S T A T E  O F  N E W  Y O R K

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2011-2012 Regular Sessions

I N  A S S E M B L Y

January 14, 2011

Introduced by M. of A. CASTELLI, RAIA, SALADINO -- Multi-Sponsored by -- M. of A. BARCLAY, CALHOUN, CONTE -- read once and referred to the Committee on Aging

AN ACT to amend the elder law, the tax law and the state finance law, in relation to establishing various long term care savings plans and providing certain tax credits; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The elder law is amended by adding a new article 4 to read as follows:

ARTICLE IV

LONG TERM CARE SAVINGS ACCOUNTS

SECTION 401. DEFINITIONS.
402. LONG TERM CARE SAVINGS ACCOUNT PROGRAM.
403. QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PROGRAM.
404. QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT PROGRAM.
405. OWNERSHIP.
406. WITHDRAWALS.
407. TAX TREATMENT.
408. DEATH OF THE ACCOUNT HOLDER.
409. CANCELLATION OR TRANSFER.
410. RULES AND REGULATIONS.

S 401. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ACCOUNT ADMINISTRATOR" MEANS ANY OF THE FOLLOWING:

(A) A NATIONAL OR STATE CHARTERED BANK, A FEDERAL OR STATE CHARTERED SAVINGS AND LOAN ASSOCIATION, A FEDERAL OR STATE CHARTERED SAVINGS BANK, OR A FEDERAL OR STATE CHARTERED CREDIT UNION.

(B) A TRUST COMPANY AUTHORIZED TO ACT AS A FIDUCIARY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(C) AN INSURANCE COMPANY LICENSED PURSUANT TO ARTICLE FORTY-ONE OR FORTY-TWO OF THE INSURANCE LAW OR A HEALTH MAINTENANCE ORGANIZATION CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW.

(D) A DEALER, SALESPERSON, OR INVESTMENT ADVISER REGISTERED PURSUANT TO SECTION THREE HUNDRED FIFTY-NINE-E OF THE GENERAL BUSINESS LAW.

(E) AN ADMINISTRATOR LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED THIRTY-SIX OF THE INSURANCE LAW.

(F) A CERTIFIED PUBLIC ACCOUNTANT LICENSED PURSUANT TO SECTION SEVENTY-FOUR HUNDRED FOUR OF THE EDUCATION LAW.

(G) AN ATTORNEY ADMITTED TO PRACTICE LAW IN THIS STATE.

(H) AN EMPLOYER, IF THE EMPLOYER HAS A SELF-INSURED HEALTH PLAN PURSUANT TO THE PROVISIONS OF THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(I) AN EMPLOYER THAT PARTICIPATES IN THE QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PROGRAM.

2. "ACCOUNT HOLDER" MEANS THE OWNER OF ANY ACCOUNT ESTABLISHED PURSUANT TO THIS ARTICLE.

3. "ELIGIBLE LONG TERM CARE EXPENSE" MEANS ANY OF THE FOLLOWING:

(A) AN EXPENSE PAID BY THE ACCOUNT HOLDER FOR THE COST OF LONG TERM CARE IN A LONG TERM CARE FACILITY FOR THE ACCOUNT HOLDER, THE ACCOUNT HOLDER'S SPOUSE, THE ACCOUNT HOLDER'S PARENT OR ANOTHER PERSON FOR WHOM THE ACCOUNT HOLDER HAS AN INSURABLE INTEREST;

(B) THE COST OF CARE PROVIDED IN AN INDIVIDUAL'S HOME WHEN THE ACCOUNT HOLDER, THE ACCOUNT HOLDER'S SPOUSE, THE ACCOUNT HOLDER'S PARENT OR ANOTHER PERSON FOR WHOM THE ACCOUNT HOLDER HAS AN INSURABLE INTEREST RECEIVING THE CARE IS UNABLE TO PERFORM MULTIPLE BASIC LIFE FUNCTIONS INDEPENDENTLY; OR

(C) AN EXPENSE PAID BY THE ACCOUNT HOLDER FOR THE COST OF QUALIFIED LONG TERM CARE SERVICES AS SUCH TERM IS DEFINED IN SUBDIVISION (C) OF SECTION 7702B OF THE INTERNAL REVENUE CODE.

4. "EMPLOYEE" MEANS THE INDIVIDUAL FOR WHOSE BENEFIT A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT IS ESTABLISHED PURSUANT TO SECTION FOUR HUNDRED THREE OF THIS ARTICLE. "EMPLOYEE" INCLUDES A SELF-EMPLOYED INDIVIDUAL.

5. "HIGHER DEDUCTIBLE" MEANS A DEDUCTIBLE OF NOT LESS THAN ONE THOUSAND TWO HUNDRED DOLLARS AND NOT MORE THAN FIVE THOUSAND NINE HUNDRED FIFTY DOLLARS FOR AN INDIVIDUAL AND NOT LESS THAN TWO THOUSAND FOUR HUNDRED DOLLARS AND NOT MORE THAN ELEVEN THOUSAND NINE HUNDRED DOLLARS FOR A FAMILY FOR THE YEAR TWO THOUSAND ELEVEN. THIS MINIMUM AND MAXIMUM SHALL BE INCREASED ANNUALLY BY THE SAME PERCENTAGE AS THE PERCENTAGE INCREASE IN THE FEDERAL CONSUMER PRICE INDEX.

