

SENATE BILL NO. 328—SENATORS TITUS AND NGUYEN

MARCH 20, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Eliminating the exemption of the Cannabis Compliance Board 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; revising procedures governing disciplinary proceedings conducted by the Board; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law sets forth the Nevada Administrative Procedure Act, which  
2 establishes the procedures for state agencies to adopt, amend or repeal  
3 administrative regulations and adjudicate contested cases. (Chapter 233B of NRS)  
4 Existing law exempts the Cannabis Compliance Board from the provisions of the  
5 Act. (NRS 233B.039) Existing law instead sets forth specific procedures for the  
6 Board to: (1) adopt, amend or repeal regulations; and (2) take disciplinary action  
7 against a person who holds a license or registration card issued by the Board. (NRS  
8 678A.460, 678A.500-678A.640) **Section 5** of this bill eliminates the exemption of  
9 the Board from the provisions of the Act, thereby requiring the Board to adopt,  
10 amend and repeal regulations and adjudicate contested cases in the same manner as  
11 other state agencies subject to the provisions of the Act. **Section 6** of this bill  
12 repeals the specific procedures for the Board to adopt, amend or repeal regulations  
13 set forth under existing law. **Sections 1-3** of this bill revise the procedures for the  
14 Board to take disciplinary action to conform with the procedures for the  
15 adjudication of contested cases set forth in the Act.

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



20 Board in a disciplinary proceeding to obtain judicial review of the decision in the  
21 manner provided in the Act.

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

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

3     678A.510 1. If the Executive Director transmits the details of  
4 a suspected violation to the Attorney General pursuant to NRS  
5 678A.500, the Attorney General shall conduct an investigation of  
6 the suspected violation to determine whether it warrants proceedings  
7 for disciplinary action of the licensee or registrant. If the Attorney  
8 General determines that further proceedings are warranted, he or she  
9 shall report the results of the investigation together with a  
10 recommendation to the Executive Director in a manner which does  
11 not violate the right of the person charged in the complaint to due  
12 process in any later hearing on the complaint. The Executive  
13 Director shall transmit the recommendation and other information  
14 received from the Attorney General to the Board.

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

18     (a) Dismiss the complaint; or

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

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

23     678A.540 1. At all hearings before the Board:

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

26     (b) Every party has the right to:

27         (1) Call and examine witnesses;


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

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

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

34         (5) Offer rebuttal evidence.

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

38     (d) The hearing need not be conducted according to technical  
39 rules relating to evidence and witnesses  , *except that those*



1 *prescribed in NRS 233B.123 apply.* Any relevant evidence *that is*  
2 *not immaterial or unduly repetitious* may be admitted and is  
3 sufficient in itself to support a finding if it is the sort of evidence on  
4 which responsible persons are accustomed to rely in the conduct of  
5 serious affairs, regardless of the existence of any common law or  
6 statutory rule which might make improper the admission of such  
7 evidence over objection in a civil action.

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

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

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

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

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

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

38  
39 The accompanying affidavit of (here insert name of  
40 affiant) will be introduced as evidence at the hearing set for  
41 the ..... day of the month of ..... of the year ..... (Here  
42 insert name of affiant) will not be called to testify orally and  
43 you will not be entitled to question (here insert name of  
44 affiant) unless you notify the undersigned that you wish to  
45 cross-examine (here insert name of affiant). To be effective



1 your request must be mailed or delivered to the undersigned  
2 on or before 7 days from the date this notice and the enclosed  
3 affidavit are served upon you.  
4

5 .....  
6 (Party or Counsel)  
7 .....

