

Assembly Bill No. 339

CHAPTER 324

An act to amend Sections 17140.4 and 23711.4 of the Revenue and Taxation Code and to amend, repeal, and add Section 4875 of the Welfare and Institutions Code, relating to Qualified ABLE Program.

[Approved by Governor October 7, 2023. Filed with Secretary
of State October 7, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 339, Irwin. Qualified ABLE Program: age limit.

Existing federal law, the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), encourages and assists individuals and families to save private funds for the purpose of supporting eligible individuals with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified disability expenses by a beneficiary of a qualified ABLE program established and maintained by a state, as specified. Under the ABLE Act, pursuant to the Consolidated Appropriations Act, 2023, an eligible individual for a taxable year is an individual entitled to specified benefits based on blindness or disability or for whom there is a disability certification filed with the Secretary of the Treasury, and such blindness or disability occurred before the date on which the individual attained 26 years of age, or, on and after January 1, 2026, 46 years of age.

Existing law establishes the Qualified ABLE Program, administered by the California ABLE Act Board, in this state for purposes of implementing the federal ABLE Act, and provides the same definition for "eligible individual."

Existing law, the Personal Income Tax Law and the Corporation Tax Law, for taxable years beginning on or after January 1, 2016, conforms to the exclusions from gross income provided under federal income tax law provisions relating to the ABLE Act, as those exclusions read in specified federal law prior to the Consolidated Appropriations Act, 2023.

This bill would, commencing January 1, 2026, revise the definition of "eligible individual" under the Qualified ABLE Program by increasing the age limit for when an eligible individual's blindness or disability occurred to 46 years of age to conform with federal ABLE Act.

This bill would also conform, for taxable years beginning on or after January 1, 2026, state tax law to those changes relating to qualified ABLE programs made by the Consolidated Appropriations Act, 2023.

Existing law requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives that the tax

credit will achieve, detailed performance indicators, and data collection requirements.

This bill would make specified findings complying with this requirement for the above-described tax expenditure. The bill would require the Treasurer's office to 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.

The people of the State of California do enact as follows:

SECTION 1. Section 17140.4 of the Revenue and Taxation Code is amended to read:

17140.4. For taxable years beginning on or after January 1, 2016, Section 529A of the Internal Revenue Code, relating to qualified ABLE programs, added by Section 102 of Division B of Public Law 113-295, shall apply, except as otherwise provided.

(a) Section 529A(a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase "under this part and Part 11 (commencing with Section 23001)" in lieu of the phrase "under this subtitle."

(2) By substituting "Article 2 (commencing with Section 23731)" in lieu of "Section 511."

(b) Section 529A(c)(3)(A) of the Internal Revenue Code is modified by substituting "2.5 percent" in lieu of "10 percent."

(c) A copy of the report required to be filed with the Secretary of the Treasury under Section 529A(d) of the Internal Revenue Code, relating to reports, shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

(d) (1) The amendments made by Section 303(a) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529A(b)(1) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(2) The amendments made by Section 303(b) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Sections 529A(d)(3) and 529A(e) of the Internal Revenue Code, relating to qualified ABLE programs shall apply, except as otherwise provided.

(3) The amendments made by Section 303(c) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Sections 529A(d)(4) and 529A(c)(1)(C)(i) of the Internal Revenue Code, relating to qualified ABLE program, shall apply, except as otherwise provided.

(e) The amendments made by Section 11024(a) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529A(b)(2)(B) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(f) (1) For taxable years beginning on or after January 1, 2026, the amendments made by Section 124 of the Consolidated Appropriations Act, 2023 (Public Law 117-328) to Section 529A(e) of the Internal Revenue

Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(2) (A) For the purpose of complying with Section 41, as it relates to the tax expenditures established by this subdivision and subdivision (f) of Section 23711.4 (hereafter the “tax expenditures,”) the Legislature finds and declares as follows:

(i) The goal, purpose, and objective of the tax expenditures are 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.

(ii) The performance indicators for the Legislature to use in determining whether the tax expenditures are achieving their stated goal shall be the number of ABLE accounts that are created for individuals who are made newly eligible by the raised age limit.

(B) No later than January 1, 2030, the Treasurer’s office shall submit a report to the Legislature, in compliance with Section 9795 of the Government Code, detailing the number of ABLE accounts that are created for individuals who are made newly eligible by the raised age limit.

SEC. 2. Section 23711.4 of the Revenue and Taxation Code is amended to read:

23711.4. For taxable years beginning on or after January 1, 2016, Section 529A of the Internal Revenue Code, relating to qualified ABLE programs, added by Section 102 of Division B of Public Law 113-295, shall apply, except as otherwise provided.

(a) Section 529A(a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase “under Part 10 (commencing with Section 17001) and this part” in lieu of the phrase “under this subtitle.”