6. "LONG TERM CARE INSURANCE PREMIUMS" MEANS PREMIUMS PAID FOR A LONG TERM CARE INSURANCE POLICY THAT OFFERS COVERAGE TO THE INDIVIDUAL, THE INDIVIDUAL'S SPOUSE OR ANOTHER PERSON FOR WHOM THE TAXPAYER HAS AN INSURABLE INTEREST.

7. "PARTICIPANT" MEANS AN INDIVIDUAL WHO ESTABLISHES A LONG TERM CARE SAVINGS ACCOUNT BY ENTERING INTO A PARTICIPATION AGREEMENT OR ESTABLISHING AN ACCOUNT WITH A FINANCIAL INSTITUTION WITH WHICH THE COMMISSIONER HAS AN AGREEMENT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED TWO OF THIS ARTICLE.

8. "QUALIFIED HIGHER DEDUCTIBLE HEALTH PLAN" MEANS A HEALTH COVERAGE POLICY, CERTIFICATE OR CONTRACT THAT PROVIDES FOR PAYMENTS FOR COVERED BENEFITS THAT EXCEED THE HIGHER DEDUCTIBLE AND THAT IS PURCHASED EITHER BY AN EMPLOYER FOR THE BENEFIT OF AN EMPLOYEE FOR WHOM THE EMPLOYER MAKES DEPOSITS INTO A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT OR BY A

SELF-EMPLOYED OR OTHER INDIVIDUAL WHO MAKES DEPOSITS INTO A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT.

9. "COMMISSIONER" MEANS THE COMMISSIONER OF THE STATE DEPARTMENT OF HEALTH.

S 402. LONG TERM CARE SAVINGS ACCOUNT PROGRAM. 1. (A) THE COMMISSIONER SHALL SELECT THE ADMINISTRATOR OF THE PLAN FROM SUBMITTED PROPOSALS. IF THE COMMISSIONER RECEIVES NO ACCEPTABLE RESPONSES TO A REQUEST FOR PROPOSALS FOR AN ADMINISTRATOR FOR THE PLAN BY DECEMBER THIRTY-FIRST, TWO THOUSAND ELEVEN, THE COMMISSIONER MAY ENTER INTO AGREEMENTS WITH STATE-CHARTERED OR FEDERALLY CHARTERED BANKS, SAVINGS BANKS, BUILDING AND LOAN ASSOCIATIONS, SAVINGS AND LOAN ASSOCIATIONS, OR CREDIT UNIONS, OR A SUBSIDIARY OF ANY SUCH ENTITY, TO RECEIVE CONTRIBUTIONS IN THE FORM OF ACCOUNT DEPOSITS. THE COMMISSIONER MAY ADOPT AND PROMULGATE RULES AND REGULATIONS TO CARRY OUT HIS OR HER DUTIES UNDER THIS PARAGRAPH.

(B) IF AN ADMINISTRATOR IS SELECTED, PARTICIPANTS SHALL ENTER INTO PARTICIPATION AGREEMENTS WITH THE COMMISSIONER. IF AN ADMINISTRATOR IS NOT SELECTED, PARTICIPANTS MAY MAKE CONTRIBUTIONS TO AN ACCOUNT WITH A FINANCIAL INSTITUTION WITH WHICH THE COMMISSIONER HAS AN AGREEMENT PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. A LIFETIME MAXIMUM OF ONE HUNDRED SIXTY-FIVE THOUSAND DOLLARS MAY BE CONTRIBUTED BY A PARTICIPANT. SUCH AMOUNT SHALL BE INCREASED ANNUALLY BY THE SAME PERCENTAGE AS THE PERCENTAGE INCREASE IN THE FEDERAL CONSUMER PRICE INDEX.

2. (A) IF AN ADMINISTRATOR FOR THE LONG TERM CARE SAVINGS ACCOUNT PROGRAM IS SELECTED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION, THE LONG TERM CARE SAVINGS ACCOUNT PROGRAM TRUST SHALL BE CREATED PURSUANT TO SECTION NINETY-NINE-T OF THE STATE FINANCE LAW.

(B) THE COMMISSIONER SHALL BE THE TRUSTEE OF THE TRUST AND, AS SUCH, RESPONSIBLE FOR THE ADMINISTRATION, OPERATION AND MAINTENANCE OF THE PLAN AND SHALL HAVE ALL POWERS NECESSARY TO CARRY OUT AND EFFECTUATE THE PURPOSES, OBJECTIVES AND PROVISIONS PERTAINING TO THE ADMINISTRATION, OPERATION AND MAINTENANCE OF THE TRUST, EXCEPT AS PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION.

(C) THE COMPTROLLER SHALL HAVE FIDUCIARY RESPONSIBILITY TO MAKE ALL DECISIONS REGARDING THE INVESTMENT OF THE MONEY IN THE TRUST, INCLUDING THE SELECTION OF ALL INVESTMENT OPTIONS AND THE APPROVAL OF ALL FEES AND OTHER COSTS CHARGED TO TRUST ASSETS EXCEPT COSTS FOR ADMINISTRATION, OPERATION AND MAINTENANCE OF THE TRUST, PURSUANT TO THE DIRECTIONS, GUIDELINES AND POLICIES ESTABLISHED BY THE COMMISSIONER.

