

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 15, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 324

**Introduced by Senator Pavley
(Coauthor: Senator Beall)**

(Coauthors: Assembly Members Dodd and Kim)
(Principal coauthors: Assembly Members Irwin and Wilk)

February 23, 2015

An act to add ~~Sections~~ *Section 17140.4 and 23711.4* to the Revenue and Taxation Code, and to add Chapter 15 (commencing with Section 4875) to Division 4.5 of the Welfare and Institutions Code, relating to ~~taxation, and making an appropriation therefor.~~ *taxation.*

LEGISLATIVE COUNSEL'S DIGEST

SB 324, as amended, Pavley. Income taxation: savings plans: Qualified ABLE Program.

The Personal Income Tax Law and the Corporation Tax Law, in specified conformity with federal income tax laws regarding qualified tuition programs, provide that distributions from a qualified tuition program are generally not included in the income of the donor or the beneficiary, as specified.

Existing federal law, the ~~Stephen-Beek~~ *Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act)*, for taxable years beginning on or after January 1, ~~2015~~, *2014*, encourages and assists individuals and families to save private funds for the purpose of supporting persons 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.

This bill, *for taxable years beginning on or after January 1, 2016*, would conform to these federal income tax law provisions relating to the ABLE Act under the Personal Income Tax Law and the Corporation Tax Law, as provided. ~~The bill would also establish in state government the ABLE program trust for purposes of implementing the federal ABLE Act. The bill would create the ABLE Act Board and would authorize the board to adopt regulations to implement the program. The bill would create the program fund and the administrative fund, both continuously appropriated funds, thereby making an appropriation. The bill would require the Treasurer to administer the program in compliance with the requirements of the federal ABLE Act. require the board provide an annual listing of distributions to individuals that have an interest in an ABLE account to the Franchise Tax Board, as provided.~~

This bill would provide that it will only become effective if AB 449 is enacted and becomes effective.

Vote: majority. Appropriation: ~~yes-no~~. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 17140.4 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17140.4. *For taxable years beginning on or after January 1,*
- 4 *2016*, Section 529A of the Internal Revenue Code, relating to
- 5 qualified ABLE programs, added by Section 102 of Division B of
- 6 Public Law 113-295, shall apply, except as otherwise provided.
- 7 (a) ~~Section 529A~~ 529A(a) of the Internal Revenue Code is
- 8 modified as follows:
- 9 (1) By substituting the phrase “under this part and Part 11
- 10 (commencing with Section 23001)” in lieu of the phrase “under
- 11 this subtitle.”
- 12 (2) By substituting “Article 2 (commencing with Section
- 13 23731)” in lieu of “Section 511.”
- 14 (b) *Section 529A(c)(3)(A) of the Internal Revenue Code is*
- 15 *modified by substituting “2.5 percent” in lieu of “10 percent.”*
- 16 (b)

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

6 ~~SEC. 2. Section 23711.4 is added to the Revenue and Taxation
7 Code, to read:~~

8 ~~23711.4. Section 529A of the Internal Revenue Code, relating
9 to qualified ABLE programs, added by Section 102 of Division B
10 of Public Law 113-295, shall apply, except as otherwise provided.~~

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

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

16 ~~(2) By substituting “Article 2 (commencing with Section
17 23731)” in lieu of “Section 511.”~~

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

23 ~~SEC. 3.~~

24 ~~SEC. 2. Chapter 15 (commencing with Section 4875) is added
25 to Division 4.5 of the Welfare and Institutions Code, to read:~~

26
27 CHAPTER 15. QUALIFIED ABLE PROGRAM

28
29 4875. For purposes of this chapter:

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

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

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

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

1 (e) “Designated beneficiary” means the eligible individual who
2 established an ABLÉ account and is the owner of the account.

3 (f) “Eligible individual” means an individual who is eligible
4 under the program for a taxable year if during that taxable year
5 both of the following criteria are met:

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

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

13 (g) “Federal ABLÉ Act” means the federal Stephen ~~Beek~~ *Beck*,
14 Jr., Achieving a Better Life Experience Act of 2014.

15 (h) “Investment management” means the functions performed
16 by a manager contracted to perform functions delegated by the
17 board.

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

20 (j) “Program fund” means the program fund established by this
21 chapter, which shall be held as a separate fund within the California
22 ABLÉ Program Trust.

23 (k) “Qualified ABLÉ Program” or “program” means the program
24 established by this chapter to implement the federal ABLÉ Act
25 pursuant to Section 529A of the Internal Revenue Code.

