

SENATE BILL NO. 419—COMMITTEE ON
HEALTH AND HUMAN SERVICES

MARCH 19, 2015

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to services for persons with disabilities. (BDR 38-978)

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 persons with disabilities; creating the Nevada ABLE Savings Program as a qualified ABLE program under the federal Achieving a Better Life Experience Act of 2014; authorizing the creation of a program within the Aging and Disability Services Division of the Department of Health and Human Services to provide services of independent living and assistive technology for persons with disabilities who need independent living services; revising the terms of members of the Nevada Commission on Services for Persons with Disabilities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Recently enacted federal law allows for the creation of tax-advantaged savings accounts for persons who have certain qualifying disabilities. Under the program, any person, including family members, may make a contribution to the account of a person with a qualified disability. Any interest or other growth in the value of the account and distributions taken from the account are tax free. The maximum amount that can be contributed tax free to the account of a qualified person is \$14,000 per year. Distributions from the account may only be used to pay expenses related to living a life with a disability and may include such things as education, housing, transportation and employment training and support. Money in the account or distributions from the account do not affect the eligibility of a person for certain public benefits such as Social Security disability payments, Supplemental Nutrition Assistance Program benefits and Medicaid. To qualify for these benefits, the savings account into which contributions are made on behalf of a qualified person must be established and maintained by the qualified person's state of residence. If a state chooses not to establish its own program, it may contract with another state that has adopted a qualified program. (Achieving a Better Life



* S B 4 1 9 R 2 *

Experience Act of 2014, 26 U.S.C. § 529A) **Sections 2-15** of this bill require the Aging and Disability Services Division of the Department of Health and Human Services, in cooperation with the State Treasurer, to establish the Nevada ABLE Savings Program as a qualified program pursuant to 26 U.S.C. § 529A.

Existing law creates the Aging and Disability Services Division within the Department of Health and Human Services and requires the Division to work with persons with disabilities, persons interested in matters relating to persons with disabilities and state and local governmental agencies to develop and improve policies of this State concerning programs and services for persons with disabilities. (NRS 427A.040) **Sections 18 and 19** of this bill authorize the Division to establish a program to provide services of independent living and assistive technology for a person with a disability who needs independent living services.

Existing law creates the Nevada Commission on Services for Persons with Disabilities, which consists of 11 members appointed by the Director of the Department of Health and Human Services. (NRS 427A.1211) **Sections 21 and 22** of this bill make revisions to the terms of the members of the Commission to ensure that the terms of the members of the Commission are staggered.

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

Section 1. Title 38 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 15, inclusive, of this act.

Sec. 2. *As used in sections 2 to 15, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Department” means the Department of Health and Human Services.*

Sec. 4. *“Division” means the Aging and Disability Services Division of the Department.*

Sec. 5. *“Nevada ABLE Savings Program” means the program established by the State Treasurer pursuant to section 8 of this act.*

Sec. 6. *“Qualified ABLE program” has the meaning ascribed to it in the Achieving a Better Life Experience Act of 2014, 26 U.S.C. § 529A, as amended.*

Sec. 7. *“Trust Fund” means the Nevada ABLE Savings Program Trust Fund created by section 11 of this act.*

Sec. 8. 1. *The State Treasurer may adopt regulations to establish and carry out the Nevada ABLE Savings Program to comply with the requirements of a qualified ABLE program pursuant to 26 U.S.C. § 529A, as amended.*

2. *The regulations must be consistent with the provisions of the Internal Revenue Code set forth in Title 26 of the United States Code, and any regulations adopted pursuant thereto, to*



1 ensure that the Nevada ABLE Savings Program meets all criteria
2 for federal tax-deferred or tax-exempt benefits, or both.

3 3. The regulations must provide for the use of savings trust
4 agreements and savings trust accounts to apply distributions
5 toward qualified disability expenses in accordance with 26 U.S.C.
6 § 529A, as amended.

