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

7767--B

2015-2016 Regular Sessions

I N A S S E M B L Y

May 26, 2015

Introduced by M. of A. GUNTHER, LINARES -- Multi-Sponsored by -- M. of A. CUSICK -- read once and referred to the Committee on Mental Health -- reported and referred to the Committee on Ways and Means -- 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 mental hygiene law, the tax law, the social services law and the state finance 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:

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

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

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

ARTICLE 84

NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNT ACT

SECTION 84.01 SHORT TITLE.
84.03 DEFINITIONS.
84.05 POWERS AND DUTIES OF THE COMPTROLLER.
84.07 NY ABLE ACCOUNT ADVISORY COUNCIL.
84.09 PROGRAM REQUIREMENTS.

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

LBD10925-10-5

84.11 DISTRIBUTION REQUIREMENTS.

S 84.01 SHORT TITLE.

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

S 84.03 DEFINITIONS.

AS USED IN THIS ARTICLE:

1. THE TERM "FINANCIAL ORGANIZATION" MEANS AN ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE OF NEW YORK AND WHICH: (A) IS LICENSED OR CHARTERED BY THE DEPARTMENT OF FINANCIAL SERVICES; (B) IS LICENSED OR CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT; OR (C) IS SUBJECT TO THE JURISDICTION AND REGULATION OF THE SECURITIES AND EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT.

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

3. "ACCOUNT OWNER" SHALL MEAN A PERSON WHO OPENS A SAVINGS ACCOUNT PURSUANT TO THE PROVISIONS OF THIS ARTICLE. THE ACCOUNT OWNER MAY ALSO BE THE DESIGNATED BENEFICIARY OF THE ACCOUNT.

4. "DESIGNATED BENEFICIARY" SHALL MEAN, WITH RESPECT TO AN ACCOUNT OR ACCOUNTS, ANY INDIVIDUAL WHO IS AN "ELIGIBLE INDIVIDUAL" AS DEFINED UNDER PARAGRAPH (1) OF SUBSECTION (E) OF SECTION 529A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR ANY REGULATIONS PROMULGATED THEREUNDER AND WHOSE QUALIFIED EXPENSES ARE EXPECTED TO BE PAID FROM THE ACCOUNT OR ACCOUNTS. A DESIGNATED BENEFICIARY SHALL BE A RESIDENT OF NEW YORK STATE OR A RESIDENT OF A STATE THAT: (A) DOES NOT HAVE A QUALIFIED ABLE PROGRAM RECOGNIZED UNDER SECTION 529-A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AND (B) HAS ENTERED INTO A CONTRACT WITH NEW YORK STATE TO PROVIDE RESIDENTS OF THE CONTRACTING STATE WITH ACCESS TO NEW YORK STATE'S ABLE PROGRAM.

5. "QUALIFIED EXPENSES" SHALL MEAN ANY QUALIFIED DISABILITY EXPENSE INCLUDED IN PARAGRAPH (5) OF SUBSECTION (E) OF SECTION 529A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR ANY REGULATIONS PROMULGATED THEREUNDER.

6. "NONQUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT FOR OTHER THAN A QUALIFIED EXPENSE, OR A WITHDRAWAL MADE AS THE RESULT OF THE DEATH OR DISABILITY OF THE DESIGNATED BENEFICIARY OF AN ACCOUNT.

7. "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.

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

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

S 84.05 POWERS AND DUTIES OF THE COMPTROLLER.

1. THE COMPTROLLER SHALL ESTABLISH A NY ABLE ACCOUNT PLAN FOR ALL ELIGIBLE INDIVIDUALS AND FAMILIES FOR THE PURPOSE OF SUPPORTING INDIVIDUALS WITH DISABILITIES TO MAINTAIN HEALTH, INDEPENDENCE, AND QUALITY OF LIFE. THE COMPTROLLER IS HEREBY AUTHORIZED TO PROMULGATE ANY AND ALL RULES AND REGULATIONS NECESSARY FOR THE IMPLEMENTATION OF THIS ARTICLE IN CONSULTATION WITH THE COMMISSIONERS OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE OFFICE OF MENTAL HEALTH, THE DEPARTMENT OF HEALTH, AND THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE.

2. THE COMPTROLLER MAY IMPLEMENT THE NY ABLE SAVINGS ACCOUNT PROGRAM THROUGH USE OF THIRD PARTY VENDORS AS ADMINISTRATORS OF SUCH ACCOUNTS, AND FINANCIAL ORGANIZATIONS AS ACCOUNT DEPOSITORIES AND MANAGERS. UNDER THE PROGRAM, INDIVIDUALS MAY ESTABLISH ACCOUNTS DIRECTLY WITH AN ACCOUNT DEPOSITORY.

