

7937

I N   S E N A T E

September 3, 2014

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Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the mental hygiene law, the banking law and the tax law, in relation to establishing the NY ABLE act

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

1     Section 1. This act shall be known and may be cited as the "New York  
2 achieving a better life experience (NY ABLE) act".

3     S 2. Legislative intent. The legislative intent of this act is to  
4 encourage and assist individuals and families in saving private funds  
5 for the purpose of supporting individuals with developmental disabili-  
6 ties to maintain health, independence and quality of life; and to  
7 provide secure funding for disability related expenses on behalf of  
8 designated beneficiaries with intellectual or developmental disabilities  
9 that will supplement, but not supplant, benefits provided through exist-  
10 ing sources.

11     S 3. The mental hygiene law is amended by adding a new article 84 to  
12 read as follows:

13                                     ARTICLE 84

14             NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNT ACT

15     SECTION 84.01 SHORT TITLE.

16             84.03 DEFINITIONS.

17             84.05 ESTABLISHMENT OF PLAN.

18             84.07 PROGRAM REQUIREMENTS.

19             84.09 DISTRIBUTION REQUIREMENTS.

20             84.11 POWERS OF THE COMPTROLLER.

21     S 84.01 SHORT TITLE.

22     THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "NEW YORK ACHIEV-  
23 ING A BETTER LIFE EXPERIENCE (NY ABLE) SAVINGS ACCOUNT ACT".

24     S 84.03 DEFINITIONS.

25     AS USED IN THIS ARTICLE: 1. "COMMISSIONER" MEANS THE COMMISSIONER OF  
26 THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES.

27     2. THE TERM "FINANCIAL ORGANIZATION" MEANS AN ORGANIZATION AUTHORIZED  
28 TO DO BUSINESS IN THE STATE OF NEW YORK AND (A) WHICH IS AN AUTHORIZED

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

LBD13325-05-4

1 FIDUCIARY TO ACT AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF  
2 CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS  
3 SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME, OR AN INSURANCE COMPA-  
4 NY; AND (B) (I) IS LICENSED OR CHARTERED BY THE STATE INSURANCE DEPART-  
5 MENT, (II) IS LICENSED OR CHARTERED BY THE STATE BANKING DEPARTMENT,  
6 (III) IS CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT, (IV) IS  
7 SUBJECT TO THE JURISDICTION AND REGULATION OF THE SECURITIES AND  
8 EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT, OR (V) IS ANY OTHER ENTI-  
9 TY OTHERWISE AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE PURSUANT TO  
10 THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT  
11 INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME  
12 TO TIME.

13 3. "ACCOUNT" OR "NY ABLE ACCOUNT" SHALL MEAN AN INDIVIDUAL SAVINGS  
14 ACCOUNT ESTABLISHED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

15 4. "ACCOUNT OWNER" SHALL MEAN A PERSON WHO ENTERS INTO A SAVINGS  
16 AGREEMENT PURSUANT TO THE PROVISIONS OF THIS ARTICLE, INCLUDING A PERSON  
17 WHO ENTERS INTO SUCH AN AGREEMENT AS A FIDUCIARY OR AGENT ON BEHALF OF A  
18 TRUST, ESTATE, PARTNERSHIP, ASSOCIATION, COMPANY OR CORPORATION. THE  
19 ACCOUNT OWNER MAY ALSO BE THE DESIGNATED BENEFICIARY OF THE ACCOUNT.

20 5. "DESIGNATED BENEFICIARY" SHALL MEAN, WITH RESPECT TO AN ACCOUNT OR  
21 ACCOUNTS, THE INTELLECTUALLY OR DEVELOPMENTALLY DISABLED INDIVIDUAL  
22 DESIGNATED AS THE INDIVIDUAL WHOSE QUALIFIED EXPENSES ARE EXPECTED TO BE  
23 PAID FROM THE ACCOUNT OR ACCOUNTS.