3. A QUALIFIED INDIVIDUAL AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION MAY MAKE WITHDRAWALS AS A PARTICIPANT IN THE LONG TERM CARE SAVINGS ACCOUNT PROGRAM TO PAY OR REIMBURSE ELIGIBLE LONG TERM CARE EXPENSES. A QUALIFIED INDIVIDUAL AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION FOUR OF THIS SECTION MAY MAKE WITHDRAWALS TO PAY OR REIMBURSE LONG TERM CARE INSURANCE PREMIUMS.

4. FOR THE PURPOSES OF THIS SECTION, "QUALIFIED INDIVIDUAL" MEANS:

(A) A PERSON WHO INCURRED LONG TERM CARE EXPENSES DURING THE TAXABLE YEAR; OR

(B) A PERSON WHO TURNED FIFTY YEARS OF AGE OR OLDER DURING THE TAXABLE YEAR WHO MADE PAYMENTS FOR LONG TERM CARE INSURANCE PREMIUMS DURING THE TAXABLE YEAR.

S 403. QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PROGRAM. 1. A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PROGRAM INCLUDES ALL OF THE FOLLOWING:

(A) THE PURCHASE BY AN EMPLOYER OR A SELF-EMPLOYED OR OTHER INDIVIDUAL OF A QUALIFIED HIGHER DEDUCTIBLE HEALTH PLAN FOR THE BENEFIT OF AN EMPLOYEE OR THE SELF-EMPLOYED OR OTHER INDIVIDUAL;

(B) EITHER: (1) IN THE CASE OF AN EMPLOYEE, THE CONTRIBUTION ON BEHALF OF AN EMPLOYEE INTO A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT BY HIS OR HER EMPLOYER OF ALL OR PART OF THE PREMIUM DIFFERENTIAL REALIZED BY THE EMPLOYER BASED ON THE PURCHASE OF A QUALIFIED HIGHER DEDUCTIBLE HEALTH PLAN FOR THE BENEFIT OF THE EMPLOYEE. AN EMPLOYER THAT DID NOT PREVIOUSLY PROVIDE A HEALTH COVERAGE POLICY, CERTIFICATE, OR CONTRACT FOR HIS OR HER EMPLOYEES MAY CONTRIBUTE ALL OR PART OF THE DEDUCTIBLE OF THE PLAN PURCHASED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION; OR

(2) IN THE CASE OF A SELF-EMPLOYED OR OTHER INDIVIDUAL, THE INDIVIDUAL'S CONTRIBUTION INTO A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT OF AMOUNTS TO PAY ELIGIBLE LONG TERM CARE EXPENSES; AND

(C) AN ACCOUNT ADMINISTRATOR TO ADMINISTER THE QUALIFIED LONG TERM CARE SAVINGS ACCOUNT FROM WHICH PAYMENT OF CLAIMS IS MADE.

2. FOR TAX YEARS ENDING ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND ELEVEN, AN EMPLOYER, EXCEPT AS OTHERWISE PROVIDED BY STATUTE, CONTRACT OR A COLLECTIVE BARGAINING AGREEMENT, MAY OFFER A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PROGRAM TO THE EMPLOYER'S EMPLOYEES. FOR TAX YEARS ENDING ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND ELEVEN, A SELF-EMPLOYED OR OTHER INDIVIDUAL MAY ESTABLISH A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT WITH AN ACCOUNT ADMINISTRATOR.

3. (A) THE ACCOUNT ADMINISTRATOR SHALL UTILIZE THE MONEYS HELD IN A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT FOR THE PURPOSE OF REIMBURSING AN EMPLOYEE'S ELIGIBLE LONG TERM CARE EXPENSES.

(B) IF AN EMPLOYER MAKES CONTRIBUTIONS TO A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PROGRAM ON A PERIODIC INSTALLMENT BASIS, THE EMPLOYER MAY ADVANCE TO AN EMPLOYEE, INTEREST FREE, AN AMOUNT NECESSARY TO COVER LONG TERM CARE EXPENSES INCURRED THAT EXCEED THE AMOUNT IN THE EMPLOYEE'S QUALIFIED LONG TERM CARE SAVINGS ACCOUNT WHEN THE EXPENSE IS INCURRED IF THE EMPLOYEE AGREES TO REPAY THE ADVANCE FROM FUTURE INSTALLMENTS OR WHEN HE OR SHE CEASES TO BE AN EMPLOYEE OF THE EMPLOYER.

S 404. QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT PROGRAM. 1. AN INDIVIDUAL WHO HAS BEEN REFUSED COVERAGE FOR LONG TERM CARE INSURANCE MAY ESTABLISH A QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT, SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

2. A QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT IS A SAVINGS ACCOUNT APPROVED BY THE COMMISSIONER FOR AN INDIVIDUAL WHO HAS BEEN SUBJECT TO DENIAL OF LONG TERM CARE INSURANCE COVERAGE. AS USED IN THIS ARTICLE, DENIAL OF LONG TERM CARE INSURANCE COVERAGE SHALL MEAN THAT:

(A) THE INDIVIDUAL HAS APPLIED FOR AND BEEN DENIED COVERAGE BY AT LEAST TWO LONG TERM CARE INSURANCE PLANS WHICH HAVE BEEN APPROVED BY THE INSURANCE DEPARTMENT FOR OPERATION IN THIS STATE, OR

(B) THE INDIVIDUAL HAS BEEN CERTIFIED BY A PHYSICIAN TO BE UNINSURABLE FOR LONG TERM CARE INSURANCE COVERAGE BY REASON OF HAVING A CONDITION, DISEASE OR DISABILITY THAT PRECLUDES ANY CONSIDERATION FOR ISSUANCE OF LONG TERM CARE INSURANCE COVERAGE.

