

Amendment No. 405

Senate Amendment to Senate Bill No. 328	(BDR 56-519)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date		SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



SENATE BILL NO. 328—SENATORS TITUS AND NGUYEN

MARCH 20, 2023

Referred to Committee on Commerce and Labor

SUMMARY—~~[Revises]~~ **Eliminating** the ~~[procedures by which]~~ **exemption of** the Cannabis Compliance Board ~~[is required to adopt, amend or repeal regulations.]~~ **from the provisions of the Nevada Administrative Procedure Act.** (BDR 56-519)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to cannabis; eliminating the exemption of the Cannabis Compliance Board from the provisions of the Nevada Administrative Procedure Act ~~[with respect to the adoption, amendment or repeal of regulations.]~~ **revising procedures governing disciplinary proceedings conducted by the Board;** and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law sets forth the Nevada Administrative Procedure Act, which establishes the procedures for state agencies to adopt, amend or repeal administrative regulations and adjudicate contested cases. (Chapter 233B of NRS) Existing law exempts the Cannabis Compliance Board from the provisions of the Act. (NRS 233B.039) Existing law instead sets forth specific procedures for the Board to **:(1) adopt, amend or repeal regulations ~~[]~~; and (2) take disciplinary action against a person who holds a license or registration card issued by the Board.** (NRS ~~[678A.460 Sections 1 and 2]~~ **678A.460, 678A.500-678A.640**) **Section 5 of this bill ~~[repeal those procedures and eliminate]~~ eliminates** the exemption of the Board from the provisions of the Act ~~[with respect to the adoption, amendment or repeal of regulations.]~~ thereby requiring the Board to adopt, amend and repeal regulations **and adjudicate contested cases** in the same manner as other state agencies subject to the provisions of the Act. **Section ~~[]~~ retains the exemption of the Board from the provisions of the Act with respect to adjudication of contested cases.] 6 of this bill repeals the specific procedures for the Board to adopt, amend or repeal regulations set forth under existing law. Sections 1-3 of this bill revise the procedures for the Board to take disciplinary action to conform with the procedures for the adjudication of contested cases set forth in the Act.**

Existing law sets forth procedures by which a person aggrieved by a final decision of the Board in a disciplinary proceeding may obtain judicial review of the decision. (NRS 678A.610-678A.640) Section 6 eliminates those procedures. Section 4 of this bill instead authorizes a person aggrieved by a final decision of the Board in a disciplinary proceeding to obtain judicial review of the decision in the manner provided in the Act.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 678A.510 is hereby amended to read as follows:

678A.510 1. If the Executive Director transmits the details of a suspected violation to the Attorney General pursuant to NRS 678A.500, the Attorney General shall conduct an investigation of the suspected violation to determine whether it warrants proceedings for disciplinary action of the licensee or registrant. If the Attorney General determines that further proceedings are warranted, he or she shall report the results of the investigation together with a recommendation to the Executive Director in a manner which does not violate the right of the person charged in the complaint to due process in any later hearing on the complaint. The Executive Director shall transmit the recommendation and other information received from the Attorney General to the Board.

2. The Board shall promptly make a determination with respect to each complaint resulting in an investigation by the Attorney General. The Board shall:

(a) Dismiss the complaint; or

(b) Proceed with appropriate disciplinary action in accordance with NRS 678A.520 to 678A.600, inclusive, chapter 233B of NRS and the regulations adopted by the Board.

Sec. 2. NRS 678A.540 is hereby amended to read as follows:

678A.540 1. At all hearings before the Board:

(a) Oral evidence may be taken only upon oath or affirmation administered by the Board.

(b) Every party has the right to:

(1) Call and examine witnesses;

(2) Introduce exhibits relevant to the issues of the case;

(3) Cross-examine opposing witnesses on any matters relevant to the issues of the case, even though the matter was not covered in a direct examination;

(4) Impeach any witness regardless of which party first called the witness to testify; and

(5) Offer rebuttal evidence.

(c) If the respondent does not testify in his or her own behalf, the respondent may be called and examined as if under cross-examination.