24 6. "QUALIFIED EXPENSES" SHALL MEAN ANY TUITION, AND EDUCATION MATERI-  
25 AL AND SERVICES, HOUSING EXPENSES FOR A PRIMARY RESIDENCE, INCLUDING  
26 RENT, REAL PROPERTY TAXES, AND UTILITY CHARGES, MASS TRANSIT, VEHICLE,  
27 AND OTHER TRANSPORTATION EXPENSES, EXPENSES RELATED TO OBTAINING AND  
28 MAINTAINING EMPLOYMENT; HEALTH, PREVENTION AND WELLNESS, EXPENSES,  
29 INCLUDING INSURANCE PREMIUMS, REHABILITATION SERVICES, DURABLE MEDICAL  
30 EQUIPMENT, AND NUTRITIONAL MANAGEMENT; AND OTHER EXPENSES WHICH THE  
31 COMMISSIONER SHALL DEEM QUALIFIED IN ACCORDANCE WITH THE PURPOSE OF THIS  
32 ARTICLE AND WHICH ARE USED FOR THE DIRECT BENEFIT OF AN INTELLECTUALLY  
33 OR DEVELOPMENTALLY DISABLED INDIVIDUAL.

34 7. "NONQUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT  
35 OTHER THAN A QUALIFIED WITHDRAWAL OR A WITHDRAWAL MADE AS THE RESULT OF  
36 THE DEATH OR DISABILITY OF THE DESIGNATED BENEFICIARY OF AN ACCOUNT.

37 8. "MANAGEMENT CONTRACT" SHALL MEAN THE CONTRACT EXECUTED BY THE COMP-  
38 TROLLER AND A FINANCIAL ORGANIZATION SELECTED TO ACT AS A DEPOSITORY AND  
39 MANAGER OF THE PROGRAM.

40 9. "SAVINGS AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN THE COMPTROLLER  
41 OR A FINANCIAL ORGANIZATION AND THE ACCOUNT OWNER.

42 10. "PROGRAM MANAGER" SHALL MEAN A FINANCIAL ORGANIZATION SELECTED BY  
43 THE COMPTROLLER TO ACT AS A DEPOSITORY AND MANAGER OF THE PROGRAM.

44 11. "INTELLECTUALLY OR DEVELOPMENTALLY DISABLED" AS DEFINED BY THE  
45 COMMISSIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES IN  
46 CONSULTATION WITH THE COMMISSIONER.

47 S 84.05 ESTABLISHMENT OF PLAN.

48 1. THE COMMISSIONER SHALL ESTABLISH A "NY ABLE" ACCOUNT PLAN FOR ALL  
49 ELIGIBLE INDIVIDUALS AND FAMILIES FOR THE PURPOSE OF SUPPORTING INDIVID-  
50 UALS WITH DISABILITIES TO MAINTAIN HEALTH, INDEPENDENCE, AND QUALITY OF  
51 LIFE. THE COMMISSIONER SHALL PROMULGATE ANY AND ALL RULES AND REGU-  
52 LATIONS NECESSARY FOR THE IMPLEMENTATION OF THIS ARTICLE.

53 2. THE COMMISSIONER SHALL ENTER INTO WRITTEN AGREEMENTS WITH ONE OR  
54 MORE FINANCIAL ORGANIZATIONS TO ADMINISTER THE NY ABLE SAVINGS ACCOUNT  
55 PLAN FOR ELIGIBLE INDIVIDUALS AND FAMILIES AND TO INVEST FUNDS HELD  
56 PURSUANT TO SUCH PLAN. THE COMMISSIONER SHALL ESTABLISH REPORTING

1 REQUIREMENTS FOR SUCH FINANCIAL ORGANIZATIONS INCLUDING BUT NOT LIMITED  
2 TO REPORTS TO THE COMMISSIONER, PARTICIPATING INDIVIDUALS AND FAMILIES,  
3 AND PARTICIPATING EMPLOYERS, REGARDING THE FISCAL STATUS OF NY ABLE  
4 SAVINGS ACCOUNTS.

