

SENATE BILL NO. 323—SENATOR DENIS

MARCH 18, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing the disciplinary process for certain regulatory bodies which administer occupational licensing. (BDR 54-905)

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 regulatory bodies; authorizing persons who are subject to disciplinary proceedings by certain regulatory bodies to elect to have a hearing conducted by a hearing officer of the Hearings Division of the Department of Administration; revising provisions governing the costs which may be recovered by certain regulatory bodies from persons who violate laws or regulations enforced by such regulatory bodies; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires certain regulatory bodies to conduct disciplinary hearings for persons charged with violations of existing law and regulations enforced by such regulatory bodies or to appoint hearing panels or officers to conduct such hearings. (NRS 622A.300-622A.410) **Section 1** of this bill authorizes a person who is subject to a disciplinary proceeding to elect to have his or her hearing conducted by a hearing officer of the Hearings Division of the Department of Administration by requesting such a hearing officer not later than 20 days after he or she is served with the charging document. **Section 1** establishes the procedure for the selection of the hearing officer and requires the hearing officer to conduct the hearing and issue written findings of fact and conclusions of law. If the hearing officer finds that a person committed an act which constitutes grounds for disciplinary action, the regulatory body is required to issue a final order incorporating the findings of fact and conclusions of law of the hearing officer and imposing a disciplinary action selected by the regulatory body. If the hearing officer finds that there are no grounds for disciplinary action, the regulatory body is required to issue a final order incorporating the findings of fact and conclusions of law of the hearing officer and dismissing the case. Finally, under **section 1**, a person who elects to have his or her case heard by a hearing officer of the Hearings Division and who is found to have



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committed an act which constitutes grounds for disciplinary action is required to pay all costs incurred by the Hearings Division as part of that case. **Section 3** of this bill makes conforming changes.

Existing law provides for the regulation of certain occupations and professions in this State. (Title 54 of NRS) The various state agencies, boards and commissions that are authorized to license and regulate particular occupations or professions are generally referred to as "regulatory bodies." (NRS 622.060) Under existing law, if a person violates a provision of existing law or regulations that a regulatory body has the authority to enforce, the regulatory body is authorized to recover reasonable attorney's fees and costs that are incurred by the regulatory body as part of its investigative, administrative and disciplinary proceedings. **Section 2** of this bill eliminates the authority of a regulatory body to recover the costs of an investigation from a person who violates a provision of existing law or regulations that the regulatory body has the authority to enforce unless a specific statute authorizes the recovery of such costs. **Sections 4-8** of this bill make conforming changes to eliminate specific authority for certain regulatory bodies to recover the costs of an investigation.

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

Section 1. Chapter 622 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A licensee who has been served with a charging document may request that his or her hearing be conducted by a hearing officer selected pursuant to subsection 2. Such a request must be in writing and must be filed with the regulatory body not later than 20 days after the date of service of the charging document pursuant to NRS 622A.300.

2. Not later than 10 days after receipt of a request pursuant to subsection 1, the regulatory body shall request from the Hearings Division a list of potential hearing officers. The licensee requesting a hearing officer pursuant to subsection 1 and the regulatory body shall select a person to serve as hearing officer from the list provided by the Hearings Division by alternately striking one name until the name of only one hearing officer remains. The prosecutor shall strike the first name.

3. Upon the selection of a person to serve as hearing officer pursuant to subsection 2, the prosecutor shall provide to the hearing officer a copy of the charging document and a copy of any information or documents that the prosecutor intends to present in support of the case and a list of proposed witnesses.

4. Except as otherwise provided in this section, the hearing officer shall conduct a hearing on the case in accordance with procedures established by this chapter and any other applicable statutory and regulatory provisions governing the case.



