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

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2015-2016 Regular Sessions

I N A S S E M B L Y

January 30, 2015

Introduced by M. of A. RAMOS, SKOUFIS, SCHIMMINGER, SANTABARBARA, MOSLEY, HOOPER, COOK, SKARTADOS, JOYNER, SEPULVEDA, CAHILL, DAVILA, OTIS, BLAKE, JEAN-PIERRE, LUPINACCI -- Multi-Sponsored by -- M. of A. ABBATE, BRENNAN, ENGLEBRIGHT, McDONALD, THIELE -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the private housing finance law, in relation to establishing the New York state first home savings program, which authorizes first time home buyers to establish savings accounts to purchase a home; and to amend the tax law, in relation to establishing a personal income tax deduction for deposits into such accounts

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

Section 1. The private housing finance law is amended by adding a new article 28 to read as follows:

ARTICLE XXVIII

NEW YORK STATE FIRST HOME SAVINGS PROGRAM

SECTION 1250. PROGRAM ESTABLISHED.
1251. PURPOSES.
1252. DEFINITIONS.
1253. FUNCTIONS OF THE COMPTROLLER.
1254. POWERS OF THE COMPTROLLER.
1255. PROGRAM REQUIREMENTS; FIRST HOME SAVINGS ACCOUNT.
1256. PROGRAM LIMITATIONS; FIRST HOME SAVINGS ACCOUNT.

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

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S 1250. PROGRAM ESTABLISHED. THERE IS HEREBY ESTABLISHED A FIRST HOME SAVINGS PROGRAM AND SUCH PROGRAM SHALL BE KNOWN AND MAY BE CITED AS THE "NEW YORK STATE FIRST HOME SAVINGS PROGRAM".

S 1251. PURPOSES. THE PURPOSES OF THE PROGRAM SHALL BE TO AUTHORIZE THE ESTABLISHMENT OF FAMILY SAVINGS ACCOUNTS AND TO PROVIDE GUIDELINES FOR THE MAINTENANCE OF SUCH ACCOUNTS TO:

1. ENABLE RESIDENTS OF THIS STATE TO BENEFIT FROM THE TAX INCENTIVE PROVIDED FOR QUALIFIED STATE FIRST HOME SAVINGS ACCOUNTS UNDER SUBSECTION (W) OF SECTION SIX HUNDRED TWELVE OF THE TAX LAW; AND

2. INCENTIVIZE RESIDENTS TO SAVE FOR THE PURCHASE OF A FIRST HOME WITHIN THE STATE.

S 1252. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ACCOUNT" OR "FIRST HOME SAVINGS ACCOUNT" SHALL MEAN AN INDIVIDUAL SAVINGS ACCOUNT ESTABLISHED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE FOR THE EXCLUSIVE BENEFIT OF AN INDIVIDUAL, AND HIS OR HER SPOUSE, THAT IS A FIRST TIME BUYER OF A HOME, TOWNHOME, CONDOMINIUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION.

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

3. "DESIGNATED BENEFICIARY" SHALL MEAN, WITH RESPECT TO AN ACCOUNT OR ACCOUNTS, THE INDIVIDUAL DESIGNATED AS THE INDIVIDUAL WHOSE FIRST HOME PURCHASE EXPENSES ARE EXPECTED TO BE PAID FROM THE ACCOUNT OR ACCOUNTS.

4. "FINANCIAL ORGANIZATION" SHALL MEAN AN ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE, AND (A) WHICH IS AN AUTHORIZED FIDUCIARY TO ACT AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME, OR AN INSURANCE COMPANY; AND (B)(I) IS LICENSED OR CHARTERED BY THE DEPARTMENT OF FINANCIAL SERVICES, (II) IS CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT, (III) IS SUBJECT TO THE JURISDICTION AND REGULATION OF THE SECURITIES AND EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT, (IV) IS ANY OTHER ENTITY OTHERWISE AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME, (V) OR ANY BANKING ORGANIZATION AS DEFINED IN SUBDIVISION ELEVEN OF SECTION TWO OF THE BANKING LAW, NATIONAL BANKING ASSOCIATION, STATE CHARTERED CREDIT UNION, FEDERAL MUTUAL SAVINGS BANK, FEDERAL SAVINGS AND LOAN ASSOCIATION OR FEDERAL CREDIT UNION.

