SENATE COMMITTEE ON GOVERNANCE AND FINANCE
Senator Anna M. Caballero, Chair
2023 - 2024 Regular

Bill No:	AB 339	**Hearing Date:**	6/21/23
Author:	Irwin	**Tax Levy:**	No
Version:	3/14/23	**Fiscal:**	Yes
Consultant:	Grinnell		

QUALIFIED ABLE PROGRAM: AGE LIMIT

Conforms state law to the recent change made to Achieving a Better Life Experience Act accounts in the federal Consolidated Appropriations Act.

Background

Conformity. State law does not automatically conform to changes in federal tax law, except for specific retirement provisions. Instead, the Legislature must affirmatively conform to federal changes, which it can do in two different ways. First, the Legislature can pass an individual tax bill that conforms to a specific federal provision, such as the Regulated Investment Company Modernization Act (AB 1423, Perea, 2011). Second, the Legislature can pass one omnibus bill conforming state law to federal law as of a specified date. Currently state law generally conforms to federal tax law as of January 1, 2015 (AB 154, Ting, 2015).

ABLE accounts. In 2014, Congress authorized the Achieving a Better Life Experience Act (ABLE) which provides parents of people with disabilities a way to save tax-free for their children’s future needs as an alternative to Special Needs and Supplement Needs Trusts. The individual must be entitled to Social Security Disability Insurance benefits, or have a disability certificate on file with the Internal Revenue Service. States administer ABLE programs on behalf of the programs’ beneficiaries. Individuals can be named the beneficiary of only one ABLE account, and beneficiaries must be either blind or disabled before reaching 26 years of age. Taxpayers can then contribute up to $17,000 each year to any ABLE account.

ABLE accounts generally follow the same rules as education savings accounts allowed by Section 529 of the Internal Revenue Code: individuals can make nondeductible cash contributions to an ABLE account in the name of a specified beneficiary, and earnings can grow tax free. ABLE account distributions are also not included in the beneficiary’s income so long as they’re used for qualified services for the beneficiary, and distributions don’t exceed the cost of the services, which include education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention, and wellness, financial management and administrative services, legal fees, oversight and monitoring, and funeral and burial services. If money is withdrawn from an account for something other than qualified disability expenses, than the beneficiary is subject to an additional 10% penalty on the overall amount withdrawn.

The Legislature authorized CalABLE accounts in 2015 under the administration of the State Treasurer’s Office, and conformed to the federal tax treatment of ABLE accounts as of January 1st, 2015 (AB 449, Irwin, and SB 324, Pavley, 2015). The CalABLE program opened to the public on December 18, 2018. The Legislature has conformed several times to federal changes to ABLE accounts, including eliminating differences in qualification criteria, increasing contribution limits to up to the federal poverty level, and allowing taxpayers to roll-over Section 529 plans to ABLE accounts, among other changes (AB 91, Burke, 2019). Last year, the Legislature made clarifying changes to bring California CalABLE account definitions in alignment with federal law regarding ABLE accounts, among other changes (AB 2216, Irwin).

Consolidated Appropriations Act. On December 29, 2022, President Biden signed the Consolidated Appropriations Act of 2023, which among other provisions, modified the age requirement for qualified ABLE programs by increasing from 26 to 46 the age prior to which an individual's blindness or disability must have begun to qualify for the program. The change applies beginning in the 2026 taxable year.

The author wants to conform state law to the recent federal changes to the age prior to which an individual's blindness or disability must have begun to qualify for the program.

Proposed Law

Assembly Bill 339 conforms state law to the recent change made to ABLE accounts in the Consolidated Appropriations Act, specifically to increase the age for eligible individuals before which an individual's blindness or disability must have begun to qualify for an ABLE account. Like federal law, the measure applies the change beginning in the 2026 taxable year. The bill also makes a conforming change to Welfare and Institutions Code provisions used by the Treasurer to administer the program. Lastly, AB 339 makes legislative findings and declarations to comply with Section 41 of the Revenue and Taxation Code.

State Revenue Impact

Franchise Tax Board estimates AB 339 will result in a revenue loss of $700,000 commencing in the 2025-26 fiscal year.

Comments

1. Purpose of the bill. According to the author, "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. Conformity. As mentioned above, state law does not automatically conform to changes in federal tax law, including ABLE accounts. The Legislature must affirmatively conform to federal changes with measures like AB 339. This bill will be particularly helpful for disabled individuals with ABLE accounts whose disabilities begin between age 26 and 46. Absent this change, these individuals would be ineligible for an ABLE account in California or would be subject to state taxes on ABLE Account earnings or distributions which would be exempt for federal purposes.

3. Section 41. Section 41 of the Revenue and Taxation Code requires any bill enacting a new tax expenditure to contain, among other things, specific goals, purposes, and objectives the tax

expenditure will achieve, detailed performance indicators, along with data collection and reporting requirements (SB 1335, Leno, 2014). AB 339 states as its goal, purpose, and objective to encourage and assist individuals and families to save private funds for purposes of supporting persons with disabilities to maintain their health, independent, and quality of life. The measure identifies the number of ABLE accounts created for individuals who are made newly eligible by the raised age limit as its performance indicator, and directs the State Treasurer to report to the Legislature no later than January 1, 2029 regarding the number of such accounts.

Assembly Actions

Assembly Revenue and Taxation Committee:	11-0
Assembly Appropriations Committee:	15-0
Assembly Floor:	78-0

Support and Opposition (6/16/23)

Support: Fiona Ma - California State Treasurer (Sponsor)
East Bay Developmental Disabilities Legislative Coalition (Sponsor)
Association of Regional Center Agencies
California Society of Enrolled Agents
Disability Rights California

Opposition: None received.

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