5 3. THE RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER SHALL  
6 ESTABLISH STANDARDS FOR THE SELECTION OF FINANCIAL ORGANIZATIONS AUTHOR-  
7 IZED TO DO BUSINESS IN THIS STATE TO ADMINISTER IN SUCH PLANS, INCLUD-  
8 ING, BUT NOT LIMITED TO, THE FOLLOWING CRITERIA: (A) RATES OF COMMIS-  
9 SION, BROKERAGE AND OTHER FEES, ADMINISTRATIVE EXPENSES AND RELATED  
10 SERVICE CHARGES IMPOSED BY THE FINANCIAL ORGANIZATION; (B) VARIETY OF  
11 TYPES OF INVESTMENT OPPORTUNITIES OFFERED BY THE FINANCIAL ORGANIZATION  
12 AND/OR AMONG THE FINANCIAL ORGANIZATIONS SELECTED AND THE ABILITY TO  
13 TRANSFER AMONG SUCH OPPORTUNITIES; (C) THE STABILITY OF THE FINANCIAL  
14 ORGANIZATION AS EVIDENCED BY EXPERIENCE, REPUTATION, ASSETS AND HOLD-  
15 INGS, ABILITY TO GUARANTEE SPECIFIC RATES OF RETURN; (D) ABILITY TO  
16 COMPLY WITH REPORTING REQUIREMENTS TO THE COMMISSIONER AND TO PARTIC-  
17 IPANTS IN SUCH A PLAN; AND (E) SUCH OTHER FACTORS WHICH WOULD BE CONSID-  
18 ERED BY A PRUDENT INVESTOR IN SUCH A PLAN.

19 4. NY ABLE SAVINGS ACCOUNTS SHALL BE MAINTAINED BY FINANCIAL ORGANIZA-  
20 TIONS UNDER WRITTEN AGREEMENT WITH THE COMMISSIONER. SUCH FINANCIAL  
21 ORGANIZATIONS SHALL BE SOLELY RESPONSIBLE FOR DISTRIBUTIONS TO PARTIC-  
22 IPANTS PURSUANT TO THIS ARTICLE.

23 5. THE COMMISSIONER SHALL ESTABLISH A PROCESS FOR CERTIFICATION OF  
24 MENTAL DISABILITY FOR THE PURPOSE OF ESTABLISHING THE VALIDITY OF  
25 ACCOUNTS AND EXPENDITURES FROM ACCOUNTS ESTABLISHED UNDER THIS ARTICLE.  
26 S 84.07 PROGRAM REQUIREMENTS.

27 1. "NY ABLE" ACCOUNTS ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS  
28 ARTICLE SHALL BE GOVERNED BY THE PROVISIONS OF THIS SECTION.

29 2. A NY ABLE ACCOUNT MAY BE OPENED BY ANY PERSON WHO DESIRES TO SAVE  
30 MONEY FOR THE PAYMENT OF THE QUALIFIED LIVING EXPENSES OF THE DESIGNATED  
31 INTELLECTUALLY OR DEVELOPMENTALLY DISABLED BENEFICIARY. SUCH PERSON WHO  
32 OPENS A NY ABLE ACCOUNT SHALL BE CONSIDERED THE ACCOUNT OWNER AS SET  
33 FORTH IN THIS ARTICLE.

34 (A) AN APPLICATION FOR SUCH ACCOUNT SHALL BE IN THE FORM PRESCRIBED BY  
35 THE PROGRAM AND CONTAIN THE FOLLOWING:

36 (I) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFI-  
37 CATION NUMBER OF THE ACCOUNT OWNER;

38 (II) THE DESIGNATION OF A DESIGNATED BENEFICIARY;

39 (III) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF THE DESIGNATED  
40 BENEFICIARY; AND

41 (IV) SUCH OTHER INFORMATION AS THE PROGRAM MAY REQUIRE.

42 (B) THE COMPTROLLER MAY ESTABLISH A NOMINAL FEE FOR SUCH APPLICATION.

43 3. ANY PERSON, INCLUDING THE ACCOUNT OWNER, MAY MAKE CONTRIBUTIONS TO  
44 THE ACCOUNT AFTER THE ACCOUNT IS OPENED.

45 4. CONTRIBUTIONS TO ACCOUNTS MAY BE MADE ONLY IN CASH.