5. *Not later than 60 days after the close of the hearing on the case, the hearing officer shall issue a decision concerning whether the licensee committed an act constituting grounds for disciplinary action, which must include written findings of fact and conclusions of law, separately stated, and serve the decision on the parties. If the hearing officer determines that the licensee committed an act constituting grounds for disciplinary action, the regulatory body must determine the disciplinary action to be imposed against the licensee and prepare a final decision or order in the manner provided in NRS 233B.125 which incorporates the findings and conclusions of law of the hearing officer and the disciplinary action imposed by the regulatory body. If the hearing officer determines that the licensee did not commit any act constituting grounds for disciplinary action, the regulatory body must prepare a final decision in the manner provided in NRS 233B.125 which dismisses the case. The regulatory body may not modify or reject any part of the decision of the hearing officer.*

6. *In a final decision or order prepared by a regulatory body pursuant to subsection 5, the regulatory body shall require the licensee to pay all costs incurred by the Hearings Division as part of the disciplinary proceedings.*

7. *As used in this section:*

(a) *"Hearings Division" means the Hearings Division of the Department of Administration.*

(b) *"Licensee" has the meaning ascribed to it in NRS 622A.050.*

Sec. 2. NRS 622.400 is hereby amended to read as follows:

622.400 1. ~~[A]~~ *Except as otherwise provided in this section, a regulatory body may recover from a person reasonable attorney's fees and costs that are incurred by the regulatory body as part of its ~~[investigative, administrative and]~~ disciplinary proceedings against the person if the regulatory body:*

(a) *Enters a final order in which it finds that the person has violated any provision of this title which the regulatory body has the authority to enforce, any regulation adopted pursuant thereto or any order of the regulatory body; or*

(b) *Enters into a consent or settlement agreement in which the regulatory body finds or the person admits or does not contest that the person has violated any provision of this title which the regulatory body has the authority to enforce, any regulation adopted pursuant thereto or any order of the regulatory body.*

2. *Except as otherwise provided by a specific statute, a regulatory body may not recover from a person who was subject to an investigative, administrative or disciplinary proceeding of the regulatory body any costs of an investigation of the person.*



3. As used in this section, "costs" means:

(a) ~~Costs of an investigation.~~

~~(b)~~ Costs for photocopies, facsimiles, long distance telephone calls and postage and delivery ~~;~~

~~(c)~~ *incurred as part of any deposition or hearing.*

(b) Fees for court reporters at any depositions or hearings.

~~(d)~~ (c) Fees for expert witnesses and other witnesses at any depositions or hearings.

~~(e)~~ (d) Fees for necessary interpreters at any depositions or hearings.

~~(f)~~ (e) Fees for service and delivery of process and subpoenas.

~~(g)~~ (f) Expenses for research ~~;~~ *to prepare for any deposition or hearing*, including, without limitation, reasonable and necessary expenses for computerized services for legal research.

Sec. 3. NRS 622A.300 is hereby amended to read as follows:

622A.300 1. To initiate the prosecution of a contested case, the prosecutor shall file a charging document with the regulatory body and serve the licensee with the charging document.

2. ~~The~~ *Except as otherwise provided in section 1 of this act, the* regulatory body shall determine whether the case will be heard by the regulatory body or a hearing panel or officer.

3. The regulatory body or hearing panel or officer shall provide the licensee with written notice of the case pursuant to NRS 233B.121 and 241.034.

4. If the case is heard by a hearing panel or officer, the hearing panel or officer shall follow the procedures established by this chapter and any other applicable statutory and regulatory provisions governing the case. ~~The~~ *Except as otherwise provided in section 1 of this act, the* hearing panel or officer shall prepare written findings and recommendations and serve the findings and recommendations on the parties and the regulatory body for its review.

5. ~~The~~ *Except as otherwise provided in section 1 of this act, the* findings and recommendations of the hearing panel or officer do not become final unless they are approved by the regulatory body after review. ~~It~~ *Except as otherwise provided in section 1 of this act, in* reviewing the findings and recommendations of the hearing panel or officer, the regulatory body may:

(a) Approve the findings and recommendations, with or without modification;

(b) Reject the findings and recommendations and remand the case to the hearing panel or officer;

(c) Reject the findings and recommendations and order a hearing de novo before the regulatory body; or

(d) Take any other action that the regulatory body deems appropriate to resolve the case.



6. If the case is heard by the regulatory body, the regulatory body shall follow the procedures established by this chapter and any other applicable statutory and regulatory provisions governing the case.