8 (Address)

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

10 678A.590 1. Within 60 days after the hearing of a contested  
11 matter, the Board shall render a written decision on the merits .  
12 ~~[which]~~ *Except as otherwise provided in subsection 5 of NRS*  
13 *233B.121, the written decision* must contain findings of fact ~~[ ]~~ *and*  
14 *conclusions of law which are separately stated,* a determination of  
15 the issues presented and the penalty to be imposed, if any. The  
16 Board shall thereafter make and enter its written order in conformity  
17 to its decision. No member of the Board who did not hear the  
18 evidence may vote on the decision. The affirmative votes of a  
19 majority of the whole Board are required to impose any penalty.  
20 Copies of the decision and order must be served on the parties  
21 personally or sent to them by registered or certified mail. The  
22 decision is effective upon such service, unless the Board orders  
23 otherwise.

24 2. The Board may, upon motion made within ~~[10]~~ *15* days after  
25 service of a decision and order, order a rehearing before the Board  
26 upon such terms and conditions as it may deem just and proper if a  
27 petition for judicial review of the decision and order has not been  
28 filed. The motion must not be granted except upon a showing that  
29 there is additional evidence which is material and necessary and  
30 reasonably calculated to change the decision of the Board, and that  
31 sufficient reason existed for failure to present the evidence at the  
32 hearing of the Board. The motion must be supported by an affidavit  
33 of the moving party or his or her counsel showing with particularity  
34 the materiality and necessity of the additional evidence and the  
35 reason why it was not introduced at the hearing. Upon rehearing,  
36 rebuttal evidence to the additional evidence must be permitted. After  
37 rehearing, the Board may modify its decision and order as the  
38 additional evidence may warrant.

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

40 678A.610 ~~[ ]~~ Any person aggrieved by a final decision or  
41 order of the Board made after hearing or rehearing by the Board  
42 pursuant to NRS 678A.520 to 678A.600, inclusive, and whether or  
43 not a motion for rehearing was filed, ~~[may obtain a]~~ *is entitled to*  
44 judicial review ~~[thereof in the district court of the county in which~~



1 ~~the petitioner resides or has his, her or its principal place of~~  
2 ~~business.~~

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

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

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

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

19 **Sec. 5.** NRS 233B.039 is hereby amended to read as follows:

20 233B.039 1. The following agencies are entirely exempted  
21 from the requirements of this chapter:

22 (a) The Governor.

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

25 (c) The Nevada System of Higher Education.

26 (d) The Office of the Military.

27 (e) The Nevada Gaming Control Board.

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

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

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

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

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

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



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

3 (m) The Silver State Health Insurance Exchange.

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

5 2. Except as otherwise provided in subsection 5 and NRS  
6 391.323, the Department of Education, the Board of the Public  
7 Employees' Benefits Program and the Commission on Professional  
8 Standards in Education are subject to the provisions of this chapter  
9 for the purpose of adopting regulations but not with respect to any  
10 contested case.

11 3. The special provisions of:

12 (a) Chapter 612 of NRS for the adoption of an emergency  
13 regulation or the distribution of regulations by and the judicial  
14 review of decisions of the Employment Security Division of the  
15 Department of Employment, Training and Rehabilitation;

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

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

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

23 ↪ prevail over the general provisions of this chapter.

24 4. The provisions of NRS 233B.122, 233B.124, 233B.125 and  
25 233B.126 do not apply to the Department of Health and Human  
26 Services in the adjudication of contested cases involving the  
27 issuance of letters of approval for health facilities and agencies.

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

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

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

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

39 (d) The judicial review of decisions of the Public Utilities  
40 Commission of Nevada;

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

44 (f) The adoption or amendment of a rule or regulation to be  
45 included in the State Plan for Services for Victims of Crime by the



1 Department of Health and Human Services pursuant to  
2 NRS 217.130;

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

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

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

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

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

20 6. The State Board of Parole Commissioners is subject to the  
21 provisions of this chapter for the purpose of adopting regulations but  
22 not with respect to any contested case.

23 **Sec. 6.** NRS 678A.460, 678A.560, 678A.620, 678A.630 and  
24 678A.640 are hereby repealed.

25 **Sec. 7.** This act becomes effective upon passage and approval.

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### LEADLINES OF REPEALED SECTIONS

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

**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.**

