

SUMMARY ANALYSIS OF AMENDED BILL

Author: Irwin, et al. Analyst: Scott McFarlane Bill Number: AB 449
 Related Bills: See Prior Analysis Telephone: 845-6075 Amended Date: May 5, 2015
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	The California Achieving a Better Life Experience (ABLE) Act
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SUMMARY

This bill would establish a temporary California ABLE program and would modify California income tax law to temporarily conform to the federal income tax treatment of ABLE accounts.

This analysis only addresses the provisions of the bill that would impact the department’s programs and operations.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 5, 2015, amendments provide that:

- California’s conformity to the federal income tax treatment of ABLE accounts would apply to taxable years beginning on or after January 1, 2016, and before January 1, 2021;
- California’s Qualified ABLE Program would be repealed on January 1, 2022; and
- Moneys in, contributions to, and qualified distributions from an ABLE account not in excess of \$100,000 would not count toward determining eligibility for a state or local means-tested program.

The May 5, 2015, amendments also added coauthors and made minor technical changes.

As a result of the amendments, the “Effective/Operative Date,” “This Bill,” “Implementation Considerations,” “Economic Impact,” and “Policy Concerns” sections of the department’s analysis of this bill as amended March 19, 2015, are revised and provided below. The remainder of the department’s analysis of this bill as amended March 19, 2015, still applies.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2016, and would be operative for taxable years beginning on or after January 1, 2016, and before January 1, 2021.

Board Position:	Legislative Director	Date
_____ S _____ NA _____ X _____ NP	Gail Hall	5/22/15
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THIS BILL

This bill would establish a temporary California Qualified ABLE Program,¹ and would temporarily conform to the federal income tax treatment of ABLE accounts; that is, California would conform to the federal tax treatment of ABLE accounts for taxable years beginning on or after January 1, 2016, and before January 1, 2021, and such conformity would remain in effect until December 1, 2021. The California Qualified ABLE Program would be effective on January 1, 2016, and would remain in effect until January 1, 2022.²

The California Qualified ABLE Program would allow a person to 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 account. The designated beneficiary would be required to be a resident of this state, and would be allowed to have only one ABLE account.

Moneys in, contributions to, and qualified distributions from an ABLE account not in excess of \$100,000 would not count toward determining eligibility for a state or local means-tested program.

Similar to federal law, contributions would be required to be made in cash and would not be deductible for state income tax purposes, and the additional federal contribution, rollover, and distribution rules would apply—meaning the portion of any ABLE distribution that is includible in income would be subject to an additional 10-percent tax for state purposes (in addition to the 10-percent additional tax imposed for federal purposes), unless the distribution is made after the death of the designated beneficiary.

A copy of the report required to be filed with the Secretary of the Treasury under IRC section 529A(d) would be required to be filed with the Franchise Tax Board at the same time and in the same manner as specified by the Secretary.

This bill would not conform to the federal six-percent excise tax on contributions to an ABLE account that exceed the annual limit.

¹ The California Qualified ABLE Program and fund would be established under the California Welfare and Institutions Code, and would be administered by the California State Treasurer, who would be responsible to ensure that the program is administered in compliance with the federal ABLE Act.

² Temporary conformity to the federal tax treatment of ABLE accounts would be provided under Revenue and Taxation Code (R&TC) sections 17140.4 and 23711.4, and those sections would be repealed on December 1, 2021. The temporary California Qualified ABLE Program would be established under Chapter 15 (commencing with Section 4875) of Division 4.5 of the Welfare and Institutions Code, and that chapter would remain in effect until January 1, 2022, and as of that date would be repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

IMPLEMENTATION CONSIDERATIONS

It is unclear how funds held in an account established in California's ABLE Program would be treated when that program is repealed; transition rules are suggested. For example, would California contract with another state that has a qualified ABLE program to provide California residents access to that other state's qualified ABLE program upon the repeal of California's ABLE Program,³ and if so would the account's designated beneficiary be required to either rollover the amount in their California ABLE account to the other state's ABLE program or have their account balance distributed to them?

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 449 As Amended May 5, 2015 Assumed Enactment After June 30, 2015		
2015-16	2016-17	2017-18
- \$100,000	- \$400,000	- \$900,000

This estimate does not account for changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

This estimate is based on a proration of the Joint Committee on Taxation (JCT) estimate for the ABLE Act of 2014. The JCT's estimated losses, converted to calendar years, are \$5.5 million, \$13.5 million, \$30.3 million, and \$57.3 million in calendar years 2016, 2017, 2018, and 2019, respectively. Estimated losses are attributable to projected earnings in ABLE accounts that would be exempt from taxation and qualified distributions that would be excluded from gross income.

The JCT estimate is reduced by approximately 87.5 percent based on Social Security Disability Insurance data to reflect California's estimated 12.5 percent share. The results are then reduced an additional 70 percent to reflect the difference between federal and state tax rates.

³ IRC section 529A(e)(7) defines a contracting state as a state without a qualified ABLE program which has entered into a contract with a state with a qualified ABLE program to provide residents of the contracting state access to a qualified ABLE program.

The calendar year estimates are converted to fiscal years and then rounded to arrive at the amounts shown in the table above. The JCT estimates that revenue losses are projected to continue to increase, resulting in an estimated loss of approximately \$3.4 million in fiscal year 2020-21.

POLICY CONCERNS

The repeal of conformity to the federal income tax treatment of ABLE accounts would create differences between federal and state law that would require adjustments on California tax returns if California contracts with another state to allow individuals to establish ABLE accounts in that state upon the repeal of California's ABLE program.

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