Date of Hearing: April 24, 2023

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Jacqui Irwin, Chair

AB 339 (Irwin) – As Amended March 14, 2023

SUSPENSE

Majority vote. Fiscal committee.

SUBJECT: Qualified ABLE Program: age limit.

SUMMARY: Revises the definition of an "eligible individual" under the Qualified ABLE Program (Program) by increasing the age prior to which an eligible individual's blindness or disability must have begun to conform with recent changes to the Federal ABLE Act. Specifically, **this bill**:

1) Increases, from 26 to 46, the age by which blindness or disability must begin for an individual to qualify as eligible by reason of such blindness or disability for the Program.

2) Provides that the revised definition applies for taxable years commencing on or after January 1, 2026.

3) Conforms the Personal Income Tax (PIT) Law and Corporation Tax (CT) Law, for taxable years commencing on or after January 1, 2026, to the gross income exclusions provided in Internal Revenue Code (IRC) Section 529A related to disbursements for qualified expenses made by Program beneficiaries.

4) Finds and declares the following for the purposes of satisfying the requirements of Revenue and Taxation Code (R&TC) Section 41:

   a) The specific goals, purposes, and objectives of this bill are to encourage and assist individuals and families to save private funds for purposes of supporting persons with disabilities to maintain their health, independence, and quality of life; and,

   b) To measure whether this bill achieves its intended purpose, the Treasurer's Office shall submit, no later than January 1, 2030, a report to the Legislature detailing the number of ABLE accounts that are created for individuals who are made newly eligible by the raised age limit.

EXISTING FEDERAL LAW establishes the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, which encourages individuals and families to save private funds to support persons with disabilities in maintaining their health, independence, and quality of life. The Act does so by excluding from gross income distributions used for qualified disability expenses by a beneficiary of a qualified ABLE program established and maintained by the state, as specified.

EXISTING STATE LAW:

1) Defines "Federal ABLE Act" as the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014. (Welfare & Institutions Code (W&IC) Section 4875).

2) Defines a "CalABLE account" as an ABLE account that is established within the Program and administered by the California ABLE Act Board (Board). (*Id*.)

3) Establishes the Program, administered by the Board, in this state to implement the ABLE Act. (W&IC Section 4877.)

4) Conforms the PIT Law and CT Law to provisions in federal income tax law that provide an exclusion from gross income for disbursements from ABLE accounts for qualifying expenses. (R&TC Sections 17140.4 and 23711.4.)

5) Requires any bill authorizing a new tax expenditure to contain all of the following:

   a) Specific goals, purposes, and objectives that the tax expenditure will achieve;

   b) Detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets the goals, purposes, and objectives stated in the bill; and,

   c) Data collection requirements to enable the Legislature to determine whether the tax expenditure is meeting, failing to meet, or exceeding those specific goals, purposes, and objectives. The requirements shall include the specific data and baseline measurements to be collected and remitted in each year the expenditure is in effect, for the Legislature to measure the change in performance indicators, and the specific taxpayers, state agencies, or other entities required to collect and remit data. (R&TC Section 41.)

FISCAL EFFECT: The Franchise Tax Board (FTB) estimates no General Fund losses for Fiscal Year (FY) 2023-24 and FY 2024-25. The FTB estimates General Fund losses of $700,000 in FY 2025-26.

COMMENTS:

1) The author has provided the following statement in support of this bill:

   > A recent change in federal law has given California the opportunity to make the CalABLE program more inclusive to those who develop a disability in their later years. AB 339 will raise the eligibility age limit for the onset of disability from age 26 to age 46 which would enable more disabled Californians, particularly those who are hurt on the job or during military service, to secure the important protections of CalABLE accounts and begin to build a rainy-day fund.

2) This bill is sponsored by State Treasurer Fiona Ma, who notes, in part:

   > Improvements to the Act have continued to be made at the Federal level and it is imperative we conform to these changes so that CalABLE accounts maintain the competitive choice for Californians, compared to other states' ABLE programs. California does not have rolling conformity and we must ensure that Californians enrolled in ABLE plans do not fall behind other states.

