

Changes to Cannabis Laws in Nevada's 82nd Legislative Session

BY LAYKE MARTIN, ESQ.



The Nevada Legislature created the Cannabis Compliance Board (CCB) in 2019 with the passage of Assembly Bill 533, and the CCB began regulating the cannabis industry on July 1, 2020. Many of the bills in the 82nd Legislative Session addressed the relationship between the CCB and the cannabis industry, encouraging cooperation and communication, cutting red tape, and lowering fines and fees for licensees.

Senate Bill 195

Sponsored by Senator Rochelle Nguyen and spearheaded by the Nevada Cannabis Association, the goals of SB 195 were to incentivize and reward compliance, increase transparency and consistency in the disciplinary process for licensees, and reduce fines and fees.

Key Changes

- **The elimination of time and effort billing.** As of June 13, 2023, the CCB may not bill a licensee for time and effort related to oversight of a cannabis establishment, including for inspections and audits.
- **Reducing the maximum fine per violation.** Maximum fines were reduced from \$90,000 to \$20,000.
- **Requiring the CCB to consider mitigating circumstances.** In approving a settlement or assessing a penalty, the CCB must consider mitigating

circumstances, including whether the licensee or agent card holder self-reported the violation.¹ Another mitigating circumstance is whether the licensee has submitted a Plan of Correction (POC) that has been approved, and the licensee has taken action to correct the violation. If the CCB does not take any action on a POC within 30 days, it is deemed approved.

- **No stacking of charges in disciplinary complaints.** If a licensee is alleged to have committed multiple violations consisting of the same or a similar act, omission or course of conduct, the CCB will charge those as a single violation if they are closely related in time, place, and circumstance, and were all discovered in the course of a single audit, inspection, or investigation.
- **Reasonable billing for Transfer of Interest (TOI), and similar “application-driven” investigations.** There is a narrow carve out to the ban on time and effort billing for application-

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driven investigations by the Investigations Division. The Investigations Division may bill for an investigation conducted in connection with a TOI, an initial application for a license, a request for approval of a management services agreement, or a request for a waiver pursuant to statute or regulations.

The board must provide a budget for the cost of the investigation prior to beginning, and then must provide an itemized list of the costs incurred. The applicant may appeal the bill if the total charges exceeded the budget by 25 percent or more. Failure to pay the bill (outside of a pending appeal) could be grounds for disciplinary action but is not grounds for the board to refuse to issue or renew a license to deny a TOI or other request.

Senate Bill 328

The CCB was modeled after the Gaming Control Board (GCB) in many ways, including exempting the CCB from Nevada Revised Statute (NRS) Chapter 233B, the Administrative Procedure Act (APA). The CCB’s procedure varied slightly from

the GCB’s in that the Legislative Commission could only review a regulation if it was pulled by a legislator within a designated time frame. The scope of that review was narrow and limited to whether the CCB exceeded its statutory authority in passing the regulation. Senate Bill 328, co-sponsored by Nguyen and Senator Robin Titus, removed the CCB’s exemption from the APA. The bill also revised the preamble to NRS Chapter 678A and made some changes to CCB governance.

Removing the CCB’s Exemption from the APA

SB 328 repealed the existing statutory procedure for CCB rulemaking as set forth in NRS 678A.460. The new procedure under the APA is set forth in NRS Chapter 233B. Some notable differences between the CCB’s previous rulemaking process and the procedure under NRS 233B include:

- **There are three types of regulations: permanent, temporary, and emergency.** Permanent regulations must follow the detailed procedure set forth in 233B. Temporary regulations are proposed between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year and will expire by November 1 of the odd-numbered year or are regulations that are effective for 120 days or less and are not emergency regulations. Emergency regulations may be adopted by the governor’s signature without holding public hearings and are effective for no more than 120 days.²
- **The impact on small businesses must be considered.** Before conducting a workshop for a proposed regulation, an agency shall make a concerted effort to determine whether the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation, or expansion of a small business.³
- **The Legislative Commission must approve all permanent regulations.** The Legislative Commission is a body of 12 legislators, six from the Senate and six from the Assembly, which meets several times a year. If the Legislative Commission objects to a regulation, the Legislative Counsel can revise and resubmit the regulation. The Legislative Commission may review a temporary regulation if requested by a legislator.⁴

Adjudicating Contested Cases

Because the CCB was exempt from the APA when the agency was created, it operated under a set of statutes related to disciplinary proceedings that diverged from NRS 233B. The bill aligned the existing procedures with 233B where there is no conflict and repealed or amended statutes in direct conflict. There is still likely to be some confusion in practice as the dust settles around these changes; for example, where a provision in NRS 678A has not been explicitly repealed yet is either in conflict with or narrows a party’s rights further than the rights set forth in NRS 233B.