5. "FIRST TIME HOME BUYER" SHALL MEAN AN INDIVIDUAL OR AN INDIVIDUAL AND HIS OR HER SPOUSE, NEITHER OF WHOM HAS OR HAD AN OWNERSHIP INTEREST IN A PRINCIPAL RESIDENCE AT ANY TIME. NO SUCH PERSON SHALL OWN ANY OTHER HOME INCLUDING VACATION OR INVESTMENT RESIDENCES, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION. IF EITHER THE INDIVIDUAL OR HIS OR HER SPOUSE IS NOT A FIRST TIME HOME BUYER, NEITHER THE INDIVIDUAL NOR THE SPOUSE SHALL BE CONSIDERED A FIRST TIME HOME BUYER. IF AN INDIVIDUAL'S ONLY POTENTIALLY DISQUALIFYING PRESENT OWNERSHIP INTEREST IS OWNERSHIP OF A MOBILE HOME THAT IS NOT PERMANENTLY ATTACHED TO THE LAND, THE INDIVIDUAL SHALL BE CONSIDERED A FIRST TIME HOME BUYER AND SHALL BE ELIGIBLE FOR A HOUSE PURCHASE ACCOUNT DEDUCTION. FOR THE PURPOSES OF THIS ARTICLE A "MOBILE HOME" SHALL MEAN A STRUCTURE WHICH IS PERMANENTLY ATTACHED, BEING PERMANENTLY ANCHORED TO REAL PROPERTY AND HAS HAD WHEELS AND OTHER

COMPONENTS USED IN TRANSPORTATION REMOVED. IF, DUE TO HIS OR HER OWNERSHIP OF A MOBILE HOME, THE INDIVIDUAL HAS CLAIMED A REAL ESTATE TAX OR HOME MORTGAGE DEDUCTION ON HIS OR HER PERSONAL INCOME TAX RETURNS, SUCH INDIVIDUAL SHALL NOT BE CONSIDERED A FIRST TIME HOME BUYER REGARDLESS OF WHETHER THE MOBILE HOME WAS PERMANENTLY ATTACHED TO THE LAND.

6. "OWNERSHIP INTEREST" SHALL MEAN A FEE SIMPLE INTEREST, A JOINT TENANCY, A TENANCY IN COMMON, A TENANCY BY THE ENTIRETY, THE INTEREST OF A TENANT-SHARE HOLDER IN A COOPERATIVE, A LIFE ESTATE OR A LAND CONTRACT. INTERESTS WHICH DO NOT CONSTITUTE OWNERSHIP INTERESTS INCLUDE THE FOLLOWING: (A) REMAINDER INTERESTS, (B) A LEASE WITH OR WITHOUT AN OPTION TO PURCHASE, (C) A MERE EXPECTANCY TO INHERIT AN INTEREST IN A RESIDENCE, (D) THE INTEREST THAT A PURCHASER OF A RESIDENCE ACQUIRES ON THE EXECUTION OF A PURCHASE CONTRACT AND (E) AN INTEREST IN REAL ESTATE OTHER THAN A RESIDENCE.

7. "MEMBER OF FAMILY" SHALL MEAN: A FAMILY MEMBER AS DEFINED IN SECTION 529 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

8. "PROGRAM" SHALL MEAN THE NEW YORK FIRST HOME SAVINGS PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE.

9. "QUALIFIED FIRST HOME PURCHASE EXPENSES" SHALL MEAN MONIES APPLIED FOR THE PURCHASE OR CONSTRUCTION OF A HOUSE, TOWNHOUSE, CONDOMINIUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION WITHIN THE STATE TO BE USED AS A PRIMARY RESIDENCE OF THE INDIVIDUAL FOR A PERIOD OF NOT LESS THAN TWO YEARS AFTER PURCHASE OR CONSTRUCTION.

10. "QUALIFIED RESIDENTIAL HOUSING" SHALL MEAN A HOUSE, TOWNHOUSE, CONDOMINIUM OR UNIT IN A COOPERATIVE HOUSING CORPORATION WITHIN THE STATE.

