

ASSEMBLY BILL NO. 218—ASSEMBLYMEN HAFEN, KRAMER,
LEAVITT, ELLISON, HANSEN; HARDY, ROBERTS AND TITUS

FEBRUARY 18, 2019

Referred to Committee on Education

SUMMARY—Revises provisions relating to education savings accounts. (BDR 31-850)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Contains Appropriation not included in Executive Budget.

~

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

AN ACT relating to education; revising provisions relating to education savings accounts; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Senate Bill 302 (S.B. 302) of the 78th Session of the Nevada Legislature established the education savings accounts program, pursuant to which grants of money are made to certain parents on behalf of their children to defray the cost of instruction outside the public school system. (Chapter 332, Statutes of Nevada 2015, p. 1824; NRS 353B.700-353B.930) Following a legal challenge of S.B. 302, the Nevada Supreme Court held in *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73, 382 P.3d 886 (2016), that the legislation was valid under Section 2 of Article 11 of the Nevada Constitution, which requires a uniform system of common schools, and under Section 10 of Article 11 of the Nevada Constitution, which prohibits the use of public money for a sectarian purpose. However, the Nevada Supreme Court found that the Legislature did not make an appropriation for the support of the education savings accounts program and held that the use of any money appropriated for K-12 public education for the education savings accounts program would violate Sections 2 and 6 of Article 11 of the Nevada Constitution. The Court enjoined the enforcement of section 16 of S.B. 302, which amended NRS 387.124 to require that all money deposited in education savings accounts be subtracted from each school district's quarterly apportionments from the State Distributive School Account.

In response to the *Schwartz* decision, **section 3** of this bill appropriates money to fund the operation of the education savings accounts program for the 2019-2021 biennium. **Section 2** of this bill removes the provisions which were enjoined by the Nevada Supreme Court in *Schwartz*. **Section 4** of this bill prescribes a reapplication process for persons who applied for the establishment of education savings



accounts on behalf of their children before July 1, 2019, to qualify for education savings accounts for the 2019-2020 school year.

With certain exceptions, to be eligible for an education savings account under existing law, a child is required to have been enrolled in a public school in this State during the period immediately preceding the establishment of the education savings account for not less than 100 school days without interruption. (NRS 353B.850) **Section 1** of this bill changes that required period of enrollment to one quarter of the school year, effective July 1, 2019.

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

Section 1. NRS 353B.850 is hereby amended to read as follows:

353B.850 1. Except as otherwise provided in subsection 10, the parent of any child required by NRS 392.040 to attend a public school who has been enrolled in a public school in this State during the period immediately preceding the establishment of an education savings account pursuant to this section for not less than ~~100 school days without interruption~~ *one quarter of the school year, or if the child has been enrolled in a public school in this State that uses a system of enrollment other than quarters, for a number of school days equivalent to one quarter of public school*, may establish an education savings account for the child by entering into a written agreement with the State Treasurer, in a manner and on a form provided by the State Treasurer. The agreement must provide that:

(a) The child will receive instruction in this State from a participating entity for the school year for which the agreement applies;

(b) The child will receive a grant, in the form of money deposited pursuant to NRS 353B.860 in the education savings account established for the child pursuant to subsection 2;

(c) The money in the education savings account established for the child must be expended only as authorized by NRS 353B.870; and

(d) The State Treasurer will freeze money in the education savings account during any break in the school year, including any break between school years.

2. If an agreement is entered into pursuant to subsection 1, an education savings account must be established by the parent on behalf of the child. The account must be maintained with a financial management firm qualified by the State Treasurer pursuant to NRS 353B.880.

3. The failure to enter into an agreement pursuant to subsection 1 for any school year for which a child is required by NRS 392.040



1 to attend a public school does not preclude the parent of the child
2 from entering into an agreement for a subsequent school year.

3 4. An agreement entered into pursuant to subsection 1 is valid
4 for 1 school year but may be terminated early. If the agreement is
5 terminated early, the child may not receive instruction from a public
6 school in this State until the end of the period for which the last
7 deposit was made into the education savings account pursuant to
8 NRS 353B.860, except to the extent the pupil was allowed to
9 receive instruction from a public school under the agreement.

10 5. An agreement terminates automatically if the child no longer
11 resides in this State. In such a case, any money remaining in the
12 education savings account of the child reverts to the State General
13 Fund.

14 6. An agreement may be renewed for any school year for
15 which the child is required by NRS 392.040 to attend a public
16 school. The failure to renew an agreement for any school year does
17 not preclude the parent of the child from renewing the agreement for
18 any subsequent school year.

19 7. A parent may enter into a separate agreement pursuant to
20 subsection 1 for each child of the parent. Not more than one
21 education savings account may be established for a child.

22 8. Except as otherwise provided in subsection 10, the State
23 Treasurer shall enter into or renew an agreement pursuant to this
24 section with any parent of a child required by NRS 392.040 to
25 attend a public school who applies to the State Treasurer in the
26 manner provided by the State Treasurer. The State Treasurer shall
27 make the application available on the Internet website of the State
28 Treasurer.

29 9. Upon entering into or renewing an agreement pursuant to
30 this section, the State Treasurer shall provide to the parent who
31 enters into or renews the agreement a written explanation of the
32 authorized uses, pursuant to NRS 353B.870, of the money in an
33 education savings account and the responsibilities of the parent and
34 the State Treasurer pursuant to the agreement and NRS 353B.700 to
35 353B.930, inclusive.

36 10. A parent may not establish an education savings account
37 for a child who will be homeschooled, who will receive instruction
38 outside this State or who will remain enrolled full-time in a public
39 school, regardless of whether such a child receives instruction from
40 a participating entity. A parent may establish an education savings
41 account for a child who receives a portion of his or her instruction
42 from a public school and a portion of his or her instruction from a
43 participating entity.