3. THE COMPTROLLER MAY SOLICIT PROPOSALS FROM FINANCIAL ORGANIZATIONS TO ACT AS DEPOSITORIES AND MANAGERS FROM 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 OBTAINING CARE FOR INDIVIDUALS WITH DISABILITIES;

(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 OR MAINTAINING 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.

4. THE COMPTROLLER MAY ENTER INTO A CONTRACT WITH A FINANCIAL ORGANIZATION. SUCH FINANCIAL ORGANIZATION MANAGEMENT MAY PROVIDE ONE OR MORE TYPES OF INVESTMENT INSTRUMENT.

5. THE COMPTROLLER MAY SELECT MORE THAN ONE FINANCIAL ORGANIZATION FOR THE PROGRAM.

6. 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 84.09 OF THIS ARTICLE AND ANY ACTIONS NOT CONTRARY TO ITS CONTRACT TO MANAGE THE PROGRAM TO QUALIFY AS A "QUALIFIED ABLE ACCOUNT" UNDER SUBSECTION (1) OF PARAGRAPH (B) OF SECTION 529A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

(B) KEEP ADEQUATE RECORDS OF EACH ACCOUNT, KEEP EACH ACCOUNT SEGREGATED FROM EACH OTHER ACCOUNT, AND PROVIDE THE COMPTROLLER WITH INFORMATION AS REQUIRED;

(C) COMPILE AND TOTAL INFORMATION CONTAINED IN STATEMENTS REQUIRED TO BE PREPARED UNDER SECTION 84.09 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;

(E) PROVIDE THE COMPTROLLER OR HIS OR HER 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; AND

(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.

7. 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.

8. 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.

9. (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.

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

S 84.07 NY ABLE ACCOUNT ADVISORY COUNCIL.

1. THE NY ABLE ACCOUNT ADVISORY COUNCIL IS HEREBY ESTABLISHED AND SHALL CONSIST OF THE FOLLOWING PERSONS OR THEIR DESIGNEES: THE COMPTROLLER, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH, THE COMMISSIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE COMMISSIONER OF THE DEPARTMENT OF HEALTH, THE SUPERINTENDENT OF THE DEPARTMENT OF FINANCIAL SERVICES, THE COMMISSIONER OF THE DEPARTMENT OF TAXATION AND FINANCE, THE COMMISSIONER OF THE OFFICE OF TEMPORARY DISABILITY ASSISTANCE, THREE INDIVIDUALS APPOINTED BY THE GOVERNOR, AND TWO INDIVIDUALS EACH BY THE TEMPORARY PRESIDENT OF THE SENATE AND BY THE SPEAKER OF THE ASSEMBLY. SUCH EXECUTIVE AND LEGISLATIVE APPOINTEES SHALL HAVE KNOWLEDGE, SKILL AND EXPERTISE IN ISSUES RELATING TO INDIVIDUALS WITH DISABILITIES; EXPERTISE IN SERVICES TO PERSONS WITH DISABILITIES; OR KNOWLEDGE IN MANAGEMENT AND SUPPORT OF THE FISCAL AFFAIRS OF SUCH DISABILITIES.

2. THE MEMBERS SHALL BE APPOINTED FOR A TERM OF THREE YEARS AND SHALL BE REPRESENTATIVE OF ALL GEOGRAPHIC AREAS OF THE STATE.

3. THE ADVISORY COUNCIL SHALL:

(A) STUDY AND REVIEW THE WORK OF THE COMPTROLLER IN RELATION TO THE ESTABLISHMENT OF THE NY ABLE ACCOUNT PROGRAM;

(B) ADVISE THE COMPTROLLER AND MAKE RECOMMENDATIONS FOR THE IMPROVEMENT OF THE NY ABLE ACCOUNT PROGRAM;

(C) ADVISE THE COMPTROLLER ON LEGISLATIVE AND REGULATORY ACTIVITY WHICH MAY BE REQUIRED FOR COMPLIANCE; AND

(D) ADVISE THE COMPTROLLER ON THE DEVELOPMENT OF MATERIALS TO BE PROVIDED TO ACCOUNT OWNERS, PROSPECTIVE ACCOUNT OWNERS, AND DESIGNATED BENEFICIARIES IN ACCORDANCE WITH SUBDIVISION FOURTEEN OF SECTION 84.09 OF THIS ARTICLE.