7 4. The regulations may include any other provisions not
8 inconsistent with federal law that the State Treasurer determines
9 are necessary for the efficient and effective administration of the
10 Nevada ABLE Savings Program and the Trust Fund, including,
11 without limitation:

12 (a) Provisions for the charging and collection of
13 administrative fees and charges in connection with any
14 transaction relating to the Nevada ABLE Savings Program,
15 including, without limitation, fees or charges related to continued
16 participation in the Program;

17 (b) A requirement that any money deposited in accordance
18 with a savings trust agreement, and any increase in the value
19 thereof or qualified withdrawal taken therefrom, is not subject to
20 attachment, levy or execution by any creditor of a contributor,
21 account owner or designated beneficiary and may not be used as
22 security for a loan;

23 (c) A requirement that any money deposited in accordance
24 with a savings trust agreement, and any increase in the value
25 thereof or qualified withdrawal taken therefrom, must not be used
26 to calculate the personal assets of a designated beneficiary or
27 account owner to determine eligibility for any disability, medical
28 or other health benefits administered by this State; and

29 (d) A requirement that any money deposited in accordance
30 with a savings trust agreement, and any increase in the value
31 thereof or qualified withdrawal taken therefrom, must not be used
32 to calculate the personal assets of a designated beneficiary or
33 account owner to determine eligibility or need for any student loan
34 program, student grant program or any other student aid program
35 administered by this State, except as otherwise provided for in
36 federal law.

37 **Sec. 9. 1.** The State Treasurer may delegate any of its
38 administrative powers and duties specified in sections 2 to 15,
39 inclusive, of this act if the State Treasurer determines that such
40 delegation is necessary for the efficient and effective
41 administration of the Nevada ABLE Savings Program and the
42 Trust Fund.

43 2. In carrying out the provisions of sections 2 to 15, inclusive,
44 of this act, the State Treasurer may contract with one or more
45 other states to:



(a) Provide for the administration of all or part of the Nevada ABLE Savings Program by another state;

(b) Authorize the State Treasurer to administer all or part of a qualified ABLE program of another state; or

(c) Jointly administer the Nevada ABLE Savings Program with a qualified ABLE program of one or more other states.

Sec. 10. Savings trust accounts used and savings trust agreements entered into pursuant to sections 2 to 15, inclusive, of this act are not guaranteed by the full faith and credit of the State of Nevada.

Sec. 11. 1. The Nevada ABLE Savings Program Trust Fund is hereby created.

2. The Trust Fund is an instrumentality of this State, and its property and income are exempt from all taxation by this State and any political subdivision thereof.

3. The Trust Fund consists of:

(a) All money deposited in accordance with savings trust agreements;

(b) All earnings on the money in the Trust Fund;

(c) Any fees or charges charged to an account owner to cover expenses incurred in administering the Nevada ABLE Savings Program; and

(d) Any other money from any public or private source appropriated or made available to this State for the benefit of the Nevada ABLE Savings Program.

4. Money in the Trust Fund:

(a) Is not the property of this State, and this State has no claim to or interest in such money; and

(b) Must not be commingled with money of this State.

5. A savings trust agreement or any other contract entered into by or on behalf of the Trust Fund does not constitute a debt or obligation of this State, and no account owner is entitled to any money in the Trust Fund except for that money on deposit in or accrued to his or her account.

6. The money in the Trust Fund must be preserved, invested and expended solely pursuant to and for the purposes authorized by sections 2 to 15, inclusive, of this act and must not be loaned or otherwise transferred or used by this State for any other purpose.

Sec. 12. 1. The Trust Fund and any account established by the State Treasurer pursuant to this section must be administered by the State Treasurer.

2. In carrying out the provisions of sections 2 to 15, inclusive, of this act, the State Treasurer may use any administrative or investment agreements or arrangements used for the Nevada College Savings Program created pursuant to NRS 353B.300



1 to 353B.370, inclusive, without soliciting separate proposals for
2 assistance with the management of all or part of the Nevada
3 ABLE Savings Program.

4 3. The State Treasurer shall establish such accounts as he or
5 she determines necessary to carry out his or her duties pursuant to
6 sections 2 to 15, inclusive, of this act, including, without
7 limitation:

8 (a) A Program Account in the Trust Fund; and

9 (b) An Administrative Account and an Endowment Account in
10 the State General Fund.