11. "QUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT TO PAY THE QUALIFIED FIRST HOME PURCHASE EXPENSE OF THE DESIGNATED BENEFICIARY OF THE ACCOUNT.

12. "NONQUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT BUT SHALL NOT INCLUDE:

(A) A QUALIFIED WITHDRAWAL; OR

(B) A WITHDRAWAL MADE AS THE RESULT OF THE DEATH OR DISABILITY OF THE DESIGNATED BENEFICIARY OF AN ACCOUNT.

13. "COMPTROLLER" SHALL MEAN THE STATE COMPTROLLER.

14. "MANAGEMENT CONTRACT" SHALL MEAN THE CONTRACT EXECUTED BY THE COMPTROLLER AND A FINANCIAL ORGANIZATION SELECTED TO ACT AS A DEPOSITORY AND MANAGER OF THE PROGRAM.

15. "FIRST HOME SAVINGS AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN THE COMPTROLLER OR A FINANCIAL ORGANIZATION AND THE ACCOUNT OWNER.

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

17. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF THE TAXATION AND FINANCE.

S 1253. FUNCTIONS OF THE COMPTROLLER. 1. THE COMPTROLLER SHALL IMPLEMENT THE PROGRAM UNDER THE TERMS AND CONDITIONS ESTABLISHED BY THIS ARTICLE AND A MEMORANDUM OF UNDERSTANDING WITH THE COMMISSIONER RELATING TO ANY TERMS OR CONDITIONS NOT OTHERWISE EXPRESSLY PROVIDED FOR IN THIS ARTICLE.

2. IN FURTHERANCE OF SUCH IMPLEMENTATION THE COMPTROLLER SHALL:

(A) DEVELOP AND IMPLEMENT THE PROGRAM IN A MANNER CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE THROUGH RULES AND REGULATIONS ESTABLISHED IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT;

(B) ENGAGE THE SERVICES OF CONSULTANTS ON A CONTRACT BASIS FOR RENDERING PROFESSIONAL AND TECHNICAL ASSISTANCE AND ADVICE;