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses ~~it~~, except that those prescribed in NRS 233B.123 apply. Any relevant evidence that is not immaterial or unduly repetitious may be admitted and is sufficient in itself to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.

(e) The parties or their counsel may by written stipulation agree that certain specified evidence may be admitted even though such evidence might otherwise be subject to objection.

2. The Board may take official notice of any generally accepted information or technical or scientific matter within the field of cannabis, and of any other fact which may be judicially noticed by the courts of this State. The parties must be informed of any information, matters or facts so noticed, and must be given a reasonable opportunity, on request, to refute such information, matters or facts by evidence or by written or oral presentation of authorities, the manner of such refutation to be determined by the Board.

1 3. Affidavits may be received in evidence at any hearing of the Board in
2 accordance with the following:

3 (a) The party wishing to use an affidavit must, not less than 10 days before the
4 day set for hearing, serve upon the opposing party or counsel, either personally or
5 by registered or certified mail, a copy of the affidavit which the party proposes to
6 introduce in evidence together with a notice as provided in paragraph (c).

7 (b) Unless the opposing party, within 7 days after such service, mails or
8 delivers to the proponent a request to cross-examine the affiant, the opposing
9 party's right to cross-examine the affiant is waived and the affidavit, if introduced
10 in evidence, must be given the same effect as if the affiant had testified orally. If an
11 opportunity to cross-examine an affiant is not afforded after request therefor is
12 made in accordance with this paragraph, the affidavit may be introduced in
13 evidence, but must be given only the same effect as other hearsay evidence.

14 (c) The notice referred to in paragraph (a) must be substantially in the
15 following form:

16
17 The accompanying affidavit of (here insert name of affiant) will be
18 introduced as evidence at the hearing set for the day of the month of
19 of the year (Here insert name of affiant) will not be called to
20 testify orally and you will not be entitled to question (here insert name of
21 affiant) unless you notify the undersigned that you wish to cross-examine
22 (here insert name of affiant). To be effective your request must be mailed or
23 delivered to the undersigned on or before 7 days from the date this notice
24 and the enclosed affidavit are served upon you.

25
26
27 (Party or Counsel)
28

29 (Address)

30 **Sec. 3. NRS 678A.590 is hereby amended to read as follows:**

31 678A.590 1. Within 60 days after the hearing of a contested matter, the
32 Board shall render a written decision on the merits, ~~which~~ **Except as otherwise**
33 **provided in subsection 5 of NRS 233B.121, the written decision** must contain
34 findings of fact ~~and~~ **and conclusions of law which are separately stated,** a
35 determination of the issues presented and the penalty to be imposed, if any. The
36 Board shall thereafter make and enter its written order in conformity to its decision.
37 No member of the Board who did not hear the evidence may vote on the decision.
38 The affirmative votes of a majority of the whole Board are required to impose any
39 penalty. Copies of the decision and order must be served on the parties personally
40 or sent to them by registered or certified mail. The decision is effective upon such
41 service, unless the Board orders otherwise.

42 2. The Board may, upon motion made within ~~10~~ **15** days after service of a
43 decision and order, order a rehearing before the Board upon such terms and
44 conditions as it may deem just and proper if a petition for judicial review of the
45 decision and order has not been filed. The motion must not be granted except upon
46 a showing that there is additional evidence which is material and necessary and
47 reasonably calculated to change the decision of the Board, and that sufficient reason
48 existed for failure to present the evidence at the hearing of the Board. The motion
49 must be supported by an affidavit of the moving party or his or her counsel showing
50 with particularity the materiality and necessity of the additional evidence and the
51 reason why it was not introduced at the hearing. Upon rehearing, rebuttal evidence
52 to the additional evidence must be permitted. After rehearing, the Board may
53 modify its decision and order as the additional evidence may warrant.