11 4. The Program Account must be used for the receipt,
12 investment and disbursement of money pursuant to savings trust
13 agreements.

14 5. The Administrative Account must be used for the deposit
15 and disbursement of money to administer and market the Nevada
16 ABLE Savings Program.

17 6. The Endowment Account must be used for the deposit of
18 any money received by the Nevada ABLE Savings Program that is
19 not received pursuant to a savings trust agreement and, in the
20 determination of the State Treasurer, is not necessary for the use
21 of the Administrative Account. The money in the Endowment
22 Account may be expended for any purpose related to the Nevada
23 ABLE Savings Program or in any other manner which assists
24 residents of this State who are eligible individuals as defined in 26
25 U.S.C. § 529A, as amended.

26 **Sec. 13.** The State Treasurer may accept and expend on
27 behalf of the Trust Fund money provided by any entity for direct
28 expenses or marketing. Such money is not a part of the Trust
29 Fund.

30 **Sec. 14.** The State Treasurer may endorse insurance
31 coverage written exclusively to protect the Trust Fund, and
32 account owners and beneficiaries of the Trust Fund, which may
33 be issued in the form of a group life policy. The provisions of title
34 57 of NRS are not applicable to the State Treasurer in carrying
35 out the provisions of this section.

36 **Sec. 15. 1.** The State Treasurer shall establish a
37 comprehensive investment plan for the money in the Trust Fund.

38 2. Notwithstanding the provisions of any specific statute to
39 the contrary, the State Treasurer may invest or cause to be
40 invested any money in the Trust Fund, including, without
41 limitation, the money in the Program Account described in
42 paragraph (a) of subsection 3 of section 12 of this act, in any
43 manner reasonable and appropriate to achieve the objectives of
44 the Nevada ABLE Savings Program, exercising the discretion and
45 care of a prudent person in similar circumstances with similar



objectives. The State Treasurer shall consider the risk, expected rate of return, term or maturity, diversification of total investments, liquidity and anticipated investments in and withdrawals from the Trust Fund.

3. The State Treasurer may establish criteria and select investment managers, mutual funds or other such entities to act as investment managers for the Nevada ABLE Savings Program.

4. The State Treasurer may employ or contract with investment managers, evaluation services or other services as determined by the State Treasurer to be necessary for the effective and efficient operation of the Nevada ABLE Savings Program.

5. The Division and the State Treasurer may employ personnel and contract for goods and services necessary for the effective and efficient operation of the Nevada ABLE Savings Program.

6. The Division shall implement an outreach and educational program designed to create awareness of, and increase participation in, the Nevada ABLE Savings Program. Any marketing plan and materials for the Nevada ABLE Savings Program must be approved by the Division.

7. The State Treasurer may prescribe terms and conditions of savings trust agreements.

8. The Division or State Treasurer may contract with one or more qualified entities for:

(a) The day-to-day operation of the Nevada ABLE Savings Program, and any associated educational and outreach activities of the Program, as the program administrator for the management of the marketing of the Nevada ABLE Savings Program;

(b) The administration of the comprehensive investment plan established pursuant to subsection 1 and the Trust Fund;

(c) The selection of investment managers for the Nevada ABLE Savings Program; and

(d) The performance of similar activities.

Sec. 16. Chapter 427A of NRS is hereby amended by adding thereto the provisions set forth as sections 17 to 20, inclusive, of this act.

Sec. 17. As used in sections 17 to 20, inclusive, of this act, unless the context otherwise requires, “person with a disability who needs independent living services” means a person with a physical disability, as that term is defined in NRS 427A.791, including, without limitation, a person who is blind, as that term is defined in NRS 426.082, who is in need of independent living services and who does not have a vocational goal.

Sec. 18. 1. The Division may, pursuant to this section and section 19 of this act, establish a program to provide services of



independent living and assistive technology for persons with disabilities who need independent living services.

2. If the Division establishes a program pursuant to subsection 1, the Division shall adopt regulations:

(a) Establishing the procedures for a person to apply for services of independent living and assistive technology;

(b) Prescribing the criteria for determining the eligibility of such an applicant;

(c) Prescribing the nature of the services of independent living and assistive technology which may be provided and the conditions imposed on the provision of such services; and

(d) Setting forth such other provisions as the Division considers necessary to administer the program.