(C) SEEK RULINGS AND OTHER GUIDANCE FROM THE UNITED STATES DEPARTMENT OF TREASURY AND THE INTERNAL REVENUE SERVICE RELATING TO THE PROGRAM;
(D) MAKE CHANGES TO THE PROGRAM REQUIRED FOR THE PARTICIPANTS IN THE PROGRAM TO OBTAIN THE STATE INCOME TAX BENEFITS OR TREATMENT PROVIDED BY THIS ARTICLE;
(E) CHARGE, IMPOSE AND COLLECT ADMINISTRATIVE FEES AND SERVICE CHARGES IN CONNECTION WITH ANY AGREEMENT, CONTRACT OR TRANSACTION RELATING TO THE PROGRAM;
(F) DEVELOP MARKETING PLANS AND PROMOTION MATERIAL;
(G) ESTABLISH THE METHODS BY WHICH THE FUNDS HELD IN SUCH ACCOUNTS BE DISPERSED;
(H) ESTABLISH THE METHOD BY WHICH FUNDS SHALL BE ALLOCATED TO PAY FOR ADMINISTRATIVE COSTS; AND
(I) DO ALL THINGS NECESSARY AND PROPER TO CARRY OUT THE PURPOSES OF THIS ARTICLE.
S 1254. POWERS OF THE COMPTROLLER. 1. THE COMPTROLLER MAY IMPLEMENT THE PROGRAM THROUGH USE OF FINANCIAL ORGANIZATIONS AS ACCOUNT DEPOSITORIES AND MANAGERS. UNDER THE PROGRAM, INDIVIDUALS MAY ESTABLISH ACCOUNTS DIRECTLY WITH AN ACCOUNT DEPOSITORY.
2. THE COMPTROLLER MAY SOLICIT PROPOSALS FROM FINANCIAL ORGANIZATIONS TO ACT AS DEPOSITORIES AND MANAGERS OF THE PROGRAM. FINANCIAL ORGANIZATIONS SUBMITTING PROPOSALS SHALL DESCRIBE THE INVESTMENT INSTRUMENT WHICH WILL BE HELD IN ACCOUNTS. THE COMPTROLLER SHALL SELECT AS PROGRAM DEPOSITORIES AND MANAGERS THE FINANCIAL ORGANIZATION, FROM AMONG THE BIDDING FINANCIAL ORGANIZATIONS THAT DEMONSTRATES THE MOST ADVANTAGEOUS COMBINATION, BOTH TO POTENTIAL PROGRAM PARTICIPANTS AND THIS STATE, OF THE FOLLOWING FACTORS:
(A) FINANCIAL STABILITY AND INTEGRITY OF THE FINANCIAL ORGANIZATION;
(B) THE SAFETY OF THE INVESTMENT INSTRUMENT BEING OFFERED;
(C) THE ABILITY OF THE INVESTMENT INSTRUMENT TO TRACK INCREASING COSTS OF RESIDENTIAL HOUSING;
(D) THE ABILITY OF THE FINANCIAL ORGANIZATION TO SATISFY RECORDKEEPING AND REPORTING REQUIREMENTS;
(E) THE FINANCIAL ORGANIZATION'S PLAN FOR PROMOTING THE PROGRAM AND THE INVESTMENT IT IS WILLING TO MAKE TO PROMOTE THE PROGRAM;
(F) THE FEES, IF ANY, PROPOSED TO BE CHARGED TO PERSONS FOR OPENING ACCOUNTS;
(G) THE MINIMUM INITIAL DEPOSIT AND MINIMUM CONTRIBUTIONS THAT THE FINANCIAL ORGANIZATION WILL REQUIRE;
(H) THE ABILITY OF BANKING ORGANIZATIONS TO ACCEPT ELECTRONIC WITHDRAWALS, INCLUDING PAYROLL DEDUCTION PLANS; AND
(I) OTHER BENEFITS TO THE STATE OR ITS RESIDENTS INCLUDED IN THE PROPOSAL, INCLUDING FEES PAYABLE TO THE STATE TO COVER EXPENSES OF OPERATION OF THE PROGRAM.
3. THE COMPTROLLER MAY ENTER INTO A CONTRACT WITH A FINANCIAL ORGANIZATION. SUCH FINANCIAL ORGANIZATION MANAGEMENT MAY PROVIDE ONE OR MORE TYPES OF INVESTMENT INSTRUMENT.
4. THE COMPTROLLER MAY SELECT MORE THAN ONE FINANCIAL ORGANIZATION FOR THE PROGRAM.
5. A MANAGEMENT CONTRACT SHALL INCLUDE, AT A MINIMUM, TERMS REQUIRING THE FINANCIAL ORGANIZATION TO:
(A) TAKE ANY ACTION REQUIRED TO KEEP THE PROGRAM IN COMPLIANCE WITH REQUIREMENTS OF SECTION TWELVE HUNDRED FIFTY-FIVE OF THIS ARTICLE AND ANY ACTIONS NOT CONTRARY TO ITS CONTRACT TO MANAGE THE PROGRAM TO QUALIFY AS A "FIRST HOME SAVINGS ACCOUNT" UNDER SUBSECTION (W) OF SECTION SIX HUNDRED TWELVE OF THE TAX LAW;

(B) KEEP ADEQUATE RECORDS OF EACH ACCOUNT, KEEP EACH ACCOUNT SEGREGATED FROM EACH OTHER ACCOUNT, AND PROVIDE THE COMPTROLLER WITH THE INFORMATION NECESSARY TO PREPARE THE STATEMENTS REQUIRED BY SECTION TWELVE HUNDRED FIFTY-FIVE OF THIS ARTICLE;

(C) COMPILE AND TOTAL INFORMATION CONTAINED IN STATEMENTS REQUIRED TO BE PREPARED UNDER SECTION TWELVE HUNDRED FIFTY-FIVE OF THIS ARTICLE AND PROVIDE SUCH COMPILATIONS TO THE COMPTROLLER;

(D) IF THERE IS MORE THAN ONE PROGRAM MANAGER, PROVIDE THE COMPTROLLER WITH SUCH INFORMATION NECESSARY TO DETERMINE COMPLIANCE WITH SECTION TWELVE HUNDRED FIFTY-FIVE OF THIS ARTICLE;

(E) PROVIDE THE COMPTROLLER OR HIS DESIGNEE ACCESS TO THE BOOKS AND RECORDS OF THE PROGRAM MANAGER TO THE EXTENT NEEDED TO DETERMINE COMPLIANCE WITH THE CONTRACT;

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

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

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

(I) ENSURE THAT ANY DESCRIPTION OF THE PROGRAM, WHETHER IN WRITING OR THROUGH THE USE OF ANY MEDIA, IS CONSISTENT WITH THE MARKETING PLAN AS DEVELOPED PURSUANT TO THE PROVISIONS OF SECTION TWELVE HUNDRED FIFTY-THREE OF THIS ARTICLE.