3) This bill is supported by Disability Rights California, which notes, in part:

> ABLE accounts can help provide financial security for people with disabilities and have the potential to break the cycle of poverty that often results from the inability to save money as a result of receiving public benefits. Increasing the eligibility age to 46 years old will help ensure individuals who are diagnosed or become disabled later in life can utilize the benefits of this program.

4) Committee Staff Comments:

   a) *Overview of federal law*: Federal law authorizes states to establish a qualified ABLE program under which individuals may contribute to an ABLE account established to meet the "qualified disability expenses" of the account's designated beneficiary. (IRC Section 529A(b)(1).) "Qualified disability expenses" are defined as any expenses related to the eligible individual's blindness or disability, including expenses for education, housing, transportation, employment training, assistive technology, health, financial management, and legal fees. (IRC Section 529A(e)(5).) As long as distributions from a qualified ABLE program do not exceed the designated beneficiary's qualified disability expenses, those distributions are excluded from gross income. (IRC Section 529A(c)(1)(B).) Assets in an ABLE account, up to $100,000, are not taken into account when determining eligibility for federal welfare benefit programs. Furthermore, the structure and tax treatment of the account generally follow the same rules as a 529 educational savings account. In this regard, after-tax contributions are placed in the account, amounts earned in the account are tax-deferred, and distributions are not included in income so long as they are used for qualifying disability expenses.

   b) *California's Qualified ABLE Program*: California's Qualified ABLE Program, codified in W&IC Section 4875 *et seq.*, was established to implement the federal ABLE Act pursuant to IRC Section 529A. Under this Program, the Board is authorized to enter into agreements with designated beneficiaries or eligible individuals to establish and maintain an ABLE account. (W&IC Section 4877(c)(6).) All moneys paid by designated beneficiaries or eligible individuals in connection with ABLE accounts must be deposited into the Program fund, promptly invested, and accounted for separately. (W&IC Section 4878(f).) Deposits accumulated on behalf of designated beneficiaries in the Program fund may then be used for qualified disability expenses. (*Id.*)

   c) *Conforming to recent changes to Federal ABLE Act:* Enacted on December 29, 2022, Sec. 124 of Part 3 of the Consolidated Appropriations Act of 2023 modified the age requirement for taxable years beginning after December 31, 2025 for qualified ABLE programs. The legislation increased the age, from 26 to 46, prior to which an individual's blindness or disability must have begun to qualify for the program.[1] This bill would conform California state law to these Federal provisions.

   d) *Who is ABLE eligible?* ABLE eligibility is tied to the age of onset of the disability, meaning symptoms of a person's disability must begin before the age specified in statute. For taxable years beginning before December 31, 2025, those who sustain a severe injury

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[1] 117 P.L. 328, 2022 Enacted H.R. 2617, 117 Enacted H.R. 2617, 136 Stat. 4459

or develop a chronic health condition after their 26th birthday are not eligible to open an ABLE account. Under the changes proposed by this bill, an individual who experiences onset of a disability or blindness after their 26th birthday would be eligible to open an ABLE account in California beginning on January 1, 2026. According to a resolution adopted by the Board on October 19, 2022 expressing support for the age adjustment, this change will expand ABLE eligibility to an estimated six million Americans, including one million disabled veterans.[2]

e) *Prior Legislation:* AB 91 (Burke), Chapter 39 of Statutes of 2019, conformed, with modifications, to the allowance of rollovers between IRC Section 529 accounts and ABLE accounts made by the Tax Cuts and Jobs Act (TCJA) of 2017 and clarifies the treatment of distributions made under TCJA. AB 91 also conformed to changes made by the Consolidated Appropriations Act of 2016 to maintain account qualification for the ABLE program and the definition of qualified educational expenditures under IRC section 529.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Regional Center Agencies
California Society of Enrolled Agents
California State Treasurer Fiona Ma (Sponsor)
Disability Rights California
The Arc and United Cerebral Palsy California Collaboration

Opposition

None on file

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[2] "CalABLE Adopts Resolution in Support of the ABLE Age Adjustment Act". California State Treasurer Fiona Ma. October 19, 2022. https://www.treasurer.ca.gov/news/releases/2022/35.pdf.