Sec. 2. NRS 387.124 is hereby amended to read as follows:

387.124 Except as otherwise provided in this section and NRS 387.1241, 387.1242 and 387.528:

1. On or before August 1, November 1, February 1 and May 1 of each year, the Superintendent of Public Instruction shall apportion the State Distributive School Account in the State General Fund among the several county school districts, charter schools and university schools for profoundly gifted pupils in amounts approximating one-fourth of their respective yearly apportionments less any amount set aside as a reserve. Except as otherwise provided in NRS 387.1244, the apportionment to a school district, computed on a yearly basis, equals the difference between the basic support and the local funds available pursuant to NRS 387.163, minus all the funds attributable to pupils who reside in the county but attend a charter school, all the funds attributable to pupils who reside in the county and are enrolled full-time or part-time in a program of distance education provided by another school district or a charter school ~~and~~ **and** all the funds attributable to pupils who are enrolled in a university school for profoundly gifted pupils located in the county . ~~[and all the funds deposited in education savings accounts established on behalf of children who reside in the county pursuant to NRS 353B.700 to 353B.930, inclusive.]~~ No apportionment may be made to a school district if the amount of the local funds exceeds the amount of basic support.

2. Except as otherwise provided in NRS 387.1244, in addition to the apportionments made pursuant to this section, if a pupil is enrolled part-time in a program of distance education and part-time in a:

(a) Public school other than a charter school, an apportionment must be made to the school district in which the pupil resides. The school district in which the pupil resides shall allocate a percentage of the apportionment to the school district or charter school that provides the program of distance education in the amount set forth in the agreement entered into pursuant to NRS 388.854.

(b) Charter school, an apportionment must be made to the charter school in which the pupil is enrolled. The charter school in which the pupil is enrolled shall allocate a percentage of the apportionment to the school district or charter school that provides the program of distance education in the amount set forth in the agreement entered into pursuant to NRS 388.858.

3. The Superintendent of Public Instruction shall apportion, on or before August 1 of each year, the money designated as the "Nutrition State Match" pursuant to NRS 387.105 to those school districts that participate in the National School Lunch Program, 42 U.S.C. §§ 1751 et seq. The apportionment to a school district must



1 be directly related to the district's reimbursements for the Program
2 as compared with the total amount of reimbursements for all school
3 districts in this State that participate in the Program.

4 4. If the State Controller finds that such an action is needed to
5 maintain the balance in the State General Fund at a level sufficient
6 to pay the other appropriations from it, the State Controller may pay
7 out the apportionments monthly, each approximately one-twelfth of
8 the yearly apportionment less any amount set aside as a reserve. If
9 such action is needed, the State Controller shall submit a report to
10 the Office of Finance and the Fiscal Analysis Division of the
11 Legislative Counsel Bureau documenting reasons for the action.

12 **Sec. 3.** 1. There is hereby appropriated from the State
13 General Fund to the State Treasurer for the purpose of carrying out
14 the education savings account program pursuant to NRS 353B.700
15 to 353B.930, inclusive, the following sums:

16 For the Fiscal Year 2019-2020..... \$24,276,354

17 For the Fiscal Year 2020-2021..... \$34,108,556

18 2. The sums appropriated by subsection 1 are available for
19 either fiscal year. Any remaining balance of those sums must not be
20 committed for expenditure after June 30, 2021, by the entity to
21 which the appropriation is made or any entity to which money from
22 the appropriation is granted or otherwise transferred in any manner,
23 and any portion of the appropriated money remaining must not be
24 spent for any purpose after September 17, 2021, by either the entity
25 to which the money was appropriated or the entity to which the
26 money was subsequently granted or transferred, and must be
27 reverted to the State General Fund on or before September 17, 2021.

28 **Sec. 4.** 1. In addition to the application form prescribed for
29 the purposes of NAC 353B.785, the State Treasurer shall prescribe
30 an abbreviated reapplication form to be used by a person who
31 submitted an application to establish an education savings account
32 before July 1, 2019, to determine whether the person's child is
33 eligible for the establishment of an education savings account for
34 the 2019-2020 school year. If the child met the requirement of 100
35 days of attendance at a public school in this State set forth in NRS
36 353B.850 as that section existed before July 1, 2019, or was
37 otherwise exempt from that requirement at the time of the original
38 application for the establishment of an education savings account for
39 that child, the child shall be deemed to have met that requirement
40 for purposes of eligibility for the establishment of an education
41 savings account for the 2019-2020 school year. A reapplication
42 form must be submitted to the State Treasurer by August 1, 2019.
43 The State Treasurer shall post information regarding the
44 reapplication process on the Internet website of the State Treasurer
45 within 10 business days after the effective date of this section.



2. The State Treasurer shall fund education savings accounts established for the 2019-2020 school year commencing with the education savings accounts established pursuant to the reapplication forms submitted in accordance with subsection 1 and approved by the State Treasurer, in the order in which the original applications for the establishment of education savings accounts that correspond to those reapplication forms were submitted before July 1, 2019.

3. The State Treasurer shall only fund education savings accounts established pursuant to the reapplication forms submitted in accordance with subsection 1 and approved by the State Treasurer with the money appropriated pursuant to section 3 of this act prospectively, commencing with the 2019-2020 school year.

4. As used in this section, "education savings account" has the meaning ascribed to it in NRS 353B.710.

Sec. 5. 1. This section and section 4 of this act become effective upon passage and approval.

2. Sections 1, 2 and 3 of this act become effective on July 1, 2019.