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

7. DURING THE TERM OF ANY CONTRACT WITH A PROGRAM MANAGER, THE COMPTROLLER SHALL CONDUCT AN EXAMINATION OF SUCH MANAGER AND ITS HANDLING OF ACCOUNTS. SUCH EXAMINATION SHALL BE CONDUCTED AT LEAST BIENNIALLY IF SUCH MANAGER IS NOT OTHERWISE SUBJECT TO PERIODIC EXAMINATION BY THE SUPERINTENDENT OF FINANCIAL SERVICES, THE FEDERAL DEPOSIT INSURANCE CORPORATION OR OTHER SIMILAR ENTITY.

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

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

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

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

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

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

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

S 1255. PROGRAM REQUIREMENTS; FIRST HOME SAVINGS ACCOUNT. 1. FIRST HOME SAVINGS ACCOUNTS ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL BE GOVERNED BY THE PROVISIONS OF THIS SECTION.

2. A FIRST HOME SAVINGS ACCOUNT MAY BE OPENED BY ANY PERSON WHO DESIRES TO SAVE MONEY FOR THE PAYMENT OF THE QUALIFIED FIRST HOME PURCHASE EXPENSES OF A DESIGNATED BENEFICIARY. AN ACCOUNT OWNER MAY DESIGNATE ANOTHER PERSON AS SUCCESSOR OWNER OF THE ACCOUNT IN THE EVENT OF THE DEATH OF THE ORIGINAL ACCOUNT OWNER. SUCH PERSON WHO OPENS AN ACCOUNT OR ANY SUCCESSOR OWNER SHALL BE CONSIDERED THE ACCOUNT OWNER.

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

(I) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER OF THE ACCOUNT OWNER;

(II) THE DESIGNATION OF A DESIGNATED BENEFICIARY;

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

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

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

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

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

5. AN ACCOUNT OWNER MAY WITHDRAW ALL OR PART OF THE BALANCE FROM AN ACCOUNT AS AUTHORIZED UNDER RULES GOVERNING THE PROGRAM. SUCH RULES SHALL INCLUDE PROVISIONS THAT WILL GENERALLY ENABLE THE DETERMINATION AS TO WHETHER A WITHDRAWAL IS A NONQUALIFIED WITHDRAWAL OR A QUALIFIED WITHDRAWAL.

6. (A) AN ACCOUNT OWNER MAY CHANGE THE DESIGNATED BENEFICIARY OF AN ACCOUNT TO AN INDIVIDUAL WHO IS A MEMBER OF THE FAMILY OF THE PRIOR DESIGNATED BENEFICIARY IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE MEMORANDUM OF UNDERSTATING PURSUANT TO THE PROVISIONS OF SECTION TWELVE HUNDRED FIFTY-THREE.

(B) AN ACCOUNT OWNER MAY TRANSFER ALL OR A PORTION OF AN ACCOUNT TO ANOTHER FIRST HOME SAVINGS ACCOUNT, THE SUBSEQUENT DESIGNATED BENEFICIARY OF WHICH IS A MEMBER OF THE FAMILY AS DEFINED IN SECTION 529 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

(C) CHANGES IN DESIGNATED BENEFICIARIES AND TRANSFERS UNDER THIS SUBDIVISION SHALL NOT BE PERMITTED TO THE EXTENT THAT THEY WOULD CAUSE ALL ACCOUNTS FOR THE SAME BENEFICIARY TO EXCEED THE PERMITTED AGGREGATE MAXIMUM ACCOUNT BALANCE.

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

8. NO ACCOUNT OWNER OR DESIGNATED BENEFICIARY OF ANY ACCOUNT SHALL BE PERMITTED TO DIRECT THE INVESTMENT OF ANY CONTRIBUTIONS TO AN ACCOUNT OR THE EARNINGS THEREON MORE THAN TWO TIMES IN ANY CALENDAR YEAR.