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

37 4876. There is hereby created the California ABLÉ Act Board
38 that consists of the Treasurer, the Director of Finance, the
39 Controller, the Director of Developmental Services, the
40 Chairperson of the State Council on Developmental Disabilities,

1 the Director of Rehabilitation, and the Chair of the State
2 Independent Living Council, or their designees. The Treasurer
3 shall serve as chair of the board.

4 ~~4877. (a) There is hereby created an instrumentality of the~~
5 ~~State of California to be known as the California ABLE Program~~
6 ~~Trust.~~

7 ~~(b) The purposes, powers, and duties of the California ABLE~~
8 ~~Program Trust are vested in, and shall be exercised by, the board.~~

9 ~~(c) The board, in the capacity of trustee, shall have the power~~
10 ~~and authority to do all of the following:~~

11 ~~(1) Sue and be sued.~~

12 ~~(2) Make and enter into contracts necessary for the~~
13 ~~administration of the ABLE program trust, and engage personnel,~~
14 ~~including consultants, actuaries, managers, counsel, and auditors,~~
15 ~~as necessary for the purpose of rendering professional, managerial,~~
16 ~~and technical assistance and advice.~~

17 ~~(3) Adopt a corporate seal and change and amend it from time~~
18 ~~to time.~~

19 ~~(4) Cause moneys in the program fund to be held and invested~~
20 ~~and reinvested.~~

21 ~~(5) Accept any grants, gifts, appropriations, and other moneys~~
22 ~~from any unit of federal, state, or local government or any other~~
23 ~~person, firm, partnership, or corporation for deposit to the~~
24 ~~administrative fund or the program fund. The board may not accept~~
25 ~~any contribution by any nonpublic entity, person, firm, partnership,~~
26 ~~or corporation that is not designated for a specified designated~~
27 ~~beneficiary.~~

28 ~~(6) Enter into agreements with designated beneficiaries or~~
29 ~~eligible individuals to establish and maintain an ABLE account.~~

30 ~~(7) Make provisions for the payment of costs of administration~~
31 ~~and operation of the ABLE program trust.~~

32 ~~(8) Carry out the duties and obligations of the ABLE program~~
33 ~~trust pursuant to this chapter and the federal ABLE Act pursuant~~
34 ~~to Section 529A of the Internal Revenue Code and federal~~
35 ~~regulations issued pursuant to that code, and have any other powers~~
36 ~~as may be reasonably necessary for the effectuation of the purposes,~~
37 ~~objectives, and provisions of this chapter.~~

38 ~~(9) Carry out studies and projections in order to advise~~
39 ~~designated beneficiaries or eligible individuals regarding present~~
40 ~~and estimated future qualified disability expenses and the levels~~

1 of financial participation in the ABLÉ program trust required in
2 order to assist designated beneficiaries or eligible individuals.

3 ~~(10) Participate in any other way in any federal, state, or local~~
4 ~~governmental program for the benefit of the ABLÉ program trust.~~

5 ~~(11) Promulgate, impose, and collect administrative fees and~~
6 ~~charges in connection with transactions of the ABLÉ program~~
7 ~~trust, and provide for reasonable service charges, including~~
8 ~~penalties for cancellations.~~

9 ~~(12) Set minimum and maximum investment levels.~~

10 ~~(13) Administer the funds of the ABLÉ program trust.~~

11 ~~(14) Procure insurance against any loss in connection with the~~
12 ~~property, assets, or activities of the ABLÉ program trust.~~

13 ~~(15) Procure insurance indemnifying any member of the board~~
14 ~~from personal loss or liability resulting from a member's action~~
15 ~~or inaction as a member of the board.~~

16 ~~(d) The Treasurer shall, on behalf of the board, appoint an~~
17 ~~executive director, who shall not be a member of the board and~~
18 ~~who shall serve at the pleasure of the board. The Treasurer shall~~
19 ~~determine the duties of the executive director and other staff as~~
20 ~~necessary and set his or her compensation. The board may authorize~~
21 ~~the executive director to enter into contracts on behalf of the board~~
22 ~~or conduct any business necessary for the efficient operation of~~
23 ~~the board.~~

24 ~~4878. (a) The board shall segregate moneys received by the~~
25 ~~ABLÉ program trust into two funds, which shall be identified as~~
26 ~~the program fund and the administrative fund.~~