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Other Changes to CCB Governance

- **Commitment to considering social equity in licensing.** The bill revised language in NRS 678A.005 to include a commitment to considering social equity in cannabis licensing.
- **Changes to the Preamble.** The bill revised NRS 678A.005 to recognize the significance of the industry to the state's economy and included language to acknowledge the threat posed by cannabis products from illegal sources. The revisions emphasized that a well-regulated cannabis industry provides significant tax revenue to the state and runs contrary to criminal and corruptive elements. Further, the revised preamble states that regulation of the industry should be strict *but fair*.
- **Change to the board and appointments.** The bill revised factors for the governor to consider when appointing certain board members to include experience in agriculture, manufacturing, distribution, retail, law enforcement in illegal cannabis activities, and laboratory testing. SB 328 removed the cooling off period for the industry-related position on the board. The bill also staggered board member terms, allowed for a change in the chair position after two years, added a vice chair position, and required board members to receive general training similar to a cannabis establishment agent.
- **CCB Executive Director appointment.** The bill provided that the executive director of the CCB is appointed and removed by the governor, instead of by the board.
- **Unlicensed activities.** SB 328 directed the board to adopt regulations providing for the enforcement, investigation, and discipline of unlicensed cannabis activities and referral to the appropriate state or local law enforcement agency for the criminal prosecution of such activities.

Senate Bill 277

Senate Bill 277, sponsored by Senator Dallas Harris, was an omnibus bill touching on everything from increasing the daily purchase limit to allowing cannabis facilities to have more than one entrance.

Key Points

- **Increasing the daily purchase limit.** The bill increased the daily purchase limit from one to 2.5 ounces of cannabis and from 1/8 to 1/4 ounce of concentrated cannabis, beginning on January 1, 2024. The packaging limits did not change, so the maximum package limits remain as set forth in NRS 678D.420.
- **Merger of medical and adult-use licenses.** The change consolidated medical and adult-use cannabis activities under the adult-use cannabis establishment license by deeming all adult-use cannabis establishment licensees to be dual licensees.
- **Reduction in initial issuance and renewal fees.** The bill reduced fees for initial applications and license renewals by as much as 90 percent.
- **Ownership of less than 5 percent.** The bill removed the requirement that owners of less than 5 percent obtain an agent card.
- **Removing “seeds” and “root balls” from the definition of marijuana.** The removal of seeds from the definition of marijuana was intended to address the conflict between seeds falling under the definition of both hemp and marijuana. However, in August, the CCB issued guidance stating that seeds are still defined in NRS 678C.100 as usable cannabis and therefore must be tracked “seed-to-sale.”⁵ Root balls were removed from the definition of marijuana, therefore the CCB will no longer require root balls to be disposed of in the same manner as cannabis waste pursuant to NCCR 10.080.
- **Allowing for additional secure entrances at cannabis facilities.** Cannabis establishments may have more than one entrance so long as each entrance is secure. This rule does not supersede any state or local requirements relating to the number of points of entry or exit.

- **Individuals with excluded felony offenses may petition for agent cards.** The board will create a process in regulation for a person who has been convicted of an excluded felony offense to petition the board for an agent card.
- **Cannabis Advisory Commission (CAC) to study the impact of descheduling or rescheduling.** The bill directed the CAC to study the potential effects of the removal of cannabis from Schedule 1 of the federal Controlled Substances Act or the state Uniform Controlled Substances Act on Nevada's cannabis industry.

Reflecting a desire to support the businesses in the legal cannabis industry and ensure that regulation is both strict and fair, SB 195 and SB 328 passed with bipartisan support. SB 195 passed unanimously in both houses and SB 328 passed with only one “no” vote. SB 277 passed by a narrower margin more closely along party lines.

ENDNOTES:

1. Agent cards are required by every employee and owner who works in the industry and require an application and background check.
2. Attorney General of Nevada, Administrative Rulemaking Manual, p. 5-6 (2023) <https://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/Administrative%20Rulemaking%20Manual%202023.pdf>
3. NRS 233B.0608
4. NRS 233B.067, 233B.0675, 233B.0633
5. Cannabis Compliance Board, Cannabis: Definition & Acquired Acquisition Guidance (August 11, 2023) <https://ccb.nv.gov/wp-content/uploads/2023/08/081123-Cannabis-Definition-Acquisition-Guidance-Final.pdf>



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