3. THE COMMISSIONER SHALL ESTABLISH AND MAINTAIN A LIST OF SUCH DISQUALIFYING CONDITIONS, DISEASES AND DISABILITIES. AN INDIVIDUAL SHALL PROVIDE PROOF OF DENIAL OF LONG TERM CARE INSURANCE COVERAGE OR SUCH CERTIFICATION FROM A PHYSICIAN IN A FORM AND MANNER SATISFACTORY TO THE COMMISSIONER.

4. THE OWNER OF SUCH ACCOUNT MAY ANNUALLY CONTRIBUTE, OR HAVE CONTRIBUTED ON HIS OR HER BEHALF, AN AMOUNT OF UP TO TEN THOUSAND DOLLARS TO A QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT. SUCH AMOUNT SHALL BE INCREASED ANNUALLY BY THE SAME PERCENTAGE AS THE PERCENTAGE INCREASE IN THE FEDERAL CONSUMER PRICE INDEX.

S 405. OWNERSHIP. 1. THE EMPLOYEE OR INDIVIDUAL WHO CONTRIBUTES OR ON WHOSE BEHALF MONIES ARE CONTRIBUTED TO A LONG TERM CARE SAVINGS ACCOUNT, QUALIFIED LONG TERM CARE SAVINGS ACCOUNT OR QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT IS THE OWNER OF SUCH ACCOUNT.

2. ANY OTHER PROVISION OF LAW OR OF THIS ARTICLE TO THE CONTRARY NOTWITHSTANDING, THE AMOUNTS A LONG TERM CARE SAVINGS ACCOUNT, QUALIFIED LONG TERM CARE SAVINGS ACCOUNT OR QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT SHALL NOT BE DEEMED A COUNTABLE ASSET PURSUANT TO THIS ARTICLE OF THE OWNER OF SUCH ACCOUNT.

S 406. WITHDRAWALS. 1. (A) AN ACCOUNT HOLDER MAY MAKE WITHDRAWALS FROM HIS OR HER ACCOUNT ESTABLISHED PURSUANT TO THIS ARTICLE TO PAY OR REIMBURSE ELIGIBLE LONG TERM CARE EXPENSES. IN THE CASE OF A LONG TERM SAVINGS PLAN PROGRAM, A QUALIFIED INDIVIDUAL AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED TWO OF THIS ARTICLE MAY MAKE WITHDRAWALS TO PAY OR REIMBURSE LONG TERM CARE INSURANCE PREMIUMS.

(B) THE ACCOUNT HOLDER SHALL SUBMIT DOCUMENTATION TO THE ACCOUNT ADMINISTRATOR OF SUCH LONG TERM CARE EXPENSES OR INSURANCE PREMIUMS DUE OR PAID BY THE ACCOUNT HOLDER IN THE TAX YEAR AND THE ACCOUNT ADMINISTRATOR SHALL PAY SUCH EXPENSES OR PREMIUMS OR REIMBURSE THE ACCOUNT HOLDER FROM THE ACCOUNT HOLDER'S ACCOUNT FOR SUCH ELIGIBLE LONG TERM CARE EXPENSES OR PREMIUMS.

2. (A) NOTWITHSTANDING PARAGRAPH (B) OF THIS SUBDIVISION AND SUBJECT TO PARAGRAPH (C) OF THIS SUBDIVISION, AN ACCOUNT HOLDER MAY WITHDRAW MONEY FROM HIS OR HER ACCOUNT ESTABLISHED PURSUANT TO THIS ARTICLE FOR ANY PURPOSE OTHER THAN TO PAY OR REIMBURSE ELIGIBLE LONG TERM CARE EXPENSES OR LONG TERM CARE INSURANCE PREMIUMS ONLY ON THE LAST BUSINESS DAY OF THE ACCOUNT ADMINISTRATOR'S BUSINESS YEAR. NOT MORE THAN THIRTY DAYS AFTER AN ACCOUNT ADMINISTRATOR BEGINS TO ADMINISTER AN ACCOUNT, THE ADMINISTRATOR SHALL NOTIFY IN WRITING EACH ACCOUNT HOLDER OF THE DATE OF THE LAST BUSINESS DAY OF THE ADMINISTRATOR'S BUSINESS YEAR.

(B) SUBJECT TO PARAGRAPH (C) OF THIS SUBDIVISION, IF AN ACCOUNT HOLDER WITHDRAWS MONEY FOR ANY PURPOSE OTHER THAN TO PAY OR REIMBURSE ELIGIBLE LONG TERM CARE EXPENSES OR LONG TERM CARE INSURANCE PREMIUMS, ALL OF THE FOLLOWING APPLY:

(I) THE AMOUNT OF THE WITHDRAWAL IS INCOME FOR PURPOSES OF SECTION SIX HUNDRED TWELVE OF THE TAX LAW.

(II) THE ADMINISTRATOR SHALL WITHHOLD AND ON BEHALF OF THE ACCOUNT HOLDER SHALL PAY A PENALTY TO THE DEPARTMENT OF TAXATION AND FINANCE EQUAL TO TEN PERCENT OF THE AMOUNT OF THE WITHDRAWAL.