1 **Sec. 4. NRS 678A.610 is hereby amended to read as follows:**

2 678A.610 ~~[(H)]~~ Any person aggrieved by a final decision or order of the
3 Board made after hearing or rehearing by the Board pursuant to NRS 678A.520 to
4 678A.600, inclusive, and whether or not a motion for rehearing was filed, ~~[may~~
5 ~~obtain a]~~ **is entitled to** judicial review ~~[thereof in the district court of the county in~~
6 ~~which the petitioner resides or has his, her or its principal place of business.~~

7 ~~2. The judicial review must be instituted by filing a petition within 20 days~~
8 ~~after the effective date of the final decision or order. A petition may not be filed~~
9 ~~while a motion for rehearing or a rehearing is pending before the Board. The~~
10 ~~petition must set forth the order or decision appealed from and the grounds or~~
11 ~~reasons why petitioner contends a reversal or modification should be ordered.~~

12 ~~3. Copies of the petition must be served upon the Board and all other parties~~
13 ~~of record, or their counsel of record, either personally or by certified mail.~~

14 ~~4. The court, upon a proper showing, may permit other interested persons to~~
15 ~~intervene as parties to the appeal or as friends of the court.~~

16 ~~5. The filing of the petition does not stay enforcement of the decision or order~~
17 ~~of the Board, but the Board itself may grant a stay upon such terms and conditions~~
18 ~~as it deems proper.]~~ **of the decision or order in the manner provided by chapter**
19 **233B of NRS.**

20 ~~[Section 1.]~~ **Sec. 5. NRS 233B.039 is hereby amended to read as follows:**

21 233B.039 1. The following agencies are entirely exempted from the
22 requirements of this chapter:

23 (a) The Governor.

24 (b) Except as otherwise provided in NRS 209.221 and 209.2473, the
25 Department of Corrections.

26 (c) The Nevada System of Higher Education.

27 (d) The Office of the Military.

28 (e) The Nevada Gaming Control Board.

29 (f) Except as otherwise provided in NRS 368A.140 and 463.765, the Nevada
30 Gaming Commission.

31 (g) Except as otherwise provided in NRS 425.620, the Division of Welfare and
32 Supportive Services of the Department of Health and Human Services.

33 (h) Except as otherwise provided in NRS 422.390, the Division of Health Care
34 Financing and Policy of the Department of Health and Human Services.

35 (i) Except as otherwise provided in NRS 533.365, the Office of the State
36 Engineer.

37 (j) The Division of Industrial Relations of the Department of Business and
38 Industry acting to enforce the provisions of NRS 618.375.

39 (k) The Administrator of the Division of Industrial Relations of the Department
40 of Business and Industry in establishing and adjusting the schedule of fees and
41 charges for accident benefits pursuant to subsection 2 of NRS 616C.260.

42 (l) The Board to Review Claims in adopting resolutions to carry out its duties
43 pursuant to NRS 445C.310.

44 (m) The Silver State Health Insurance Exchange.

45 ~~[(n) The Cannabis Compliance Board.]~~

46 2. Except as otherwise provided in subsection 5 and NRS 391.323, the
47 Department of Education, the Board of the Public Employees' Benefits Program
48 and the Commission on Professional Standards in Education are subject to the
49 provisions of this chapter for the purpose of adopting regulations but not with
50 respect to any contested case.

51 3. The special provisions of:

52 (a) Chapter 612 of NRS for the adoption of an emergency regulation or the
53 distribution of regulations by and the judicial review of decisions of the

1 Employment Security Division of the Department of Employment, Training and
2 Rehabilitation;

3 (b) Chapters 616A to 617, inclusive, of NRS for the determination of contested
4 claims;

5 (c) Chapter 91 of NRS for the judicial review of decisions of the Administrator
6 of the Securities Division of the Office of the Secretary of State; and

7 (d) NRS 90.800 for the use of summary orders in contested cases,

8 ➔ prevail over the general provisions of this chapter.

9 4. The provisions of NRS 233B.122, 233B.124, 233B.125 and 233B.126 do
10 not apply to the Department of Health and Human Services in the adjudication of
11 contested cases involving the issuance of letters of approval for health facilities and
12 agencies.

