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AB-1553 Savings plans: qualified ABLE program. (2015-2016)

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Assembly Bill No. 1553

CHAPTER 317

An act to amend Sections 4875 and 4877 of the Welfare and Institutions Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 13, 2016. Filed with Secretary of State September 13, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1553, Irwin. Savings plans: qualified ABLE program.

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 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.

Existing law conforms 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. Existing law defines "eligible individual" for these purposes. Existing law establishes in state government the ABLE program trust for purposes of implementing the federal ABLE Act. Existing law also establishes the ABLE Act Board and authorizes the board to adopt regulations to implement the program.

The existing State Contract Act, in connection with contracts entered into by any state agency for services to be rendered to the state, prohibits a person, firm, or subsidiary thereof that has been awarded a consulting services contract from submitting a bid for, or being awarded a contract for, the provision of services, the procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. A willful violation of these provisions is a misdemeanor, under other provisions.

This bill would modify the definition of "eligible individual." The bill would also exempt the ABLE Act Board from the above prohibition in the State Contract Act for a contract with a program consultant for the qualified ABLE program but would require such a contract to be publicly disclosed in a manner specified by the board prior to entering into the contract.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. 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 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) "Designated beneficiary" means the eligible individual who established an ABLE account and is the owner of the account.

(f) "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.

(g) "Federal ABLE Act" means the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014.

(h) "Investment management" means the functions performed by a manager contracted to perform functions delegated by the board.

(i) "Investment manager" means a manager contracted to perform functions delegated by the board.

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

(k) "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.

(l) "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.

SEC. 2. Section 4877 of the Welfare and Institutions Code is amended to read:

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

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

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

(1) Sue and be sued.

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

(B) Subdivision (a) of Section 10365.5 of the Public Contract Code shall not apply to a contract with a program consultant for the qualified ABLE program. Any contract with a program consultant for the qualified ABLE program that would have been prohibited by that subdivision shall be publicly disclosed in a manner specified by the board prior to entering into the contract.

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

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

(5) Accept any grants, gifts, appropriations, and other moneys from any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund.

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

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

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

(9) Carry out studies and projections in order to advise designated beneficiaries or eligible individuals regarding present and estimated future qualified disability expenses and the levels of financial participation in the ABLE program trust required in order to assist designated beneficiaries or eligible individuals.

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

(11) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the ABLE program trust, and provide for reasonable service charges, including penalties for cancellations.

(12) Set minimum and maximum investment levels.

(13) Administer the funds of the ABLE program trust.

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

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

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

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow ABLE accounts to be accessed at the earliest possible time, it is necessary that this act take effect immediately.