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

10. THE COMPTROLLER SHALL PROMULGATE RULES OR REGULATIONS TO PREVENT CONTRIBUTIONS ON BEHALF OF A DESIGNATED BENEFICIARY IN EXCESS OF AN AMOUNT THAT WOULD CAUSE THE AGGREGATE ACCOUNT BALANCE FOR ALL ACCOUNTS FOR A DESIGNATED BENEFICIARY TO EXCEED A MAXIMUM ACCOUNT BALANCE, AS ESTABLISHED FROM TIME TO TIME BY THE COMPTROLLER.

11. CONTRIBUTIONS FIRST HOME SAVINGS ACCOUNTS SHALL BE LIMITED TO ONE HUNDRED THOUSAND DOLLARS PER ACCOUNT. THIS AMOUNT SHALL NOT TAKE INTO CONSIDERATION ANY GAIN OR LOSS TO THE PRINCIPAL INVESTMENT INTO THE ACCOUNT.

12. IN THE EVENT THAT AN INDIVIDUAL MAKES A "NONQUALIFIED WITHDRAWAL" OF MONIES FROM THE FIRST HOME SAVINGS ACCOUNT SUCH INDIVIDUAL SHALL HAVE THE ENTIRE ACCOUNT TAXED, INCLUDING ANY INTEREST, AS THOUGH IT WAS INCOME IN THE TAX YEARS THE MONIES WERE WITHDRAWN. IN THE EVENT THE INDIVIDUAL DOES NOT USE THE QUALIFIED RESIDENTIAL HOUSING AS A PRIMARY RESIDENCE FOR A PERIOD OF NOT LESS THAN TWO YEARS AFTER THE PURCHASE OR CONSTRUCTION OF SUCH HOUSING, THE INDIVIDUAL SHALL HAVE THE ENTIRE ACCOUNT TAXED, INCLUDING ANY INTEREST, AS THOUGH IT WAS INCOME IN THE TAX YEARS THE MONIES WERE WITHDRAWN. FOR PURPOSES OF THIS ARTICLE, THE TWO YEAR PERIOD SHALL BEGIN AT THE TIME TITLE IS TRANSFERRED TO THE FIRST TIME HOME BUYER. THE PENALTY SHALL BE IN ADDITION TO ANY TAXES DUE FOR THE INAPPROPRIATE USE OF MONIES IN A FIRST HOME SAVINGS ACCOUNT.

13. PENALTIES MAY BE WAIVED BY THE COMMISSIONER IF THE INDIVIDUAL CAN SHOW PROOF THAT THE REASON THE INDIVIDUAL DID NOT USE THE QUALIFIED RESIDENTIAL HOUSING AS A PRIMARY RESIDENCE FOR A PERIOD OF TWO YEARS OR MORE AFTER THE PURCHASE OR CONSTRUCTION WAS DUE TO EITHER:

(A) AN EMPLOYMENT RELOCATION OUTSIDE THE STATE AND SUCH RELOCATION REQUIRED THE INDIVIDUAL TO BECOME A RESIDENT OF ANOTHER STATE; OR

(B) AN UNFORESEEABLE FINANCIAL EMERGENCY.

FOR PURPOSES OF THIS SUBDIVISION, AN "UNFORESEEABLE FINANCIAL EMERGENCY" SHALL MEAN A SEVERE FINANCIAL HARDSHIP TO THE INDIVIDUAL RESULTING FROM A SUDDEN AND UNEXPECTED ILLNESS OR ACCIDENT OF THE INDIVIDUAL OR OF A DEPENDENT. THE CIRCUMSTANCES THAT CONSTITUTE AN UNFORESEEABLE FINANCIAL EMERGENCY WILL DEPEND ON THE FACTS OF EACH CASE, HOWEVER, WITHDRAWAL OF ACCOUNT FUNDS MAY NOT BE MADE, WITHOUT PENALTY, TO THE EXTENT THAT SUCH HARDSHIP IS OR MAY BE RELIEVED BY EITHER:

(I) REIMBURSEMENT OR COMPENSATION BY INSURANCE OR OTHERWISE; OR

(II) LIQUIDATION OF THE INDIVIDUAL'S ASSETS TO THE EXTENT THE LIQUIDATION OF SUCH ASSETS WOULD NOT ITSELF CAUSE SEVERE FINANCIAL HARDSHIP.