13 5. The provisions of this chapter do not apply to:

14 (a) Any order for immediate action, including, but not limited to, quarantine
15 and the treatment or cleansing of infected or infested animals, objects or premises,
16 made under the authority of the State Board of Agriculture, the State Board of
17 Health, or any other agency of this State in the discharge of a responsibility for the
18 preservation of human or animal health or for insect or pest control;

19 (b) An extraordinary regulation of the State Board of Pharmacy adopted
20 pursuant to NRS 453.2184;

21 (c) A regulation adopted by the State Board of Education pursuant to NRS
22 388.255 or 394.1694;

23 (d) The judicial review of decisions of the Public Utilities Commission of
24 Nevada;

25 (e) The adoption, amendment or repeal of policies by the Rehabilitation
26 Division of the Department of Employment, Training and Rehabilitation pursuant
27 to NRS 426.561 or 615.178;

28 (f) The adoption or amendment of a rule or regulation to be included in the
29 State Plan for Services for Victims of Crime by the Department of Health and
30 Human Services pursuant to NRS 217.130;

31 (g) The adoption, amendment or repeal of rules governing the conduct of
32 contests and exhibitions of unarmed combat by the Nevada Athletic Commission
33 pursuant to NRS 467.075;

34 (h) The adoption, amendment or repeal of regulations by the Director of the
35 Department of Health and Human Services pursuant to NRS 447.335 to 447.350,
36 inclusive;

37 (i) The adoption, amendment or repeal of standards of content and performance
38 for courses of study in public schools by the Council to Establish Academic
39 Standards for Public Schools and the State Board of Education pursuant to NRS
40 389.520;

41 (j) The adoption, amendment or repeal of the statewide plan to allocate money
42 from the Fund for a Resilient Nevada created by NRS 433.732 established by the
43 Department of Health and Human Services pursuant to paragraph (b) of subsection
44 1 of NRS 433.734; or

45 (k) The adoption or amendment of a data request by the Commissioner of
46 Insurance pursuant to NRS 687B.404.

47 6. The State Board of Parole Commissioners ~~is [and the Cannabis~~
48 ~~Compliance Board are]~~ subject to the provisions of this chapter for the purpose of
49 adopting regulations but not with respect to any contested case.

50 ~~[Sec. 2.] Sec. 6.~~ NRS 678A.460 ~~[is]~~, 678A.560, 678A.620, 678A.630 and
51 678A.640 are hereby repealed.

52 ~~[Sec. 3.] Sec. 7.~~ This act becomes effective upon passage and approval.

~~[TEXT]~~ **LEADLINES** OF REPEALED ~~[SECTION]~~ **SECTIONS**

678A.460 Regulations: Procedure for adoption, amendment and repeal.

~~1. The Board shall adopt, amend and repeal regulations in accordance with the following procedures:~~

~~(a) At least 30 days before a meeting of the Board at which the adoption, amendment or repeal of a regulation is considered, notice of the proposed action must be:~~

~~(1) Posted on the Internet website of the Board;~~

~~(2) Mailed to every person who has filed a request therefor with the Board;~~

~~and~~

~~(3) When the Board deems advisable, mailed to any person whom the Board believes would be interested in the proposed action, and published in such additional form and manner as the Board prescribes.~~

~~(b) The notice of proposed adoption, amendment or repeal must include:~~

~~(1) A statement of the time, place and nature of the proceedings for adoption, amendment or repeal;~~

~~(2) Reference to the authority under which the action is proposed; and~~

~~(3) Either the express terms or an informative summary of the proposed action.~~

~~(c) On the date and at the time and place designated in the notice, the Board shall afford any interested person or his or her authorized representative, or both, the opportunity to present statements, arguments or contentions in writing, with or without opportunity to present them orally. The Board shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.~~

~~(d) Any interested person may file a petition with the Board requesting the adoption, amendment or repeal of a regulation. The petition must state, clearly and concisely:~~

~~(1) The substance or nature of the regulation, amendment or repeal requested;~~

~~(2) The reasons for the request; and~~

~~(3) Reference to the authority of the Board to take the action requested.~~

~~Upon receipt of the petition, the Board shall within 45 days deny the request in writing or schedule the matter for action pursuant to this subsection.~~