46 5. AN ACCOUNT OWNER MAY WITHDRAW ALL OR PART OF THE BALANCE FROM AN  
47 ACCOUNT ON SIXTY DAYS NOTICE OR SUCH SHORTER PERIOD AS MAY BE AUTHORIZED  
48 UNDER RULES GOVERNING THE PROGRAM. SUCH RULES SHALL INCLUDE PROVISIONS  
49 THAT WILL GENERALLY ENABLE THE DETERMINATION AS TO WHETHER A WITHDRAWAL  
50 IS A NONQUALIFIED WITHDRAWAL OR A QUALIFIED WITHDRAWAL.

51 6. (A) AN ACCOUNT OWNER MAY CHANGE THE DESIGNATED BENEFICIARY OF AN  
52 ACCOUNT TO ANOTHER BENEFICIARY WHO IS QUALIFIED UNDER THE PROVISIONS OF  
53 THIS ARTICLE.

54 (B) CHANGES IN DESIGNATED BENEFICIARIES AND TRANSFERS UNDER THIS  
55 SUBDIVISION SHALL NOT BE PERMITTED TO THE EXTENT THAT THEY WOULD CAUSE

1 ALL ACCOUNTS FOR THE SAME BENEFICIARY TO EXCEED THE PERMITTED AGGREGATE  
2 MAXIMUM ACCOUNT BALANCE.

3 7. THE PROGRAM SHALL PROVIDE SEPARATE ACCOUNTING FOR EACH DESIGNATED  
4 BENEFICIARY.

5 8. NO ACCOUNT OWNER OR DESIGNATED BENEFICIARY OF ANY ACCOUNT SHALL BE  
6 PERMITTED TO DIRECT THE INVESTMENT OF ANY CONTRIBUTIONS TO AN ACCOUNT OR  
7 THE EARNINGS THEREON.

8 9. NEITHER AN ACCOUNT OWNER NOR A DESIGNATED BENEFICIARY MAY USE AN  
9 INTEREST IN AN ACCOUNT AS SECURITY FOR A LOAN. ANY PLEDGE OF AN INTEREST  
10 IN AN ACCOUNT SHALL BE OF NO FORCE AND EFFECT.

11 10. THE COMPTROLLER SHALL PROMULGATE RULES OR REGULATIONS TO PREVENT  
12 CONTRIBUTIONS ON BEHALF OF A DESIGNATED BENEFICIARY IN EXCESS OF AN  
13 AMOUNT THAT WOULD CAUSE THE AGGREGATE ACCOUNT BALANCE FOR ALL ACCOUNTS  
14 FOR A DESIGNATED BENEFICIARY TO EXCEED A MAXIMUM ACCOUNT BALANCE, AS  
15 ESTABLISHED FROM TIME TO TIME BY THE COMPTROLLER. SUCH MAXIMUM AMOUNT  
16 SHALL REFLECT REASONABLE EXPENDITURES AND SHALL BE DETERMINED IN CONSUL-  
17 TATION WITH THE COMMISSIONER.

18 11. (A) IF THERE IS ANY DISTRIBUTION FROM AN ACCOUNT TO ANY INDIVIDUAL  
19 OR FOR THE BENEFIT OF ANY INDIVIDUAL DURING A CALENDAR YEAR, SUCH  
20 DISTRIBUTION SHALL BE REPORTED TO THE INTERNAL REVENUE SERVICE AND THE  
21 ACCOUNT OWNER, THE DESIGNATED BENEFICIARY, OR THE DISTRIBUTE TO THE  
22 EXTENT REQUIRED BY FEDERAL LAW OR REGULATION.

23 (B) STATEMENTS SHALL BE PROVIDED TO EACH ACCOUNT OWNER AT LEAST ONCE  
24 EACH YEAR WITHIN SIXTY DAYS AFTER THE END OF THE TWELVE MONTH PERIOD TO  
25 WHICH THEY RELATE. THE STATEMENT SHALL IDENTIFY THE CONTRIBUTIONS MADE  
26 DURING A PRECEDING TWELVE MONTH PERIOD, THE TOTAL CONTRIBUTIONS MADE TO  
27 THE ACCOUNT THROUGH THE END OF THE PERIOD, THE VALUE OF THE ACCOUNT AT  
28 THE END OF SUCH PERIOD, DISTRIBUTIONS MADE DURING SUCH PERIOD AND ANY  
29 OTHER INFORMATION THAT THE COMPTROLLER SHALL REQUIRE TO BE REPORTED TO  
30 THE ACCOUNT OWNER.