(III) INTEREST EARNED ON THE ACCOUNT DURING THE TAXABLE YEAR IN WHICH A WITHDRAWAL UNDER THIS SECTION IS MADE IS INCOME FOR PURPOSES OF SECTION SIX HUNDRED TWELVE OF THE TAX LAW.

(C) THE AMOUNT OF A DISBURSEMENT OF ANY ASSETS OF AN ACCOUNT ESTABLISHED PURSUANT TO THIS ARTICLE AS A RESULT OF A FILING FOR PROTECTION UNDER TITLE ELEVEN OF THE UNITED STATES CODE BY AN ACCOUNT HOLDER IS NOT CONSIDERED A WITHDRAWAL FOR PURPOSES OF THIS SECTION AND PARAGRAPH (B) OF THIS SUBDIVISION SHALL NOT APPLY.

S 407. TAX TREATMENT. 1. EXCEPT AS PROVIDED IN SECTION FOUR HUNDRED SIX OF THIS ARTICLE, PRINCIPAL CONTRIBUTED TO AN ACCOUNT ESTABLISHED PURSUANT TO THIS ARTICLE AND MONEY PAID OR REIMBURSED TO AN OWNER OF SUCH AN ACCOUNT FOR ELIGIBLE LONG TERM CARE EXPENSES SHALL BE EXEMPT FROM TAXATION.

2. ANY INDIVIDUAL WHO CONTRIBUTES TO A QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT, IRRESPECTIVE OF WHETHER SUCH INDIVIDUAL IS THE ACCOUNT HOLDER, SHALL BE ELIGIBLE FOR THE LONG TERM CARE INSURANCE CRED-

IT PURSUANT TO SECTION ONE HUNDRED NINETY OR SIX HUNDRED SIX OF THE TAX LAW.

S 408. DEATH OF THE ACCOUNT HOLDER. UPON THE DEATH OF AN ACCOUNT HOLDER, THE FOLLOWING SHALL APPLY:

1. IF THE SURVIVING SPOUSE OF THE ACCOUNT HOLDER OR A CHRONICALLY ILL INDIVIDUAL AS PROVIDED IN THIS ARTICLE ACQUIRES SUCH ACCOUNT HOLDER'S INTEREST IN SUCH ACCOUNT BY REASON OF BEING THE DESIGNATED BENEFICIARY OF THE ACCOUNT AT THE DEATH OF THE ACCOUNT HOLDER, SUCH ACCOUNT SHALL BE TREATED AS IF THE SPOUSE OR SUCH CHRONICALLY ILL INDIVIDUAL WAS THE OWNER OF SUCH ACCOUNT;

2. IF A PERSON WHO IS NOT THE SURVIVING SPOUSE OF THE ACCOUNT HOLDER OR WHO IS NOT CHRONICALLY ILL ACQUIRES THE INTEREST OF THE ACCOUNT HOLDER IN AN ACCOUNT ESTABLISHED PURSUANT TO THIS ARTICLE, SUCH ACCOUNT SHALL CEASE TO BE A LONG TERM CARE SAVINGS ACCOUNT, QUALIFIED LONG TERM CARE SAVINGS ACCOUNT OR QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT AS OF THE DATE OF THE DEATH OF THE OWNER OF SUCH ACCOUNT, AND:

(A) IF SUCH PERSON IS NOT THE ESTATE OF SUCH BENEFICIARY, AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE ASSETS IN SUCH ACCOUNT ON SUCH DATE SHALL BE INCLUDIBLE IN SUCH PERSON'S GROSS INCOME FOR THE TAXABLE YEAR WHICH INCLUDES SUCH DATE, PROVIDED HOWEVER THAT SUCH INCLUDIBLE AMOUNT SHALL BE REDUCED BY DISTRIBUTIONS TO PAY FOR LONG TERM CARE SERVICES PERMITTED PURSUANT TO THIS ARTICLE WHICH WERE INCURRED BY THE DECEDENT BEFORE THE DATE OF THE DECEDENT'S DEATH AND PAID BY SUCH PERSON WITHIN ONE YEAR AFTER SUCH DATE, OR

(B) IF SUCH PERSON IS THE ESTATE OF SUCH BENEFICIARY, AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE ASSETS IN SUCH ACCOUNT ON SUCH DATE SHALL BE INCLUDIBLE IN SUCH BENEFICIARY'S GROSS INCOME FOR THE LAST TAXABLE YEAR OF SUCH BENEFICIARY, PROVIDED HOWEVER THAT SUCH FAIR MARKET VALUE SHALL BE REDUCED BY DISTRIBUTIONS TO PAY FOR LONG TERM CARE SERVICES PERMITTED PURSUANT TO THIS ARTICLE WHICH WERE INCURRED BY THE DECEDENT BEFORE THE DATE OF THE DECEDENT'S DEATH AND PAID BY SUCH PERSON WITHIN ONE YEAR AFTER SUCH DATE.

S 409. CANCELLATION OR TRANSFER. 1. (A) EACH ACCOUNT ESTABLISHED OR MAINTAINED UNDER THIS ARTICLE MAY BE CANCELED OR TRANSFERRED TO A SPOUSE UPON THE TERMS AND CONDITIONS SET BY THE COMMISSIONER. IF THE ACCOUNT IS CANCELED OR TERMINATED, THE ACCOUNT HOLDER MAY RECEIVE THE PRINCIPAL AMOUNT OF ALL CONTRIBUTIONS MADE BY THE ACCOUNT HOLDER OR ON BEHALF OF THE ACCOUNT HOLDER PLUS THE ACTUAL INVESTMENT EARNINGS ON THE CONTRIBUTIONS, LESS ANY LOSSES INCURRED ON THE CONTRIBUTIONS. AN ACCOUNT HOLDER SHALL NOT RECEIVE MORE THAN THE FAIR MARKET VALUE OF HIS OR HER ACCOUNT ON THE APPLICABLE LIQUIDATION DATE.