3. The decision of the Division regarding the eligibility of an applicant to participate in the program is a final decision for the purpose of judicial review.

Sec. 19. 1. The services of independent living that the Division may, pursuant to this section and section 18 of this act, provide to a person with a disability who needs independent living services may include, without limitation, assistance and training as to how to perform skills of daily living, including, without limitation:

(a) The preparation and eating of meals;

(b) Home management, including, without limitation, paying bills;

(c) Communication, including, without limitation, the use of services of assistive technology;

(d) Orientation and mobility; and

(e) Any other skills that will allow a person who has recently become disabled to function and live in a more independent manner.

2. The services of assistive technology that the Division may, pursuant to this section and section 18 of this act, provide to a person with a disability who needs independent living services may include, without limitation:

(a) Large-print signs and reading materials;

(b) Voice recognition or Braille technology installed on a computer or handheld device;

(c) Global positioning satellite technology with voice output;

(d) Mechanical lifts or similar mobility enhancing devices;

(e) Telecommunications devices specially designed for persons with impaired vision, speech or hearing; and

(f) Any other technology that provides significant assistance in performing daily tasks to a person with a disability who needs independent living services.



Sec. 20. *The Division may:*

1. Periodically research and determine the cost of providing services in this State for people who are blind or visually impaired and who do not have a vocational goal; and

2. Present a report of the findings of the research to the Nevada Commission on Services for Persons with Disabilities created by NRS 427A.1211.

Sec. 21. NRS 427A.1211 is hereby amended to read as follows:

427A.1211 1. The Nevada Commission on Services for Persons with Disabilities, consisting of 11 voting members and 2 or more nonvoting members, is hereby created within the Division.

2. The Director shall appoint as voting members of the Commission 11 persons who have experience with or an interest in and knowledge of the problems of and services for persons with disabilities. The majority of the voting members of the Commission must be persons with disabilities or the parents or family members of persons with disabilities.

3. The Director and the Administrator shall serve as nonvoting, ex officio members of the Commission and each may designate an alternate within his or her office to attend any meeting of the Commission in his or her place.

4. The Director may appoint as nonvoting members of the Commission such other representatives of State Government as the Director deems appropriate.

5. After the initial term of an appointed member, the term of an appointed member is 3 years. An appointed member may be reappointed for an additional term of 3 years. An appointed member may not serve more than two terms ***or 6 years, whichever is greater.*** A vacancy on the Commission must be filled in the same manner as the original appointment. An appointed member who serves for more than 1 year of a term to which another person was appointed may be appointed to serve only one additional full term as an appointed member. ***However, at the completion of the additional full-term, the member may be appointed to the remaining term of another member who has resigned or otherwise left the Commission before completing his or her term if the total combined service of the member being appointed, after serving the remaining term of the member who resigned or otherwise left the Commission, will not exceed 6 years.***

6. The Director may remove an appointed member of the Commission for malfeasance in office or neglect of duty. Absence from two consecutive meetings of the Commission constitutes good and sufficient cause for removal of an appointed member by the Director.



Sec. 22. 1. Notwithstanding any provision of subsection 5 of NRS 427A.1211, as amended by section 21 of this act, to the contrary, the existing terms of the voting members of the Nevada Commission on Services for Persons with Disabilities whose terms have not expired before July 1, 2015, must expire as follows:

(a) The terms of four voting members of the Commission must expire on June 30, 2016;

(b) The terms of four voting members of the Commission must expire on June 30, 2017; and

(c) The terms of three voting members of the Commission must expire on June 30, 2018.

2. The Director shall, at his or her sole discretion, determine the allocation of existing members of the Commission to the particular groupings established for the expiration of terms in subsection 1.

3. The terms of members of the Commission appointed after the expiration of the terms of the existing members of the Commission pursuant to subsection 1 must begin on July 1 of the year in which the member was appointed.

Sec. 23. This act becomes effective on July 1, 2015.