31 (C) STATEMENTS AND INFORMATION RELATING TO ACCOUNTS SHALL BE PREPARED  
32 AND FILED TO THE EXTENT REQUIRED BY FEDERAL AND STATE TAX LAW.

33 12. THE PROGRAM SHALL DISCLOSE THE FOLLOWING INFORMATION IN WRITING TO  
34 EACH ACCOUNT OWNER AND PROSPECTIVE ACCOUNT OWNER OF A NY ABLE ACCOUNT:

35 (A) THE TERMS AND CONDITIONS FOR PURCHASING A NY ABLE ACCOUNT;

36 (B) ANY RESTRICTIONS ON THE SUBSTITUTION OF BENEFICIARIES;

37 (C) THE PERSON OR ENTITY ENTITLED TO TERMINATE THE SAVINGS AGREEMENT;

38 (D) THE PERIOD OF TIME DURING WHICH A BENEFICIARY MAY RECEIVE BENEFITS  
39 UNDER THE SAVINGS AGREEMENT;

40 (E) THE TERMS AND CONDITIONS UNDER WHICH MONEY MAY BE WHOLLY OR  
41 PARTIALLY WITHDRAWN FROM THE PROGRAM, INCLUDING, BUT NOT LIMITED TO, ANY  
42 REASONABLE CHARGES AND FEES THAT MAY BE IMPOSED FOR WITHDRAWAL;

43 (F) THE PROBABLY TAX CONSEQUENCES ASSOCIATED WITH CONTRIBUTIONS TO AND  
44 DISTRIBUTIONS FROM ACCOUNTS; AND

45 (G) ALL OTHER RIGHTS AND OBLIGATIONS PURSUANT TO NY ABLE SAVINGS  
46 AGREEMENTS, AND ANY OTHER TERMS, CONDITIONS, AND PROVISIONS DEEMED  
47 NECESSARY AND APPROPRIATE BY THE COMMISSIONER AND THE COMPTROLLER.

48 13. NY ABLE SAVINGS AGREEMENTS SHALL BE SUBJECT TO SECTION FOURTEEN-C  
49 OF THE BANKING LAW AND THE "TRUTH-IN-SAVINGS" REGULATIONS PROMULGATED  
50 THEREUNDER.

51 S 84.09 DISTRIBUTION REQUIREMENTS.

52 1. (A) PARTICIPANTS SHALL BE ELIGIBLE FOR A DISTRIBUTION FROM THE  
53 ACCUMULATED FUNDS DEFERRED TO THEIR NY ABLE SAVINGS ACCOUNT ESTABLISHED  
54 PURSUANT TO THIS ARTICLE, IN FULL AND PARTIAL DISBURSEMENT OPTIONS FOR  
55 QUALIFIED EXPENSES.

1 (B) THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS DEFINING  
2 QUALIFIED EXPENSES WHICH SHALL, AT A MINIMUM, INCLUDE EXPENSES ASSOCI-  
3 ATED WITH: TUITION AND EDUCATIONAL MATERIAL AND SERVICES; HOUSING  
4 EXPENSES FOR A PRIMARY RESIDENCE, INCLUDING RENT, REAL PROPERTY TAXES,  
5 AND UTILITY CHARGES; MASS TRANSIT, VEHICLE, AND OTHER TRANSPORTATION  
6 EXPENSES; EXPENSES RELATED TO OBTAINING AND MAINTAINING EMPLOYMENT;  
7 HEALTH, PREVENTION, AND WELLNESS EXPENSES, INCLUDING INSURANCE PREMIUMS,  
8 REHABILITATION SERVICES, DURABLE MEDICAL EQUIPMENT, AND NUTRITIONAL  
9 MANAGEMENT; AND OTHER EXPENSES WHICH THE COMMISSIONER SHALL DEEM QUALI-  
10 FIED IN ACCORDANCE WITH THE PURPOSES OF THIS ARTICLE.