(B) THE TRANSFER OF THE INTEREST OF THE ACCOUNT HOLDER TO SUCH OWNER'S SPOUSE OR FORMER SPOUSE UNDER A DIVORCE OR SEPARATION INSTRUMENT SHALL NOT BE CONSIDERED A TAXABLE TRANSFER MADE BY SUCH ACCOUNT HOLDER NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR OF THIS ARTICLE, AND THE INTEREST SHALL, AFTER SUCH TRANSFER, BE TREATED AS AN ACCOUNT ESTABLISHED UNDER THIS ARTICLE WITH RESPECT TO WHICH SUCH SPOUSE IS THE OWNER OF SUCH ACCOUNT.

2. IN THE CASE OF A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PROGRAM, IF (A) AN EMPLOYEE IS NO LONGER EMPLOYED BY AN EMPLOYER THAT PARTICIPATES IN A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PROGRAM, (B) THE EMPLOYEE, NOT MORE THAN ONE HUNDRED EIGHTY DAYS AFTER HIS OR HER FINAL DAY OF EMPLOYMENT, TRANSFERS THE ACCOUNT TO A NEW ACCOUNT ADMINISTRATOR OR REQUESTS IN WRITING TO THE FORMER EMPLOYER'S ACCOUNT ADMINISTRATOR THAT THE ACCOUNT REMAIN WITH THAT ADMINISTRATOR, AND (C) THAT ACCOUNT ADMINISTRATOR AGREES TO RETAIN THE ACCOUNT, THEN THE MONEY IN THE QUALI-

FIED LONG TERM CARE SAVINGS ACCOUNT MAY BE UTILIZED FOR THE BENEFIT OF THE EMPLOYEE SUBJECT TO THIS ARTICLE AND REMAINS EXEMPT FROM TAXATION PURSUANT TO THIS ARTICLE. NOT MORE THAN THIRTY DAYS AFTER THE EXPIRATION OF THE ONE HUNDRED EIGHTY DAYS, IF AN ACCOUNT ADMINISTRATOR HAS NOT ACCEPTED THE FORMER EMPLOYEE'S ACCOUNT, THE EMPLOYER SHALL MAIL A CHECK TO THE FORMER EMPLOYEE, AT THE EMPLOYEE'S LAST KNOWN ADDRESS, FOR AN AMOUNT EQUAL TO THE AMOUNT IN THE ACCOUNT ON THAT DAY, AND THAT AMOUNT IS SUBJECT TO TAXATION PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION FOUR HUNDRED SIX OF THIS ARTICLE BUT IS NOT SUBJECT TO THE PENALTY UNDER SUBPARAGRAPH (II) OF SUCH PARAGRAPH. IF AN EMPLOYEE BECOMES EMPLOYED WITH A DIFFERENT EMPLOYER THAT PARTICIPATES IN A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PROGRAM, THE EMPLOYEE MAY TRANSFER HIS OR HER QUALIFIED LONG TERM CARE SAVINGS ACCOUNT TO THAT NEW EMPLOYER'S ACCOUNT ADMINISTRATOR. A SELF-EMPLOYED OR OTHER INDIVIDUAL MAY TRANSFER HIS OR HER QUALIFIED LONG TERM CARE SAVINGS ACCOUNT TO ANOTHER ACCOUNT ADMINISTRATOR; THE MONEY IN THE ACCOUNT REMAINS EXEMPT FROM TAXATION PURSUANT TO THIS ARTICLE.

S 410. RULES AND REGULATIONS. THE COMMISSIONER, AFTER CONSULTATION WITH THE COMPTROLLER WHEN RELEVANT, SHALL ESTABLISH APPROPRIATE RULES AND REGULATIONS TO GOVERN ACCOUNTS ESTABLISHED PURSUANT TO THIS ARTICLE, INCLUDING BUT NOT LIMITED TO ELIGIBILITY AND APPROVAL, USE OF PROCEEDS AND MANNERS OF PROOF.

S 2. Subdivision 1 of section 190 of the tax law, as amended by section 17 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

1. General. A taxpayer shall be allowed a credit against the tax imposed by this article, other than the taxes and fees imposed by sections one hundred eighty and one hundred eighty-one of this article, equal to:

(A) twenty percent of the premium paid during the taxable year for long-term care insurance. In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred seventeen of the insurance law; OR

(B) THE LESSER OF ONE THOUSAND FIVE HUNDRED DOLLARS OR TWENTY PERCENT OF THE AMOUNT CONTRIBUTED TO A QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT PURSUANT TO ARTICLE FOUR OF THE ELDER LAW.

S 3. Paragraph (a) of subdivision 25-a of section 210 of the tax law, as amended by section 18 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

(a) A taxpayer shall be allowed a credit against the tax imposed by this article equal to [twenty] TWENTY-FIVE percent of the premium paid during the taxable year for long-term care insurance. In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred seventeen of the insurance law.

