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AB-384 The Qualified ABLE Program: tax-advantaged savings accounts. (2017-2018)

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Assembly Bill No. 384

CHAPTER 470

An act to amend Sections 4879, 4880, and 4884 of the Welfare and Institutions Code, relating to the Qualified ABLE Program, and making an appropriation therefor.

[Approved by Governor October 04, 2017. Filed with Secretary of State October 04, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 384, Irwin. The Qualified ABLE Program: tax-advantaged savings accounts.

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 in a tax-advantaged savings account 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 establishes the Qualified ABLE Program, administered by the California ABLE Act Board, in this state for purposes of implementing the federal ABLE Act. Existing law requires the board to segregate the moneys coming into the ABLE program trust into 2 funds: the program fund, which is continuously appropriated, and the administrative fund, which is available upon appropriation by the Legislature. All moneys paid by designated beneficiaries or eligible individuals in connection with ABLE accounts are required to be deposited, as received, into the program fund, promptly invested, and accounted for separately.

Existing law requires that an ABLE account only be established for a designated beneficiary who is a resident of this state, and that the board market the program to residents of this state to the extent funds are available. Existing law also provides that moneys in, contributions to, and any distribution for qualified disability expenses from, an ABLE account, not to exceed \$100,000, do not count toward determining eligibility for a state or local means-tested program.

This bill would expand the residency requirement for a designated beneficiary to being a resident of the United States, and as a result, would expand the purposes of a continuously appropriated fund, thereby making an appropriation. The bill would require the board to market the program to residents of the United States to the extent funds are available. The bill would clarify that specified existing provisions of law exempting the moneys in, and qualified distributions from, an ABLE account from being included as income for certain federal means-tested programs also apply.

This bill would incorporate additional changes to Section 4880 of the Welfare and Institutions Code proposed by AB 688 to be operative only if this bill and AB 688 are enacted and this bill is enacted last.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 4879 of the Welfare and Institutions Code is amended to read:

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

- (1) The designated beneficiary is limited to one ABLE account for purposes of this chapter.
- (2) The ABLE account is established only for a designated beneficiary who is a resident of the United States.

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

- (1) The contribution is not in cash.
- (2) Except in the case of contributions under Section 529A(c)(1)(C) of the Internal Revenue Code, relating to change in designated beneficiaries or programs, the contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount in effect under Section 2503(b) of the Internal Revenue Code, relating to exclusion from gifts, for the calendar year in which the taxable year begins.

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

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

SEC. 2. Section 4880 of the Welfare and Institutions Code is amended to read:

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

(b) Notwithstanding subdivision (a), Section 103 of Division B of Public Law 113-295 and Sections 17140.4 and 23711.4 of the Revenue and Taxation Code shall apply.

SEC. 2.5. Section 4880 of the Welfare and Institutions Code is amended to read:

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

(b) Notwithstanding subdivision (a), Section 103 of Division B of Public Law 113-295 and Sections 17140.4 and 23711.4 of the Revenue and Taxation Code shall apply.

(c) This section shall become inoperative on September 1, 2018, and, as of January 1, 2019, is repealed.

SEC. 2.7. Section 4880 is added to the Welfare and Institutions Code, to read:

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

(b) Notwithstanding subdivision (a), Section 103 of Division B of Public Law 113-295 and Sections 17140.4 and 23711.4 of the Revenue and Taxation Code shall apply.

(c) (1) Notwithstanding any other law, moneys in an ABLE account, not to exceed one hundred thousand dollars (\$100,000), shall be exempt from enforcement of a money judgment without making a claim.

(2) A money judgment in favor of the State Department of Health Care Services shall not be subject to the exemption provided in paragraph (1) during any period of time in which federal law or guidance issued by the federal Centers for Medicare and Medicaid Services requires the department to recover funds from ABLE accounts for reimbursement of qualifying Medi-Cal expenditures.

(d) This section shall become operative on September 1, 2018.

SEC. 3. Section 4884 of the Welfare and Institutions Code is amended to read:

4884. The board shall market this program to residents of the United States to the extent funds are available to do so.

SEC. 4. Sections 2.5 and 2.7 of this bill incorporate amendments to Section 4880 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 688. Those sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 4880 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 688, in which case Section 2 of this bill shall not become operative.