27 ~~(1) Notwithstanding Section 13340 of the Government Code,~~
28 ~~the program fund is hereby continuously appropriated, without~~
29 ~~regard to fiscal years, to the ABLÉ Act Board for the purposes~~
30 ~~specified in this act.~~

31 ~~(2) Notwithstanding Section 13340 of the Government Code,~~
32 ~~the administrative fund is hereby continuously appropriated,~~
33 ~~without regard to fiscal years, to the ABLÉ Act Board for~~
34 ~~administration of the act. Administrative costs shall not exceed 3~~
35 ~~percent of the incoming funds for each fiscal year for the first five~~
36 ~~fiscal years following the opening of the first ABLÉ Act account.~~
37 ~~After the five-year period, administrative costs shall not exceed 1~~
38 ~~percent of the incoming funds for each fiscal year.~~

39 ~~(3) Funding for startup and administrative costs for the board~~
40 ~~shall be provided in the form of a loan from the General Fund~~

1 sufficient to cover the board's projected administrative costs for
2 its first two years of implementing the program. Once the loan has
3 been expended and revenues from the program are sufficient to
4 cover the board's ongoing costs, the board shall repay, within five
5 years, the amount loaned, plus interest calculated at the rate earned
6 by the Pooled Money Investment Account.

7 (b) Not later than 30 days after the close of each month, the
8 investment manager shall place on file for public inspection during
9 business hours a report with respect to investment performance.
10 The investment manager shall report the following information,
11 to the extent applicable, to the board within 30 days following the
12 end of each month:

13 (1) The type of investment, name of the issuer, date of maturity,
14 and the par and dollar amount invested in each security, investment,
15 and money within the program fund.

16 (2) The weighted average maturity of the investments within
17 the program fund.

18 (3) Any amounts in the program fund that are under the
19 management of an investment manager.

20 (4) The market value as of the date of the report and the source
21 of this valuation for any security within the program fund.

22 (5) A description of the compliance with the statement of
23 investment policy.

24 (e) Moneys in the program fund may be invested or reinvested
25 by the Treasurer or may be invested in whole or in part under
26 contract with an investment manager, as determined by the board.

27 (d) The board shall annually prepare and adopt a written
28 statement of investment policy. The board shall consider the
29 statement of investment policy and any changes in the investment
30 policy at a public hearing. The board shall approve the investment
31 management entity or entities consistent with subdivision (c).

32 (e) Transfers may be made from the program fund to the
33 administrative fund for the purpose of paying operating costs
34 associated with administering the ABLE program trust and as
35 required by this chapter. All costs of administration of the ABLE
36 program trust shall be paid out of the administrative fund.

37 (f) All moneys paid by designated beneficiaries or eligible
38 individuals in connection with ABLE accounts shall be deposited
39 as received into the program fund, and shall be promptly invested
40 and accounted for separately. Deposits and interest thereon

1 accumulated on behalf of designated beneficiaries in the program
2 fund of the ABLE program trust may be used for qualified
3 disability expenses.

4 ~~(g) The board shall maintain separate accounting for each
5 designated beneficiary.~~

6 ~~(h) Any designated beneficiary may, directly or indirectly, direct
7 the investment of any contributions to his or her ABLE account,
8 or any earnings thereon, no more than two times in any calendar
9 year.~~

10 ~~(i) The assets of the trust, including the program fund, shall at
11 all times be preserved, invested, and expended solely and only for
12 the purposes of the trust and shall be held in trust for the designated
13 beneficiaries and no property rights therein shall exist in favor of
14 the state. The assets shall not be transferred or used by the state
15 for any purposes other than the purposes of the trust and consistent
16 with the provisions of the federal ABLE Act.~~

17 4879. (a) Under the program, a person may make contributions
18 for a taxable year, for the benefit of an individual who is an eligible
19 individual for that taxable year, to an ABLE account that is
20 established for the purpose of meeting the qualified disability
21 expenses of the designated beneficiary of the account if both of
22 the following criteria are met:

23 (1) The designated beneficiary is limited to one ABLE account
24 for purposes of this chapter.

25 (2) The ABLE account is established only for a designated
26 beneficiary who is a resident of this state.

