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ASSEMBLY BILL NO. 339—ASSEMBLYMEN CARRILLO, BILBRAY-AXELROD, WATTS, MCCURDY; ASSEFA, DALY, DURAN, FLORES, NGUYEN, TOLLES AND TORRES

MARCH 18, 2019

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JOINT SPONSOR: SENATOR OHRENSCHALL

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Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to wages paid to certain persons who participate in job and day training services. (BDR 39-104)

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.

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AN ACT relating to wages; requiring the minimum payment that must be paid to certain persons who participate in jobs and day training services to be set by regulation; prohibiting the issuance of a certificate to provide jobs and day training services under certain circumstances; requiring providers of jobs and day training services to submit certain annual reports to the Labor Commissioner; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

- 1 **Section 1** of this bill requires the Administrator of the Aging and Disability  
2 Services Division of the Department of Health and Human Services to adopt  
3 regulations that set forth the minimum amount that must be paid to a person with an  
4 intellectual disability, or a person with a developmental disability, to whom jobs  
5 and day training services are provided. **Section 6** of this bill sets forth the rates of  
6 compensation which must be promulgated in the regulations adopted by the  
7 Administrator pursuant to **section 1**. **Sections 1, 2 and 7** of this bill eliminate or  
8 repeal language which conflicts with these new compensation requirements.  
9 Existing law prohibits a natural person, partnership, firm, corporation or  
10 association, including, without limitation, a nonprofit organization, or a state or  
11 local government or agency thereof from providing jobs and day training services  
12 in this State without first obtaining a certificate from the Division. (NRS 435.225)  
13 **Section 2** prohibits the Division from issuing a certificate to such a person or entity



14 unless the person or entity proposes to provide jobs and day training services which  
15 pay at least the state minimum wage.

16 Existing law sets forth certain conditions for initial and continued certification  
17 of a provider of jobs and day training services. (NRS 435.227) **Section 3** of this bill  
18 prohibits a provider from impairing or restricting the right of persons to whom jobs  
19 and day training services are provided or to be provided from engaging in collective  
20 bargaining.

21 **Section 4** of this bill updates a reference to the Aging and Disability Services  
22 Division of the Department of Health and Human Services. **Section 6** of this bill  
23 requires a provider of jobs and day training services to submit annually a report to  
24 the Labor Commissioner for each person to whom the provider provides jobs and  
25 day training services for compensation at a rate which is less than the state  
26 minimum wage, and to include in such report an individualized plan to assist each  
27 such person to gain competitive, integrative employment, if possible.

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

1 **Section 1.** NRS 435.220 is hereby amended to read as follows:  
2 435.220 1. The Administrator shall adopt regulations  
3 governing jobs and day training services, including, without  
4 limitation, regulations that set forth:

5 (a) Standards for the provision of quality care and training by  
6 providers of jobs and day training services;

7 (b) The requirements for the issuance and renewal of a  
8 certificate; ~~and~~

9 (c) The rights of consumers of jobs and day training services,  
10 including, without limitation, the right of a consumer to file a  
11 complaint and the procedure for filing the complaint ~~;~~ *and*

12 *(d) The minimum amount that must be paid to a person with*  
13 *an intellectual disability, or a person with a developmental*  
14 *disability, to whom jobs and day training services are provided*  
15 *pursuant to NRS 435.130 to 435.310, inclusive.*

16 2. The Division may enter into such agreements with public  
17 and private agencies as it deems necessary for the provision of jobs  
18 and day training services. Any such agreements must include a  
19 provision stating that employment is the preferred service option for  
20 all adults of working age.

21 3. For the purpose of entering into an agreement described in  
22 subsection 2, if the qualifications of more than one agency are equal,  
23 the Division shall give preference to the agency that will provide  
24 persons with intellectual disabilities or persons with developmental  
25 disabilities with training and experience that demonstrates a  
26 progression of measurable skills that is likely to lead to competitive  
27 employment outcomes that provide employment that ~~f~~



1 ~~—(a) Is~~ *is* comparable to employment of persons without  
2 intellectual disabilities or persons without developmental disabilities

3 . ~~}; and~~

4 ~~—(b) Pays at or above the minimum wage prescribed by regulation~~  
5 ~~of the Labor Commissioner pursuant to NRS 608.250.]~~

6 **Sec. 2.** NRS 435.225 is hereby amended to read as follows:

7 435.225 1. A partnership, firm, corporation or association,  
8 including, without limitation, a nonprofit organization, or a state or  
9 local government or agency thereof shall not provide jobs and day  
10 training services in this State without first obtaining a certificate  
11 from the Division.