11 2. UNDER THE NY ABLE SAVINGS ACCOUNT PLAN, AMOUNTS SHALL NOT BE MADE  
12 AVAILABLE TO PARTICIPANTS OR BENEFICIARIES UNLESS THE PARTICIPANT OR  
13 BENEFICIARY HAS BEEN DETERMINED TO BE MENTALLY DISABLED AS DEFINED IN  
14 SECTION 1.03 OF THIS CHAPTER.

15 S 84.11 POWERS OF THE COMPTROLLER.

16 1. THE COMPTROLLER MAY IMPLEMENT THE NY ABLE SAVINGS ACCOUNT PROGRAM  
17 THROUGH USE OF FINANCIAL ORGANIZATIONS AS ACCOUNT DEPOSITORIES AND  
18 MANAGERS. UNDER THE PROGRAM, INDIVIDUALS MAY ESTABLISH ACCOUNTS DIRECT-  
19 LY WITH AN ACCOUNT DEPOSITORY.

20 2. THE COMPTROLLER MAY SOLICIT PROPOSALS FROM FINANCIAL ORGANIZATIONS  
21 TO ACT AS DEPOSITORIES AND MANAGERS FROM THE PROGRAM. FINANCIAL ORGAN-  
22 IZATIONS SUBMITTING PROPOSALS SHALL DESCRIBE THE INVESTMENT INSTRUMENT  
23 WHICH WILL BE HELD IN ACCOUNTS. THE COMPTROLLER SHALL SELECT AS PROGRAM  
24 DEPOSITORIES AND MANAGERS THE FINANCIAL ORGANIZATION, FROM AMONG THE  
25 BIDDING FINANCIAL ORGANIZATIONS THAT DEMONSTRATES THE MOST ADVANTAGEOUS  
26 COMBINATION, BOTH TO POTENTIAL PROGRAM PARTICIPANTS AND THIS STATE, OF  
27 THE FOLLOWING FACTORS:

28 (A) FINANCIAL STABILITY AND INTEGRITY OF THE FINANCIAL ORGANIZATION;

29 (B) THE SAFETY OF THE INVESTMENT INSTRUMENT BEING OFFERED;

30 (C) THE ABILITY OF THE INVESTMENT INSTRUMENT TO TRACK INCREASING COSTS  
31 OF HIGHER EDUCATION;

32 (D) THE ABILITY OF THE FINANCIAL ORGANIZATION TO SATISFY RECORDKEEPING  
33 AND REPORTING REQUIREMENTS;

34 (E) THE FINANCIAL ORGANIZATION'S PLAN FOR PROMOTING THE PROGRAM AND  
35 THE INVESTMENT IT IS WILLING TO MAKE TO PROMOTE THE PROGRAM;

36 (F) THE FEES, IF ANY, PROPOSED TO BE CHARGED TO PERSONS FOR OPENING  
37 ACCOUNTS;

38 (G) THE MINIMUM INITIAL DEPOSIT AND MINIMUM CONTRIBUTIONS THAT THE  
39 FINANCIAL ORGANIZATION WILL REQUIRE;

40 (H) THE ABILITY OF BANKING ORGANIZATIONS TO ACCEPT ELECTRONIC WITH-  
41 DRAWALS, INCLUDING PAYROLL DEDUCTION PLANS; AND

42 (I) OTHER BENEFITS TO THE STATE OR ITS RESIDENTS INCLUDED IN THE  
43 PROPOSAL, INCLUDING FEES PAYABLE TO THE STATE TO COVER EXPENSES OF OPER-  
44 ATION OF THE PROGRAM.

45 3. THE COMPTROLLER MAY ENTER INTO A CONTRACT WITH A FINANCIAL ORGAN-  
46 IZATION. SUCH FINANCIAL ORGANIZATION MANAGEMENT MAY PROVIDE ONE OR MORE  
47 TYPES OF INVESTMENT INSTRUMENT.

48 4. THE COMPTROLLER MAY SELECT MORE THAN ONE FINANCIAL ORGANIZATION FOR  
49 THE PROGRAM.

