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AB-2216 The Qualified ABLE Program: tax-advantaged savings accounts. (2021-2022)

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Assembly Bill No. 2216

CHAPTER 896

An act to amend Sections 4875, 4879, and 4885 of the Welfare and Institutions Code, relating to the Qualified ABLE Program.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2216, 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 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 defines "ABLE account" and "designated beneficiary" for purposes of the act. Existing law prohibits acceptance of a contribution to an ABLE account that is not in cash or if the contribution would result in aggregate contributions exceeding a specified amount. Existing law authorizes, to the extent allowed under federal law, all amounts in the designated beneficiary's ABLE account to be transferred into the ABLE account of another designated beneficiary's account. Existing law requires the board to notify all designated beneficiaries of the potential tax consequences of transferring funds from one ABLE account to another, as specified.

Under existing law, following the death of a designated beneficiary, and only after the department has received approval by the federal Centers for Medicare and Medicaid Services, the state is prohibited from seeking recovery under the Medi-Cal estate recovery provisions of any amount remaining in the designated beneficiary's ABLE account for any amount of medical assistance paid under the state's Medicaid plan, and prohibits the state from filing a claim for the payment under the ABLE Act.

This bill would, among other things, instead authorize a change in the designated beneficiary of an ABLE account to take effect upon the death of the designated beneficiary, as specified. The bill would remove the requirement on the board to notify all designated beneficiaries of the potential tax consequences described above.

This bill would also define "CaABLE account" for purposes of the act to mean an ABLE account established pursuant to those provisions and administered by the board. The bill would adjust the aggregate contribution limit on contributions to ABLE

accounts. The bill also would provide that the above-described Medi-Cal estate recovery provisions apply to ABLE accounts and CalABLE accounts established prior to January 1, 2023, and to CalABLE accounts established on or after January 1, 2023, thereby limiting the application of the prohibition on the above-described Medi-Cal estate recovery provisions to CalABLE accounts for accounts established after January 1, 2023.

Vote: majority 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 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.

SEC. 2. 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 of both of the following:

(A) The amount allowed under Section 2503(b) of the Internal Revenue Code, relating to exclusion from gifts, for the calendar year in which the taxable year begins.

(B) In the case of any contribution by a designated beneficiary described in Section 529A(b)(7) of the Internal Revenue Code before January 1, 2026, the lesser of either of the following:

(i) Compensation, as defined by Section 219(f)(1) of the Internal Revenue Code, includible in the designated beneficiary's gross income for the taxable year.

(ii) An amount equal to the poverty line for a one-person household as promulgated under Section 9902(2) of Title 42 of the United States Code, for the calendar year preceding 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. 3. Section 4885 of the Welfare and Institutions Code is amended to read:

4885. (a) Notwithstanding any other state law, and only to the extent permitted under federal law, the program may permit a change in the designated beneficiary of an ABLE account, made during the life of the designated beneficiary, to take effect upon the death of the designated beneficiary. The amount to be transferred pursuant to the successor beneficiary designation is subject to all of the relevant payment and tax provisions of the federal ABLE Act.

(b) Following the death of a designated beneficiary, and only after the State Department of Health Care Services has received approval by the federal Centers for Medicare and Medicaid Services, both of the following shall apply:

(1) For CalABLE accounts established on or after January 1, 2023, the following shall apply:

(A) The state shall not seek recovery pursuant to Section 14009.5 of any amount remaining in a designated beneficiary's CalABLE account for any amount of medical assistance paid for the designated beneficiary after the establishment of the account under the state's Medicaid plan established under Title XIX of the federal Social Security Act.

(B) The state shall not file a claim for any amount remaining in a designated beneficiary's CalABLE account for the payment under subdivision (f) of Section 529A of the Internal Revenue Code.

(2) For CalABLE accounts and ABLE accounts established prior to January 1, 2023:

(A) The state shall not seek recovery pursuant to Section 14009.5 of any amount remaining in a designated beneficiary's CalABLE or ABLE account for any amount of medical assistance paid for the designated beneficiary after the establishment of the account under the state's Medicaid plan established under Title XIX of the federal Social Security Act.

(B) The state shall not file a claim for any amount remaining in a designated beneficiary's CalABLE or ABLE account for the payment under subdivision (f) of Section 529A of the Internal Revenue Code.