~~2. In emergencies, the Board may summarily adopt, amend or repeal any regulation if:~~

~~(a) The Board submits to the Governor:~~

~~(1) A written finding that such action is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare; and~~

~~(2) A written statement of the facts constituting an emergency;~~

~~(b) The Governor endorses the written finding and written statement described in paragraph (a) by written endorsement at the end of the full text of the written statement and written finding; and~~

~~(c) The Board files the written statement and written finding endorsed by the Governor at the same time it adopts, amends or repeals the regulation.~~

~~3. In any hearing held pursuant to this section, the Board or its authorized representative may administer oaths or affirmations, and may continue or postpone the hearing from time to time and at such places as it prescribes.~~

~~4. The Board shall file a copy of any regulation adopted, amended or repealed by the Board with the Legislative Counsel as soon as practicable after adoption, amendment or repeal. The adoption, amendment or repeal of a regulation by the Board becomes effective upon filing with the Secretary of State. The Board shall not file a regulation with the Secretary of State until 15 days after the date on which the regulation was adopted, amended or repealed by the Board.~~

~~5. Upon the request of a Legislator, the Legislative Commission may examine a regulation adopted, amended or repealed by the Board that is not yet effective pursuant to subsection 4 to determine whether the regulation conforms to the statutory authority pursuant to which it was adopted and whether the regulation carries out the intent of the Legislature in granting that authority.~~

~~6. Except as otherwise provided in subsection 7, the Legislative Commission shall:~~

~~(a) Review the regulation at its next regularly scheduled meeting if the request for examination of the regulation is received more than 10 working days before the meeting; or~~

~~(b) Refer the regulation for review to the Subcommittee to Review Regulations appointed pursuant to subsection 6 of NRS 233B.067.~~

~~7. If the Board determines that an emergency exists which requires a regulation of the Board for which a Legislator requested an examination pursuant to subsection 5 to become effective before the next meeting of the Legislative Commission is scheduled to be held, the Board may notify the Legislative Counsel in writing of the emergency. Upon receipt of such a notice, the Legislative Counsel shall refer the regulation for review by the Subcommittee to Review Regulations as soon as practicable.~~

~~8. If the Legislative Commission, or the Subcommittee to Review Regulations if the regulation was referred to the Subcommittee, approves the regulation, the Legislative Counsel shall notify the Board that the Board may file the regulation with the Secretary of State. If the Commission or the Subcommittee objects to the regulation after determining that:~~

~~(a) The regulation does not conform to statutory authority; or~~

~~(b) The regulation does not carry out legislative intent,~~

~~the Legislative Counsel shall attach to the regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the regulation to the Board.~~

~~9. If the Legislative Commission or the Subcommittee to Review Regulations has objected to a regulation, the Board shall revise the regulation to conform to the statutory authority pursuant to which it was adopted and to carry out the intent of the Legislature in granting that authority and return it to the Legislative Counsel within 60 days after the Board received the written notice of the objection to the regulation pursuant to subsection 8. Upon receipt of the revised regulation, the Legislative Counsel shall resubmit the regulation to the Legislative Commission or the Subcommittee for review. If the Legislative Commission or the Subcommittee approves the revised regulation, the Legislative Counsel shall notify the Board that the Board may file the revised regulation with the Secretary of State.~~

~~10. If the Legislative Commission or the Subcommittee to Review Regulations objects to the revised regulation, the Legislative Counsel shall attach to the revised regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the revised regulation to the Board. The Board shall continue to revise the regulation and resubmit it to the Legislative Commission or the Subcommittee within 30 days after the Board receives a written notice of the objection to the revised regulation.]~~

678A.560 Hearings: Limitations on communications.

678A.620 Judicial review: Record on review.

678A.630 Judicial review: Additional evidence taken by Board; review confined to record; court may affirm, remand or reverse.

678A.640 Judicial review: Appeal to appellate court; exclusive method of review for disciplinary hearings; certain actions not subject to judicial review.