S 4. Subsection (aa) of section 606 of the tax law, as amended by section 1 of part P of chapter 61 of the laws of 2005, is amended to read as follows:

(aa) Long-term care insurance credit. (1) Residents. A taxpayer shall be allowed a credit against the tax imposed by this article equal to:

(A) [twenty] THIRTY-FIVE percent of the premium paid during the taxable year for long-term care insurance. In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or

for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred seventeen of the insurance law; OR

(B) THE LESSER OF ONE THOUSAND FIVE HUNDRED DOLLARS OR TWENTY PERCENT OF THE AMOUNT CONTRIBUTED TO A QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT ESTABLISHED PURSUANT TO ARTICLE FOUR OF THE ELDER LAW.

If the amount of the credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(2) Nonresidents and part-year residents. In the case of a nonresident taxpayer or a part-year resident taxpayer, the credit determined under this subsection shall be limited to the amount determined by multiplying the amount of such credit by the New York source fraction as set forth in paragraph three of subsection (e) of section six hundred one of this [article] PART. The credit as so limited shall be applied as provided in paragraph one of this subsection.

S 5. Subsection (c) of section 612 of the tax law is amended by adding two new paragraphs 39 and 40 to read as follows:

(39) CONTRIBUTIONS MADE DURING THE TAXABLE YEAR BY OR ON BEHALF OF THE OWNER OF AN ACCOUNT ESTABLISHED PURSUANT TO ARTICLE FOUR OF THE ELDER LAW DURING SUCH OWNER'S LIFETIME TO SUCH AN ACCOUNT, AND SUBJECT TO THE RULES ESTABLISHED FOR SUCH ACCOUNTS BY THE COMMISSIONER OF HEALTH, TO THE EXTENT NOT DEDUCTIBLE OR ELIGIBLE FOR CREDIT FOR FEDERAL INCOME TAX PURPOSES, PROVIDED, HOWEVER, THE EXCLUSION PROVIDED FOR IN THIS PARAGRAPH SHALL NOT EXCEED TEN THOUSAND DOLLARS FOR AN INDIVIDUAL.

(40) DISTRIBUTIONS FROM AN ACCOUNT ESTABLISHED PURSUANT TO ARTICLE FOUR OF THE ELDER LAW ON BEHALF OF THE OWNER OF SUCH ACCOUNT DURING SUCH OWNER'S LIFETIME, SUBJECT TO THE RULES ESTABLISHED FOR SUCH ACCOUNTS BY THE COMMISSIONER OF HEALTH, TO THE EXTENT INCLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES.

S 6. The tax law is amended by adding a new section 35 to read as follows:

S 35. RULES CONCERNING LONG TERM CARE ACCOUNTS. A TAXPAYER MAY ESTABLISH A LONG TERM CARE SAVINGS ACCOUNT, A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT OR A QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT PURSUANT TO ARTICLE FOUR OF THE ELDER LAW. A TAXPAYER WHO ESTABLISHES SUCH AN ACCOUNT SHALL BE THE OWNER OF SUCH ACCOUNT. SUCH ACCOUNT SHALL BE SUBJECT TO THE FOLLOWING RULES:

1. A QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT SHALL BE ELIGIBLE FOR CREDITS PURSUANT TO SECTIONS ONE HUNDRED NINETY AND SIX HUNDRED SIX OF THIS CHAPTER AND ANY ACCOUNT ESTABLISHED PURSUANT TO ARTICLE FOUR OF THE ELDER LAW SHALL BE ELIGIBLE FOR DEDUCTIONS PURSUANT TO SUBSECTION (C) OF SECTION SIX HUNDRED TWELVE OF THIS CHAPTER. ANY INDIVIDUAL WHO CONTRIBUTES TO A QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT, IRRESPECTIVE OF WHETHER SUCH INDIVIDUAL IS THE OWNER OF SUCH ACCOUNT, SHALL BE ELIGIBLE FOR THE LONG TERM CARE INSURANCE CREDITS PURSUANT TO SECTIONS ONE HUNDRED NINETY AND SIX HUNDRED SIX OF THIS CHAPTER.

2. THE PROCEEDS OF AN ACCOUNT ESTABLISHED PURSUANT TO ARTICLE FOUR OF THE ELDER LAW MAY BE USED TO PAY FOR ANY LONG TERM CARE EXPENSES PERMITTED PURSUANT TO SUCH ARTICLE IN FULFILLMENT OF A PLEDGE BY THE OWNER OF SUCH ACCOUNT PURSUANT TO RULES PROMULGATED BY THE COMMISSIONER OF HEALTH. DISTRIBUTIONS FROM THE QUALIFIED LONG TERM CARE SAVINGS ACCOUNT TO PAY FOR SERVICES OR ITEMS NOT PERMITTED PURSUANT TO ARTICLE FOUR OF THE ELDER LAW AND THE REGULATIONS PROMULGATED BY THE COMMISSIONER OF

HEALTH SHALL BE SUBJECT TO A PENALTY OF TEN PERCENT OF EVERY DOLLAR SO EXPENDED DURING THE LIFETIME OF THE OWNER OF SUCH ACCOUNT. SUCH PENALTY SHALL BE LEVIED ONLY AGAINST THE OWNER OF SUCH ACCOUNT.