14. THE COMMISSION AND THE COMPTROLLER ARE DIRECTED TO PROMULGATE ALL RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION AND ARE HEREBY DIRECTED TO ESTABLISH, SUPERVISE AND REGULATE FIRST HOME SAVINGS ACCOUNTS AUTHORIZED TO BE CREATED BY THIS SECTION.

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

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

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

16. (A) A LOCAL GOVERNMENT OR ORGANIZATION DESCRIBED IN SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, MAY OPEN AND BECOME THE ACCOUNT OWNER OF AN ACCOUNT TO FUND SCHOLARSHIPS FOR PERSONS WHOSE IDENTITY WILL BE DETERMINED UPON DISBURSEMENT.

(B) IN THE CASE OF ANY ACCOUNT OPENED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION THE REQUIREMENT SET FORTH IN SUBDIVISION TWO OF THIS SECTION THAT A DESIGNATED BENEFICIARY BE DESIGNATED WHEN AN ACCOUNT IS OPENED SHALL NOT APPLY AND EACH INDIVIDUAL WHO RECEIVES AN INTEREST IN SUCH ACCOUNT AS A SCHOLARSHIP SHALL BE TREATED AS A DESIGNATED BENEFICIARY WITH RESPECT TO SUCH INTEREST.

17. AN ANNUAL FEE MAY BE IMPOSED UPON THE ACCOUNT OWNER FOR THE MAINTENANCE OF THE ACCOUNT.

18. THE PROGRAM SHALL DISCLOSE THE FOLLOWING INFORMATION IN WRITING TO EACH ACCOUNT OWNER AND PROSPECTIVE ACCOUNT OWNER OF A FIRST HOME SAVINGS ACCOUNT:

(A) THE TERMS AND CONDITIONS FOR PURCHASING A FIRST HOME SAVINGS ACCOUNT;

(B) ANY RESTRICTIONS ON THE SUBSTITUTION OF BENEFICIARIES;

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

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

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

(F) THE PROBABLE TAX CONSEQUENCES ASSOCIATED WITH CONTRIBUTIONS TO AND DISTRIBUTIONS FROM ACCOUNTS; AND

(G) ALL OTHER RIGHTS AND OBLIGATIONS PURSUANT TO FIRST HOME SAVINGS AGREEMENTS, AND ANY OTHER TERMS, CONDITIONS, AND PROVISIONS DEEMED NECESSARY AND APPROPRIATE BY THE TERMS OF THE MEMORANDUM OF UNDERSTANDING ENTERED INTO PURSUANT TO SECTION TWELVE HUNDRED FIFTY-THREE OF THIS ARTICLE.

19. FIRST HOME SAVINGS AGREEMENTS SHALL BE SUBJECT TO SECTION FOURTEEN-C OF THE BANKING LAW AND THE "TRUTH-IN-SAVINGS" REGULATIONS PROMULGATED THEREUNDER.

20. NOTHING IN THIS ARTICLE OR IN ANY FIRST HOME SAVINGS AGREEMENT ENTERED INTO PURSUANT TO THIS ARTICLE SHALL BE CONSTRUED AS A GUARANTEE BY THE STATE THAT A BENEFICIARY WILL QUALIFY FOR THE PURCHASE OF A HOME.

21. TO ESTABLISH THAT AN INDIVIDUAL IS A FIRST TIME HOME BUYER, THE INDIVIDUAL SHALL COMPLETE A FORM PROMULGATED BY THE COMPTROLLER CERTIFYING, UNDER THE PENALTIES OF PERJURY, THAT SUCH INDIVIDUAL IS A FIRST TIME HOME BUYER.

22. AN INDIVIDUAL MUST NOT INTEND TO USE ANY PORTION OF THE REAL PROPERTY PURCHASED USING THE HOUSE PURCHASE ACCOUNT FUNDS IN A TRADE OR BUSINESS, OR AS A VACATION HOME OR AS AN INVESTMENT, EXCEPT AS AN OWNER OCCUPIED MULTIPLE DWELLING WITH NO MORE THAN TWO RENTAL UNITS.