27 ~~(b) A contribution to any ABLE account shall not be accepted
28 unless one of the following conditions is satisfied:~~

29 ~~(1) The contribution is in cash.~~

30 ~~(2) Except in the case of contributions under Section
31 529A(c)(1)(C) of the Internal Revenue Code, if the contribution
32 to an ABLE account would result in aggregate contributions from
33 all contributors to the ABLE account for the taxable year exceeding
34 the amount in effect under Section 2503(b) of the Internal Revenue
35 Code for the calendar year in which the taxable year begins.~~

36 ~~(b) A contribution shall not be accepted if either of the following
37 occurs:~~

38 ~~(1) The contribution is not in cash.~~

39 ~~(2) Except in the case of contributions under Section
40 529A(c)(1)(C) of the Internal Revenue Code, relating to change~~

1 *in designated beneficiaries or programs, the contribution to an*
2 *ABLE account would result in aggregate contributions from all*
3 *contributors to the ABLE account for the taxable year exceeding*
4 *the amount in effect under Section 2503(b) of the Internal Revenue*
5 *Code, relating to exclusion from gifts, for the calendar year in*
6 *which the taxable year begins.*

7 (c) The designated beneficiary shall retain ownership of all
8 contributions made to the designated beneficiary's ABLE account
9 to the date of utilization for qualified disability expenses, and all
10 interest derived from the investment of the contributions to the
11 designated beneficiary's ABLE account shall be deemed to be held
12 in the ABLE program trust for the benefit of the designated
13 beneficiary. Neither the contributions, nor any interest derived
14 therefrom, may be pledged as collateral for any loan.

15 (d) The board shall develop adequate safeguards to prevent
16 aggregate contributions on behalf of a designated beneficiary in
17 excess of the maximum contribution limits necessary to provide
18 for the qualified disability expenses of the designated beneficiary.
19 For purposes of this subdivision, aggregate contributions include
20 contributions under any prior qualified ABLE program of any state
21 or agency or instrumentality thereof.

22 ~~4880. Notwithstanding any other law, moneys in, contributions~~
23 ~~to, and any distribution for qualified disability expenses from, an~~
24 ~~ABLE account, not to exceed one hundred thousand dollars~~
25 ~~(\$100,000), shall not count toward determining eligibility for a~~
26 ~~state or local means-tested program.~~

27 4881. (a) The board shall provide an annual listing of
28 distributions to individuals with respect to an interest in an ABLE
29 account to the Franchise Tax Board at a time and in a manner and
30 form as specified by the Franchise Tax Board. The taxpayers'
31 identification numbers obtained in connection with an ABLE
32 account shall be used exclusively for state and federal tax
33 administration purposes.

34 (b) The board shall make a report to the appropriate individual
35 of any distribution to any individual with respect to an interest in
36 an ABLE account, at a time and in a form and manner as required
37 by the Franchise Tax Board.

38 (c) The board shall report annually to each designated
39 beneficiary all of the following:

40 (1) The value of the designated beneficiary's account.

1 (2) The interest earned thereon.
 2 (3) The rate of return of the investments in the designated
 3 beneficiary’s account for that reporting period.

4 (4) Information on investments and qualified disability expenses
 5 that designated beneficiaries can use to set savings goals and
 6 contribution amounts.

7 (d) The board shall provide a means for designated beneficiaries
 8 to express concerns or comments regarding the ABLE program
 9 trust and any information required to be reported by this section.

10 ~~4882. (a) The board shall adopt regulations as it deems~~
 11 ~~necessary to implement this chapter consistent with the federal~~
 12 ~~Internal Revenue Code and regulations issued pursuant to that~~
 13 ~~code to ensure that this program meets all criteria for federal~~
 14 ~~tax-exempt benefits.~~

15 ~~(b) The board may adopt regulations to implement this chapter~~
 16 ~~as emergency regulations in accordance with the rulemaking~~
 17 ~~provisions of the Administrative Procedure Act (Chapter 3.5~~
 18 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
 19 ~~2 of the Government Code). The adoption of the regulations shall~~
 20 ~~be deemed to be an emergency and necessary for the immediate~~
 21 ~~preservation of the public peace, health and safety, or general~~
 22 ~~welfare.~~

23 4883. This act shall be construed liberally in order to effectuate
 24 its legislative intent. The purposes of this act and all of its
 25 provisions with respect to powers granted shall be broadly
 26 interpreted to effectuate the intent and purposes of the federal
 27 ABLE Act and not as a limitation of those powers.

28 ~~4884. The board shall market this program to residents of the~~
 29 ~~State of California to the extent funds are available to do so.~~

30 *SEC. 3. This act shall only become effective if Assembly Bill*
 31 *449 of the 2015–16 Regular Session is enacted and becomes*
 32 *effective.*