3. ANY OTHER PROVISION OF LAW TO THE CONTRARY NOTWITHSTANDING, THE PROVISIONS OF THIS SECTION RELATING TO CREDITS, DEDUCTIONS, CONTRIBUTIONS OR DISTRIBUTIONS FROM ACCOUNTS ESTABLISHED PURSUANT TO ARTICLE FOUR OF THE ELDER LAW SHALL NOT APPLY IF THE DISTRIBUTION FROM THE ACCOUNT IS MADE AFTER THE DEATH OF THE OWNER OF SUCH ACCOUNT, PROVIDED HOWEVER THAT:

(A) IF THE SURVIVING SPOUSE OF THE OWNER OF SUCH ACCOUNT OR A CHRONICALLY ILL INDIVIDUAL AS PROVIDED BY ARTICLE FOUR OF THE ELDER LAW ACQUIRES SUCH OWNER'S INTEREST IN SUCH ACCOUNT BY REASON OF BEING THE DESIGNATED BENEFICIARY OF THE ACCOUNT AT THE DEATH OF THE OWNER, SUCH ACCOUNT SHALL BE TREATED AS IF THE SPOUSE OR SUCH CHRONICALLY ILL INDIVIDUAL WERE THE OWNER OF SUCH ACCOUNT.

(B) IF A PERSON WHO IS NOT THE SURVIVING SPOUSE OF THE BENEFICIARY OR WHO IS NOT CHRONICALLY ILL ACQUIRES THE INTEREST OF THE OWNER OF AN ACCOUNT ESTABLISHED PURSUANT TO ARTICLE FOUR OF THE ELDER LAW, SUCH ACCOUNT SHALL CEASE TO BE A LONG TERM CARE SAVINGS ACCOUNT, QUALIFIED LONG TERM CARE SAVINGS ACCOUNT OR QUALIFIED LONG TERM CARE FLEXIBLE SPENDING ACCOUNT AS OF THE DATE OF THE DEATH OF THE OWNER OF SUCH ACCOUNT, AND:

(I) IF SUCH PERSON IS NOT THE ESTATE OF SUCH BENEFICIARY, AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE ASSETS IN SUCH ACCOUNT ON SUCH DATE SHALL BE INCLUDIBLE IN SUCH PERSON'S GROSS INCOME FOR THE TAXABLE YEAR WHICH INCLUDES SUCH DATE, PROVIDED HOWEVER THAT SUCH INCLUDIBLE AMOUNT SHALL BE REDUCED BY DISTRIBUTIONS TO PAY FOR LONG TERM CARE SERVICES PERMITTED PURSUANT TO THIS SECTION WHICH WERE INCURRED BY THE DECEDENT BEFORE THE DATE OF THE DECEDENT'S DEATH AND PAID BY SUCH PERSON WITHIN ONE YEAR AFTER SUCH DATE, OR

(II) IF SUCH PERSON IS THE ESTATE OF SUCH BENEFICIARY, AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE ASSETS IN SUCH ACCOUNT ON SUCH DATE SHALL BE INCLUDIBLE IN SUCH BENEFICIARY'S GROSS INCOME FOR THE LAST TAXABLE YEAR OF SUCH BENEFICIARY, PROVIDED HOWEVER THAT SUCH FAIR MARKET VALUE SHALL BE REDUCED BY DISTRIBUTIONS TO PAY FOR LONG TERM CARE SERVICES PERMITTED PURSUANT TO THIS SECTION WHICH WERE INCURRED BY THE DECEDENT BEFORE THE DATE OF THE DECEDENT'S DEATH AND PAID BY SUCH PERSON WITHIN ONE YEAR AFTER SUCH DATE.

(C) THE TRANSFER OF THE INTEREST OF THE OWNER OF SUCH ACCOUNT TO SUCH OWNER'S SPOUSE OR FORMER SPOUSE UNDER A DIVORCE OR SEPARATION INSTRUMENT SHALL NOT BE CONSIDERED A TAXABLE TRANSFER MADE BY SUCH OWNER OF SUCH ACCOUNT NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR OF THIS ARTICLE, AND SUCH INTEREST SHALL, AFTER SUCH TRANSFER, BE TREATED AS AN ACCOUNT CREATED PURSUANT TO ARTICLE FOUR OF THE ELDER LAW WITH RESPECT TO WHICH SUCH SPOUSE IS THE OWNER OF SUCH ACCOUNT.

S 7. The state finance law is amended by adding a new section 99-t to read as follows:

S 99-T. LONG-TERM CARE SAVINGS ACCOUNT PROGRAM TRUST. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT IN THE MISCELLANEOUS SPECIAL REVENUE FUND TO BE KNOWN AS THE "LONG-TERM CARE SAVINGS ACCOUNT PROGRAM TRUST".

2. THE LONG-TERM CARE SAVINGS ACCOUNT PROGRAM TRUST SHALL CONSIST OF ALL MONEYS RECEIVED BY THE STATE PURSUANT TO SECTION FOUR HUNDRED TWO OF THE ELDER LAW.

3. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE MONEYS IN SUCH ACCOUNT SHALL BE EXPENDED SOLELY FOR THE PURPOSE DEFINED PURSUANT TO SECTION FOUR HUNDRED TWO OF THE ELDER LAW. UNDER NO CIRCUMSTANCES SHALL THE MONEYS IN SUCH ACCOUNT BE COMMINGLED WITH ANY OTHER MONEYS.

S 8. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 9. This act shall take effect on the ninetieth day after it shall have become a law and shall expire December 31, 2021 when upon such date the provisions of this act shall be deemed repealed.