12 2. A natural person other than a person who is employed by an  
13 entity listed in subsection 1 shall not provide jobs and day training  
14 services in this State without first obtaining a certificate from the  
15 Division.

16 3. For the purpose of issuing a certificate pursuant to this  
17 section, if the qualifications of more than one applicant are equal,  
18 the Division shall give preference to the natural person who, or the  
19 nonprofit organization, state or local government or agency thereof  
20 that, will provide persons with intellectual disabilities or persons  
21 with developmental disabilities with training and experience that  
22 demonstrates a progression of measurable skills that is likely to lead  
23 to competitive employment outcomes that provide employment  
24 that ~~};~~

25 ~~—(a) Is~~ *is* comparable to employment of persons without  
26 intellectual disabilities or persons without developmental disabilities

27 . ~~}; and~~

28 ~~—(b) Pays at or above the minimum wage prescribed by regulation~~  
29 ~~of the Labor Commissioner pursuant to NRS 608.250.]~~

30 4. Each application for the issuance or renewal of a certificate  
31 issued pursuant to this section must include a provision stating that  
32 employment is the preferred service option for all adults of working  
33 age.

34 *5. The Division shall not issue a certificate pursuant to this*  
35 *section unless the person or entity which proposes to provide jobs*  
36 *and day training services to persons with intellectual disabilities or*  
37 *persons with developmental disabilities in this State agrees to pay*  
38 *such persons at least the minimum wage prescribed by regulation*  
39 *of the Labor Commissioner pursuant to NRS 608.250.*

40 **Sec. 3.** NRS 435.227 is hereby amended to read as follows:

41 435.227 1. Before being issued a certificate by the Division  
42 pursuant to NRS 435.225 and annually thereafter as a condition of  
43 certification, a partnership, firm, corporation or association,  
44 including, without limitation, a nonprofit organization, must:



1 ~~[(1)]~~ (a) Be on file and in good standing with the Secretary of  
2 State and organized pursuant to title 7 of NRS;

3 ~~[(2)]~~ (b) Submit to the Division an annual audit of its financial  
4 statements that has been conducted by an independent certified  
5 public accountant; and

6 ~~[(3)]~~ (c) If it is a nonprofit organization, submit to the Division  
7 the most recent federal tax return of the nonprofit organization,  
8 including, without limitation, Form 990, or its successor form, and  
9 the Schedule L and Schedule R of such return, or the successor  
10 forms of such schedules, which include an itemization of:

11 ~~[(a)]~~ (1) Any transaction during the federal tax year of the  
12 nonprofit organization in which an economic benefit is provided by  
13 the nonprofit organization to a director, officer or board member of  
14 the nonprofit organization, or any other person who has substantial  
15 influence over the nonprofit organization, and in which the value of  
16 the economic benefit provided by the nonprofit organization  
17 exceeds the value of the consideration received by the nonprofit  
18 organization;

19 ~~[(b)]~~ (2) Any loans to or from the nonprofit organization which  
20 are received by or from a director, officer or board member of the  
21 nonprofit organization, a person who has substantial influence over  
22 the nonprofit organization or a family member of such director,  
23 officer, board member or person and which remain outstanding at  
24 the end of the federal tax year of the nonprofit organization;

25 ~~[(c)]~~ (3) Any grants or other assistance from the organization  
26 during the federal tax year of the nonprofit organization which  
27 benefit a director, officer or board member of the nonprofit  
28 organization, a person who has substantial influence over the  
29 nonprofit organization or a family member of such director, officer,  
30 board member or person;

31 ~~[(d)]~~ (4) Business transactions during the federal tax year of the  
32 nonprofit organization between the nonprofit organization and a  
33 director, officer or board member of the nonprofit organization, a  
34 person who has substantial influence over the nonprofit organization  
35 or a family member of such director, officer, board member or  
36 person which exceed, in the aggregate, \$100,000, or a single  
37 business transaction that exceeds \$10,000; and

38 ~~[(e)]~~ (5) All related party transactions including, without  
39 limitation, the receipt of interest, royalties, annuities or rent, the sale  
40 or purchase of assets or services, the sharing of facilities, equipment  
41 or employees, and the transfer of cash or property.