23. MONIES WITHDRAWN FROM FIRST HOME SAVINGS ACCOUNTS AND ANY INTEREST WHICH HAS ACCRUED SHALL NOT BE CONSIDERED AS INCOME TO THE INDIVIDUAL AND TAXED AS SUCH IF THE MONIES ARE APPLIED FOR THE PURCHASE OR CONSTRUCTION OF A QUALIFIED FIRST HOME PURCHASE.

S 1256. PROGRAM LIMITATIONS; FIRST HOME SAVINGS ACCOUNT. 1. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO:

(A) GIVE ANY DESIGNATED BENEFICIARY ANY RIGHTS OR LEGAL INTEREST WITH RESPECT TO AN ACCOUNT UNLESS THE DESIGNATED BENEFICIARY IS THE ACCOUNT OWNER;

(B) GUARANTEE THAT A DESIGNATED BENEFICIARY WILL BE FINANCIALLY QUALIFIED TO PURCHASE A HOME;

(C) CREATE STATE RESIDENCY FOR AN INDIVIDUAL MERELY BECAUSE THE INDIVIDUAL IS A DESIGNATED BENEFICIARY; OR

(D) GUARANTEE THAT AMOUNTS SAVED PURSUANT TO THE PROGRAM WILL BE SUFFICIENT TO COVER THE DOWN PAYMENT OR CLOSING COSTS PURSUANT TO THE PURCHASE OF A QUALIFIED FIRST HOME.

2. (A) NOTHING IN THIS ARTICLE SHALL CREATE OR BE CONSTRUED TO CREATE ANY OBLIGATION OF THE COMPTROLLER, THE STATE, OR ANY AGENCY OR INSTRUMENTALITY OF THE STATE TO GUARANTEE FOR THE BENEFIT OF ANY ACCOUNT OWNER OR DESIGNATED BENEFICIARY WITH RESPECT TO:

(I) THE RATE OF INTEREST OR OTHER RETURN ON ANY ACCOUNT; AND

(II) THE PAYMENT OF INTEREST OR OTHER RETURN ON ANY ACCOUNT.

(B) THE COMPTROLLER BY RULE OR REGULATION SHALL PROVIDE THAT EVERY CONTRACT, APPLICATION, DEPOSIT SLIP OR OTHER SIMILAR DOCUMENT THAT MAY BE USED IN CONNECTION WITH A CONTRIBUTION TO AN ACCOUNT CLEARLY INDICATE THAT THE ACCOUNT IS NOT INSURED BY THE STATE AND NEITHER THE PRINCIPAL DEPOSITED NOR THE INVESTMENT RETURN IS GUARANTEED BY THE STATE.

S 2. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) THE AMOUNT THAT MAY BE SUBTRACTED FROM FEDERAL ADJUSTED GROSS INCOME PURSUANT TO SUBSECTION (W) OF THIS SECTION.

S 3. Section 612 of the tax law is amended by adding a new subsection (w) to read as follows:

(W) DEDUCTIONS FOR MONIES DEPOSITED INTO A FIRST HOME SAVINGS ACCOUNT. AN INDIVIDUAL SHALL BE ABLE TO DEDUCT ANNUALLY FROM HIS OR HER FEDERAL ADJUSTED GROSS INCOME THAT AMOUNT, NOT TO EXCEED FIVE THOUSAND DOLLARS, DEPOSITED INTO A FIRST HOME SAVINGS ACCOUNT CREATED AS DEFINED IN ARTICLE TWENTY-EIGHT OF THE PRIVATE HOUSING FINANCE LAW. AN INDIVIDUAL AND HIS OR HER SPOUSE SHALL JOINTLY BE ENTITLED TO A MAXIMUM DEDUCTION OF TEN THOUSAND DOLLARS. THIS AMOUNT MAY BE DIVIDED IN ANY MANNER AS THE PARTIES DESIRE FOR INCOME TAX PURPOSES.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law, and shall apply to taxable years commencing on or after the first of January next succeeding the date on which it shall have become law; provided however, that subdivision 14 of section 1255 of the private housing finance law, as added by section one of this act, shall take effect immediately.