolutely NO training regarding locksmith
								permits There really should be be something for us, maybe
								provided by the State Patrol. I know there are people that
								open locked cars for people but no permit in my office. How
,	•		-					can we get the word out? Is there a penalty if they are not
1-4		0	0	0	0 Yes	Other	No.	registered?
								To my knowledge, our office has never issued a locksmith
								license. The only locksmiths in the county are within the city.
								Since we haven't issued a license and the city doesn't,
1-4		O don't know	don't know	don't know	No	2	No	maybe they aren't licensed?
				·				
								The background check I have done by the Sheriff's Office is
								no way complete. The character references are worthless.
						•		They are not going to put anyone on there that will say bad
					The testing	-		things about them. Some businesses use only one license for
****								everyone employed there, others have each individual
								locksmith apply. We have so few of these. We had five
								between 2011 and 2014 and then only one since then. I
				-1-2		Ask sheriff or State		think these should be done at the state level so a complete
						Patrol to conduct		background check is performed and have penalties for
1-4	1-4		0	0	0 Yes	background check	No	locksmiths that do not comply with registration.
						Ask sheriff or State		
0		0	0	- 1	0 Yes	background check N	No	
1-4	1-4	don't know		0 don't know	No	2	No	

don't know	-		•				I have never issued any (i ve been serving in iny elected bosition since 2015)
't know		Tr. 4-12			Ask sheriff or State		I have never found any files on any ever being issued in our
't know					Patrol to conduct		county.
	0	0	0	Yes	background check	No	
	5	0	0	No		No	
							I don't think the statute needs to be repealed, but rather
							enhanced. For instance, I think the licenses should be only
	,=+=··		-				good for a number of years, require background checks at
							renewal, require references, make them be approved by the
							Board of Comm, raise the fees to pay for these additional
							requirements. After all, they are making keys into homes,
1-4		0	0	No		No	businesses, etc. where there are thousands of dollars at risk.
					Ask sheriff or State		
			***		Patrol to conduct	-1112-1	
1-4	0	0	0 0	Yes	background check		
0	0	0	0 0				
don't know	0 don't know	don't know	don't know			No	
		:				,	We have only had one application and we had the County
-							Attorney perform the background check. The individual paid
1-4		0	0	Yes	Other	No	for the background check which was \$19.00.
don't know	0	0	0				