42 *2. A provider of jobs and day training services certified*  
43 *pursuant to NRS 435.130 to 435.310, inclusive, shall not impair or*  
44 *restrict the right of persons to whom jobs and day training services*



1 *are provided or to be provided to engage in collective bargaining*  
2 *as provided by chapter 288 of NRS.*

3 **Sec. 4.** NRS 435.310 is hereby amended to read as follows:

4 435.310 A provider of jobs and day training services certified  
5 pursuant to NRS 435.130 to 435.310, inclusive:

6 1. Except as otherwise provided in subsection 2, may enter into  
7 contracts with authorized county and school officials and public and  
8 private agencies to give care and training to persons with intellectual  
9 disabilities or persons with developmental disabilities who would  
10 also qualify for care or training programs offered by the public  
11 schools or by county welfare programs.

12 2. ~~Except as otherwise provided in NRS 435.305, shall~~ *Shall*  
13 not enter into a contract or other arrangement with any person or  
14 governmental entity to provide for the employment of a person  
15 under 25 years of age where the person will be paid less than the  
16 state minimum wage.

17 **Sec. 5.** NRS 608.255 is hereby amended to read as follows:

18 608.255 For the purposes of this chapter and any other  
19 statutory or constitutional provision governing the minimum wage  
20 paid to an employee, the following relationships do not constitute  
21 employment relationships and are therefore not subject to those  
22 provisions:

23 1. The relationship between a provider of jobs and day training  
24 services which is recognized as exempt pursuant to the provisions of  
25 26 U.S.C. § 501(c)(3) and which has been issued a certificate by the  
26 *Aging and Disability Services* Division ~~of Public and Behavioral~~  
27 ~~Health~~ of the Department of Health and Human Services pursuant  
28 to NRS 435.130 to 435.310, inclusive, and a person with an  
29 intellectual disability or a person with a developmental disability  
30 participating in a jobs and day training services program.

31 2. The relationship between a principal and an independent  
32 contractor.

33 3. As used in this section, “developmental disability” has the  
34 meaning ascribed to it in NRS 435.007.

35 **Sec. 6.** The regulations adopted by the Administrator of the  
36 Aging and Disability Services Division of the Department of Health  
37 and Human Services pursuant to paragraph (d) of subsection 1 of  
38 section 1 of this act must provide that:

39 1. Not later than 12 months after passage and approval of this  
40 act, all persons who are provided with jobs and day training services  
41 pursuant to NRS 435.130 to 435.310, inclusive, for compensation  
42 less than the minimum wage prescribed by regulation of the Labor  
43 Commissioner pursuant to NRS 608.250 are required to be  
44 compensated at a rate which is not less than \$4.25 per hour; and



1 2. On and after January 1, 2024, all persons who are provided  
2 with jobs and day training services pursuant to NRS 435.130 to  
3 435.310, inclusive, are required to be compensated at a rate which is  
4 not less than the minimum wage prescribed by regulation of the  
5 Labor Commissioner pursuant to NRS 608.250.

6 **Sec. 7.** A provider of jobs and day training services certified  
7 pursuant to NRS 435.130 to 435.310, inclusive, shall submit  
8 annually a report to the Labor Commissioner for each person to  
9 whom the provider provides jobs and day training services for  
10 compensation at a rate which is less than the minimum wage  
11 prescribed by regulation of the Labor Commissioner pursuant to  
12 NRS 608.250. The report must include an individualized plan to  
13 assist the person to gain competitive, integrative employment, if  
14 such employment is possible.

15 **Sec. 8.** NRS 435.305 is hereby repealed.

16 **Sec. 9.** 1. This section and sections 1, 2, 3, 5, 6 and 7 of this  
17 act become effective:

18 (a) Upon passage and approval for the purpose of adopting  
19 regulations and performing any other preparatory administrative  
20 tasks that are necessary to carry out the provisions of this act; and

21 (b) On July 1, 2019, for all other purposes.