(2) By substituting “Article 2 (commencing with Section 23731)” in lieu of “Section 511.”

(b) Section 529A(c)(3)(A) of the Internal Revenue Code is modified by substituting “2.5 percent” in lieu of “10 percent.”

(c) A copy of the report required to be filed with the Secretary of the Treasury under Section 529A(d) of the Internal Revenue Code, relating to reports shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

(d) (1) The amendments made by Section 303(a) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529A(b)(1) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(2) The amendments made by Section 303(b) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Sections 529A(d)(3) and 529A(e) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(3) The amendments made by Section 303(c) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Sections 529A(d)(4) and 529A(c)(1)(C)(i) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(e) The amendments made by Section 11024(a) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529A(b)(2)(B) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(f) (1) For taxable years beginning on or after January 1, 2026, the amendments made by Section 124 of the Consolidated Appropriations Act, 2023 (Public Law 117-328) to Section 529A(e) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(2) For purposes of complying with Section 41, the goal, purpose, objective, performance indicators, and data collection requirements for the tax expenditure allowed by this subdivision shall be as specified in subdivision (f) of Section 17140.4.

SEC. 3. Section 4875 of the Welfare and Institutions Code is amended to read:

4875. For purposes of this chapter:

(a) “ABLE account” or “account” means the account established for and owned by a designated beneficiary pursuant to this chapter for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.

(b) “Administrative fund” means the fund used to administer this chapter.

(c) “Board” means the California ABLE Act Board established under this chapter.

(d) “California ABLE Program Trust” or “ABLE program trust” means the trust created pursuant to this chapter.

(e) “CalABLE account” means an ABLE account that is established within the program established by this chapter and administered by the board.

(f) “Designated beneficiary” means the eligible individual for whom the ABLE account was established and who is the owner of the account.

(g) “Eligible individual” means an individual who is eligible under the program for a taxable year if blindness or disability occurred before the date on which the individual attained 26 years of age, and during that taxable year either of the following criteria are satisfied:

(1) The individual is entitled to benefits based on blindness or disability under Title II or XVI of the federal Social Security Act, and that blindness or disability occurred before the date on which the individual attained 26 years of age.

(2) A disability certification, as defined in the federal ABLE Act, with respect to the individual is filed pursuant to the requirements set forth in the federal ABLE Act.

(h) “Federal ABLE Act” means the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (as codified in Section 529A of Title 26 of the United States Code and amended through Public Law 115-141).

(i) “Investment management” means the functions performed by a manager contracted to perform functions delegated by the board.

(j) “Investment manager” means a manager contracted to perform functions delegated by the board.

(k) “Program fund” means the program fund established by this chapter, which shall be held as a separate fund within the California ABLE Program Trust.

(l) “Qualified ABLE Program” or “program” means the program established by this chapter to implement the federal ABLE Act pursuant to Section 529A of the Internal Revenue Code.

(m) “Qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary of the Treasury under regulations and consistent with the purposes of the federal ABLE Act.

(n) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 4. Section 4875 is added to the Welfare and Institutions Code, to read:

4875. For purposes of this chapter:

(a) “ABLE account” or “account” means the account established for and owned by a designated beneficiary pursuant to this chapter for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.

(b) “Administrative fund” means the fund used to administer this chapter.

(c) “Board” means the California ABLE Act Board established under this chapter.

(d) “California ABLE Program Trust” or “ABLE program trust” means the trust created pursuant to this chapter.

(e) “CalABLE account” means an ABLE account that is established within the program established by this chapter and administered by the board.

(f) “Designated beneficiary” means the eligible individual for whom the ABLE account was established and who is the owner of the account.

(g) “Eligible individual” means an individual who is eligible under the program for a taxable year if blindness or disability occurred before the date on which the individual attained 46 years of age, and during that taxable year either of the following criteria are satisfied:

(1) The individual is entitled to benefits based on blindness or disability under Title II or XVI of the federal Social Security Act, and that blindness or disability occurred before the date on which the individual attained 46 years of age.

(2) A disability certification, as defined in the federal ABLE Act, with respect to the individual is filed pursuant to the requirements set forth in the federal ABLE Act.

(h) “Federal ABLE Act” means the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (as codified in Section 529A of Title 26 of the United States Code and amended through Public Law 117-328).

(i) “Investment management” means the functions performed by a manager contracted to perform functions delegated by the board.

(j) “Investment manager” means a manager contracted to perform functions delegated by the board.

(k) “Program fund” means the program fund established by this chapter, which shall be held as a separate fund within the California ABLE Program Trust.

(l) “Qualified ABLE Program” or “program” means the program established by this chapter to implement the federal ABLE Act pursuant to Section 529A of the Internal Revenue Code.

(m) “Qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary of the Treasury under regulations and consistent with the purposes of the federal ABLE Act.

(n) This section shall become operative on January 1, 2026.