50 5. A MANAGEMENT CONTRACT SHALL INCLUDE, AT A MINIMUM, TERMS REQUIRING  
51 THE FINANCIAL ORGANIZATION TO:

52 (A) TAKE ANY ACTION REQUIRED TO KEEP THE PROGRAM IN COMPLIANCE WITH  
53 REQUIREMENTS OF SECTION 84.07 OF THIS ARTICLE;

54 (B) KEEP ADEQUATE RECORDS OF EACH ACCOUNT, KEEP EACH ACCOUNT SEGRE-  
55 GATED FROM EACH OTHER ACCOUNT, AND PROVIDE THE COMPTROLLER WITH INFORMA-  
56 TION AS REQUIRED;

1 (C) IF THERE IS MORE THAN ONE PROGRAM MANAGER, PROVIDE THE COMPTROLLER  
2 WITH SUCH INFORMATION NECESSARY TO DETERMINE COMPLIANCE;

3 (D) PROVIDE THE COMPTROLLER OR HIS OR HER DESIGNEE ACCESS TO THE BOOKS  
4 AND RECORDS OF THE PROGRAM MANAGER TO THE EXTENT NEEDED TO DETERMINE  
5 COMPLIANCE WITH THE CONTRACT;

6 (E) HOLD ALL ACCOUNTS FOR THE BENEFIT OF THE ACCOUNT OWNER;

7 (F) BE AUDITED AT LEAST ANNUALLY BY A FIRM OF CERTIFIED PUBLIC  
8 ACCOUNTANTS SELECTED BY THE PROGRAM MANAGER AND THAT THE RESULTS OF SUCH  
9 AUDIT BE PROVIDED TO THE COMPTROLLER; AND

10 (G) PROVIDE THE COMPTROLLER WITH COPIES OF ALL REGULATORY FILINGS AND  
11 REPORTS MADE BY IT DURING THE TERM OF THE MANAGEMENT CONTRACT OR WHILE  
12 IT IS HOLDING ANY ACCOUNTS, OTHER THAN CONFIDENTIAL FILINGS OR REPORTS  
13 THAT WILL NOT BECOME PART OF THE PROGRAM. THE PROGRAM MANAGER SHALL MAKE  
14 AVAILABLE FOR REVIEW BY THE COMPTROLLER THE RESULTS OF ANY PERIODIC  
15 EXAMINATION OF SUCH MANAGER BY ANY STATE OR FEDERAL BANKING, INSURANCE,  
16 OR SECURITIES COMMISSION, EXCEPT TO THE EXTENT THAT SUCH REPORT OR  
17 REPORTS MAY NOT BE DISCLOSED UNDER APPLICABLE LAW OR THE RULES OF SUCH  
18 COMMISSION.

19 6. THE COMPTROLLER MAY PROVIDE THAT AN AUDIT SHALL BE CONDUCTED OF THE  
20 OPERATIONS AND FINANCIAL POSITION OF THE PROGRAM DEPOSITORY AND MANAGER  
21 AT ANY TIME IF THE COMPTROLLER HAS ANY REASON TO BE CONCERNED ABOUT THE  
22 FINANCIAL POSITION, THE RECORDKEEPING PRACTICES, OR THE STATUS OF  
23 ACCOUNTS OF SUCH PROGRAM DEPOSITORY AND MANAGER.

24 7. DURING THE TERM OF ANY CONTRACT WITH A PROGRAM MANAGER, THE COMP-  
25 TROLLER SHALL CONDUCT AN EXAMINATION OF SUCH MANAGER AND ITS HANDLING OF  
26 ACCOUNTS. SUCH EXAMINATION SHALL BE CONDUCTED AT LEAST BIENNIALY IF  
27 SUCH MANAGER IS NOT OTHERWISE SUBJECT TO PERIODIC EXAMINATION BY THE  
28 SUPERINTENDENT OF FINANCIAL SERVICES, THE FEDERAL DEPOSIT INSURANCE  
29 CORPORATION OR OTHER SIMILAR ENTITY.