22 2. Sections 4 and 8 of this act become effective:

23 (a) Upon passage and approval for the purpose of adopting  
24 regulations and performing any other preparatory administrative  
25 tasks that are necessary to carry out the provisions of this act; and

26 (b) On January 1, 2024, for all other purposes.

27 3. Section 7 of this act expires by limitation on July 1, 2024.

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### TEXT OF REPEALED SECTION

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**435.305 Conditions under which provider of services may enter into arrangement to provide for employment of person under 25 years of age for less than state minimum wage; documentation concerning documentation.**

1. Except as otherwise provided in subsection 3, a provider of jobs and day training services certified pursuant to NRS 435.130 to 435.310, inclusive, may enter into a contract or other arrangement with any person or governmental entity to provide for the employment of a person under 25 years of age under which the person will be paid less than the state minimum wage if the person was employed on July 22, 2016, by an entity that holds a valid



certificate pursuant to 29 U.S.C. § 214(c) or, before beginning such employment, the person has:

(a) Received preemployment transition services available under the provisions of 29 U.S.C. § 733 or transition services under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq.;

(b) Received career counseling, information and referrals to federal and state programs and other resources in the geographic area in which the person resides that offer services and supports that are designed to enable the person to attain competitive integrated employment and meet the requirements of subsection 2; and

(c) Applied for vocational rehabilitation services under the provisions of 29 U.S.C. §§ 720 to 751, inclusive, and been found:

(1) Ineligible for such services; or

(2) Eligible for such services and:

(I) Has an individualized plan for employment pursuant to 29 U.S.C. § 722;

(II) Has been working, with appropriate supports and services, toward an employment outcome specified in that plan without success; and

(III) The person's vocational rehabilitation case has been closed.

2. Counseling, information, referrals, services and supports provided pursuant to paragraph (b) of subsection 1 must not be provided to a person for the purpose of obtaining employment compensated at less than the state minimum wage.

3. A provider of jobs and day training services certified pursuant to NRS 435.130 to 435.310, inclusive, shall not enter into a contract or other arrangement described in subsection 1 with a local educational agency.

4. Except as otherwise provided in subsection 5, if a provider of jobs and day training services certified pursuant to NRS 435.130 to 435.310, inclusive, enters into a contract or other arrangement described in subsection 1:

(a) The Division shall, at least once every 6 months for the first year of such employment and annually thereafter for the duration of the employment, provide the person employed pursuant to the arrangement with career counseling, information and referrals as described in paragraph (b) of subsection 1 in a manner that facilitates independent decisions and informed choice; and

(b) The employer of the person shall, at least once every 6 months for the first year of such employment and annually thereafter for the duration of the employment, inform the person of opportunities in the geographic area in which the person resides to receive training concerning self-advocacy, self-determination and



peer mentoring that is provided by a person or entity that does not have a financial interest in the employment outcome of the person.

5. If a provider of jobs and day training services certified pursuant to NRS 435.130 to 435.310, inclusive, enters into a contract or other arrangement described in subsection 1 with a business with fewer than 15 employees, the business may satisfy the requirements of subsection 4 by referring a person employed pursuant to the arrangement to the Division for the services described in that subsection at least once every 6 months for the first year of such employment and annually thereafter for the duration of the employment.

6. The Division, in consultation with the Department of Education, shall adopt regulations prescribing the manner in which compliance with the requirements of subsections 1 and 4 may be documented.

7. An employer who employs a person pursuant to a contract or other arrangement described in subsection 1 shall:

(a) Before the employment begins, verify that the person meets the requirements of subsection 1 by reviewing the documentation prescribed for that purpose pursuant to subsection 6;

(b) For the duration of the employment:

(1) Verify that the person has received the services required by subsection 4 by reviewing the documentation prescribed for that purpose pursuant to subsection 6; and

(2) Maintain on file a copy of the documentation reviewed pursuant to subparagraph (1) and paragraph (a).

8. The Division may inspect the documentation maintained pursuant to subparagraph (2) of paragraph (b) of subsection 7 as necessary to ensure compliance with the requirements of this section.

9. As used in this section:

(a) "Competitive integrated employment" has the meaning ascribed to it in 29 U.S.C. § 705.

(b) "Local educational agency" has the meaning ascribed to it in 20 U.S.C. § 1401(19).