~~The~~ *Except as otherwise provided in this subsection, the regulatory body or the hearing panel or officer, with the approval of the regulatory body, may consolidate two or more cases if it appears that the cases involve common issues of law or fact and the interests of the parties will not be prejudiced by the consolidation. If two or more cases are heard by a hearing officer selected pursuant to section 1 of this act and it appears that the cases involve common issues of law or fact and the interests of the parties will not be prejudiced by consolidation, the hearing officer, without the approval of the regulatory body, may consolidate the cases.*

Sec. 4. NRS 623.270 is hereby amended to read as follows:

623.270 1. Except as otherwise provided in subsection 6 of NRS 701.220, the Board may place the holder of any certificate of registration issued pursuant to the provisions of this chapter on probation, publicly reprimand the holder of the certificate, impose a fine of not more than \$10,000 against him or her, suspend or revoke his or her license, impose the costs of ~~investigation and~~ prosecution upon him or her or take any combination of these disciplinary actions for any of the following acts:

(a) The certificate was obtained by fraud or concealment of a material fact.

(b) The holder of the certificate has been found guilty by the Board or found guilty or guilty but mentally ill by a court of justice of any fraud, deceit or concealment of a material fact in his or her professional practice, or has been convicted by a court of justice of a crime involving moral turpitude.

(c) The holder of the certificate has been found guilty by the Board of incompetency, negligence or gross negligence in:

(1) The practice of architecture or residential design; or

(2) His or her practice as a registered interior designer.

(d) The holder of a certificate has affixed his or her signature or seal to plans, drawings, specifications or other instruments of service which have not been prepared by the holder of the certificate or in his or her office, or under his or her responsible control, or has permitted the use of his or her name to assist any person who is not a registered architect, registered interior designer or residential designer to evade any provision of this chapter.

(e) The holder of a certificate has aided or abetted any unauthorized person to practice:

(1) Architecture or residential design; or

(2) As a registered interior designer.



(f) The holder of the certificate has violated any law, regulation or code of ethics pertaining to:

(1) The practice of architecture or residential design; or

(2) Practice as a registered interior designer.

(g) The holder of a certificate has failed to comply with an order issued by the Board or has failed to cooperate with an investigation conducted by the Board.

2. The conditions for probation imposed pursuant to the provisions of subsection 1 may include, but are not limited to:

(a) Restriction on the scope of professional practice.

(b) Peer review.

(c) Required education or counseling.

(d) Payment of restitution to each person who suffered harm or loss.

3. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

4. The Board shall not privately reprimand the holder of any certificate of registration issued pursuant to this chapter.

5. As used in this section:

(a) "Gross negligence" means conduct which demonstrates a reckless disregard of the consequences affecting the life or property of another person.

(b) "Incompetency" means conduct which, in:

(1) The practice of architecture or residential design; or

(2) Practice as a registered interior designer,

↳ demonstrates a significant lack of ability, knowledge or fitness to discharge a professional obligation.

(c) "Negligence" means a deviation from the normal standard of professional care exercised generally by other members in:

(1) The profession of architecture or residential design; or

(2) Practice as a registered interior designer.

Sec. 5. NRS 623A.270 is hereby amended to read as follows:

623A.270 1. The Board may:

(a) Suspend or revoke a certificate of registration or certificate to practice as a landscape architect intern;

(b) Refuse to renew a certificate of registration or certificate to practice as a landscape architect intern;

(c) Place a holder of a certificate of registration or certificate to practice as a landscape architect intern on probation;

(d) Issue a public reprimand to a holder of a certificate of registration or certificate to practice as a landscape architect intern;

(e) Impose upon a holder of a certificate of registration or certificate to practice as a landscape architect intern a fine of not more than \$5,000 for each violation of this chapter;



(f) Require a holder of a certificate of registration or certificate to practice as a landscape architect intern to pay restitution; or

(g) Take such other disciplinary action as the Board deems appropriate,

↳ if the holder of a certificate of registration or certificate to practice as a landscape architect intern has committed any act set forth in NRS 623A.280.

2. The conditions for probation imposed pursuant to the provisions of subsection 1 may include, without limitation:

(a) Restriction on the scope of professional practice;

(b) Peer review;

(c) Education or counseling;

(d) The payment of restitution to each person who suffered harm or loss; and

(e) The payment of all costs of ~~the administrative investigation and~~ prosecution.

3. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

4. The Board shall not issue a private reprimand to a holder of a certificate of registration or certificate to practice as a landscape architect intern.

5. The Board may adopt regulations setting forth a schedule of fines for the purposes of paragraph (e) of subsection 1.

Sec. 6. NRS 637.170 is hereby amended to read as follows:

637.170 ~~1.~~ Any licensee whose license was revoked by the Board may apply for reinstatement of the license pursuant to the provisions of chapter 622A of NRS.

~~2. In addition to the requirements for reinstatement of the license pursuant to chapter 622A of NRS, the Board may reinstate the license upon the applicant's payment of a fee set by the Board to cover the administrative costs of any investigation and hearing.~~

Sec. 7. NRS 640C.710 is hereby amended to read as follows:

640C.710 1. If, after notice and a hearing as required by law, the Board finds one or more grounds for taking disciplinary action, the Board may:

(a) Place the applicant or holder of the license on probation for a specified period or until further order of the Board;

(b) Administer to the applicant or holder of the license a public reprimand;

(c) Refuse to issue, renew, reinstate or restore the license;

(d) Suspend or revoke the license;

(e) Except as otherwise provided in NRS 640C.712, impose an administrative fine of not more than \$5,000 for each violation;

(f) Require the applicant or holder of the license to pay the costs incurred by the Board to conduct the ~~investigation and~~ hearing; or



(g) Impose any combination of actions set forth in paragraphs (a) to (f), inclusive.

2. The order of the Board may contain such other terms, provisions or conditions as the Board deems appropriate.

3. The order of the Board and the findings of fact and conclusions of law supporting that order are public records.

4. The Board shall not issue a private reprimand.

Sec. 8. NRS 640E.270 is hereby amended to read as follows:

640E.270 1. The Board may deny, refuse to renew, revoke or suspend any license applied for or issued pursuant to this chapter, or take such other disciplinary action against a licensee as authorized by regulations adopted by the Board, upon determining that the licensee:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license pursuant to this chapter.

(b) Is guilty of any offense:

(1) Involving moral turpitude; or

(2) Relating to the qualifications, functions or duties of a licensee.

(c) Uses any controlled substance, dangerous drug as defined in chapter 454 of NRS, or intoxicating liquor to an extent or in a manner which is dangerous or injurious to any other person or which impairs his or her ability to conduct the practice authorized by the license.

(d) Is guilty of unprofessional conduct, which includes, without limitation:

(1) Impersonating an applicant or acting as proxy for an applicant in any examination required pursuant to this chapter for the issuance of a license.

(2) Impersonating another licensed dietitian.

(3) Permitting or allowing another person to use his or her license to engage in the practice of dietetics.

(4) Repeated malpractice, which may be evidenced by claims of malpractice settled against the licensee.

(5) Physical, verbal or psychological abuse of a patient.

(6) Conviction for the use or unlawful possession of a controlled substance or dangerous drug as defined in chapter 454 of NRS.

(e) Has willfully or repeatedly violated any provision of this chapter.

(f) Is guilty of aiding or abetting any person in violating any provision of this chapter.

(g) Has been disciplined in another state in connection with the practice of dietetics or has committed an act in another state which would constitute a violation of this chapter.



1 (h) Has engaged in conduct likely to deceive, defraud or
2 endanger a patient or the general public.

3 (i) Has willfully failed to comply with a regulation, subpoena or
4 order of the Board.

5 2. In addition to any criminal or civil penalty that may be
6 imposed pursuant to this chapter, the Board may , *in a manner*
7 *consistent with NRS 622A.400*, assess against and collect from a
8 licensee all costs incurred by the Board in connection with any
9 disciplinary action taken against the licensee, including, without
10 limitation, costs for ~~investigators and~~ stenographers, attorney's
11 fees and other costs of the hearing.

12 3. For the purposes of this section, a plea or verdict of guilty or
13 guilty but mentally ill or a plea of nolo contendere constitutes a
14 conviction of an offense. The Board may take disciplinary action
15 pending the appeal of a conviction.