30 8. (A) IF SELECTION OF A FINANCIAL ORGANIZATION AS A PROGRAM MANAGER  
31 OR DEPOSITORY IS NOT RENEWED, AFTER THE END OF ITS TERM:

32 (I) ACCOUNTS PREVIOUSLY ESTABLISHED AND HELD IN INVESTMENT INSTRUMENTS  
33 AT SUCH FINANCIAL ORGANIZATION MAY BE TERMINATED;

34 (II) ADDITIONAL CONTRIBUTIONS MAY BE MADE TO SUCH ACCOUNTS;

35 (III) NO NEW ACCOUNTS MAY BE PLACED WITH SUCH FINANCIAL ORGANIZATION;  
36 AND

37 (IV) EXISTING ACCOUNTS HELD BY SUCH DEPOSITORY SHALL REMAIN SUBJECT TO  
38 ALL OVERSIGHT AND REPORTING REQUIREMENTS ESTABLISHED BY THE COMPTROLLER.

39 (B) IF THE COMPTROLLER TERMINATES A FINANCIAL ORGANIZATION AS A  
40 PROGRAM MANAGER OR DEPOSITORY, HE OR SHE SHALL TAKE CUSTODY OF ACCOUNTS  
41 HELD BY SUCH FINANCIAL ORGANIZATION AND SHALL SEEK TO PROMPTLY TRANSFER  
42 SUCH ACCOUNTS TO ANOTHER FINANCIAL ORGANIZATION THAT IS SELECTED AS A  
43 PROGRAM MANAGER OR DEPOSITORY AND INTO INVESTMENT INSTRUMENTS AS SIMILAR  
44 TO THE ORIGINAL INSTRUMENTS AS POSSIBLE.

45 9. THE COMPTROLLER MAY ENTER INTO SUCH CONTRACTS AS IT DEEMS NECESSARY  
46 AND PROPER FOR THE IMPLEMENTATION OF THE PROGRAM.

47 S 4. Section 237 of the banking law is amended by adding a new subdi-  
48 vision 9 to read as follows:

49 9. SUBJECT TO ANY REGULATIONS AND RESTRICTIONS PRESCRIBED BY THE  
50 SUPERINTENDENT OF FINANCIAL SERVICES, A SAVINGS BANK SHALL HAVE POWER TO  
51 ACT AS TRUSTEE OF A NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE (NY  
52 ABLE) SAVINGS ACCOUNT ESTABLISHED PURSUANT TO ARTICLE EIGHTY-FOUR OF THE  
53 MENTAL HYGIENE LAW, PROVIDED THAT THE PROVISIONS OF THE WRITTEN GOVERN-  
54 ING INSTRUMENT CREATING THE TRUST REQUIRE THE FUNDS OF SUCH TRUST TO BE  
55 INVESTED EXCLUSIVELY IN DEPOSITS IN SAVINGS BANKS.

1 S 5. Subsection (c) of section 612 of the tax law is amended by adding  
2 two new paragraphs 42 and 43 to read as follows:

3 (42) CONTRIBUTIONS MADE DURING THE TAXABLE YEAR BY AN ACCOUNT OWNER TO  
4 ONE OR MORE "NY ABLE" ACCOUNTS ESTABLISHED UNDER ARTICLE EIGHTY-FOUR OF  
5 THE MENTAL HYGIENE LAW, PROVIDED, HOWEVER THAT SUCH EXCLUSION SHALL BE  
6 AVAILABLE ONLY TO THE ACCOUNT OWNER AND NOT TO ANY OTHER PERSON.

7 (43) DISTRIBUTIONS FOR QUALIFIED EXPENSES OF A DESIGNATED BENEFICIARY  
8 FROM A "NY ABLE" ACCOUNT ESTABLISHED UNDER ARTICLE EIGHTY-FOUR OF THE  
9 MENTAL HYGIENE LAW, TO THE EXTENT INCLUDIBLE IN GROSS INCOME FOR FEDERAL  
10 INCOME TAX PURPOSES.

11 S 6. This act shall take effect on the one hundred eightieth day after  
12 it shall have become a law; provided, however, that effective immediate-  
13 ly, the addition, amendment and/or repeal of any rules or regulations  
14 necessary for the implementation of this act on its effective date are  
15 authorized and directed to be made and completed on or before such  
16 effective date.