4. THE ADVISORY COUNCIL SHALL MEET AT LEAST FOUR TIMES IN EACH FULL CALENDAR YEAR DURING THE FIRST THREE YEARS OF THE IMPLEMENTATION OF ABLE ACCOUNTS, ANNUALLY THEREAFTER, AND ADDITIONALLY UPON THE REQUEST OF THE COMPTROLLER.

5. THE MEMBERS OF THE ADVISORY COUNCIL SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES AS MEMBERS, BUT EACH SHALL BE ALLOWED THE NECESSARY AND ACTUAL EXPENSES INCURRED IN THE PERFORMANCE OF HIS OR HER DUTIES UNDER THIS SECTION.

S 84.09 PROGRAM REQUIREMENTS.

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

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

(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 MAY ESTABLISH A NOMINAL FEE FOR SUCH APPLICATION.

3. AN ACCOUNT OWNER MAY OWN ONLY ONE NY ABLE ACCOUNT UNLESS OTHERWISE PERMITTED BY SECTION 529A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

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

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

6. CONTRIBUTIONS TO A NY ABLE ACCOUNT SHALL NOT EXCEED THE LIMIT ON ANNUAL CONTRIBUTIONS ESTABLISHED UNDER PARAGRAPH (2) OF SUBSECTION (B) OF SECTION 529A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

7. AN ACCOUNT OWNER MAY WITHDRAW ALL OR PART OF THE BALANCE FROM AN ACCOUNT ON SIXTY DAYS NOTICE OR SUCH SHORTER PERIOD AS MAY BE 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. NONQUALIFIED WITHDRAWALS SHALL BE SUBJECT TO ANY PENALTIES IMPOSED UNDER SECTION 529A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

8. AN ACCOUNT OWNER MAY CHANGE THE DESIGNATED BENEFICIARY OF AN ACCOUNT TO ANOTHER BENEFICIARY WHO IS QUALIFIED UNDER THE PROVISIONS OF THIS ARTICLE.

9. THE PROGRAM SHALL PROVIDE A SEPARATE ACCOUNTING FOR EACH DESIGNATED BENEFICIARY.

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

11. 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.

12. 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. SUCH MAXIMUM AMOUNT SHALL REFLECT REASONABLE EXPENDITURES AND SHALL BE DETERMINED IN ACCORDANCE WITH ANY APPLICABLE STATE OR FEDERAL LAW, RULE, OR REGULATION. SUCH MAXIMUM AMOUNT SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS UNLESS OTHERWISE PERMITTED BY LAW.

13. (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 LAW.

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

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

(B) ANY RESTRICTIONS ON THE SUBSTITUTION OF BENEFICIARIES;

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

(D) THE PERIOD OF TIME DURING WHICH A BENEFICIARY MAY RECEIVE BENEFITS UNDER THE 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 NY ABLE SAVINGS AGREEMENTS, INCLUDING BUT NOT LIMITED TO THE POTENTIAL IMPACT ON MEANS TESTED PROGRAMS, THAT UPON THE DEATH OF THE BENEFICIARY ANY REMAINING BALANCE MAY BE SUBJECT TO STATE RECOVERY FOR MEDICAID PAYMENTS AND ANY OTHER TERMS, CONDITIONS, AND PROVISIONS DEEMED NECESSARY AND APPROPRIATE BY THE COMMISSIONER, THE ADVISORY COUNCIL, AND THE COMPTROLLER.

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

16. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, RULE, OR REGULATION TO THE CONTRARY, ASSETS CONTAINED IN NY ABLE ACCOUNT, THAT IS IN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL LAWS, RULES, AND REGULATIONS, SHALL NOT BE USED IN DETERMINING THE ELIGIBILITY OF A DESIGNATED BENEFICIARY FOR ANY FEDERAL, STATE, OR LOCAL MEANS-TESTED PROGRAM.

17. SUBJECT TO ANY OUTSTANDING PAYMENTS DUE FOR QUALIFIED DISABILITY EXPENSES, UPON THE DEATH OF THE DESIGNATED BENEFICIARY, ALL AMOUNTS REMAINING WILL BE SUBJECT TO STATE RECOVERY FOR MEDICAL ASSISTANCE

PAYMENTS MADE ON BEHALF OF THE BENEFICIARY AFTER THE DATE OF ESTABLISHMENT OF THE ACCOUNT.

18. 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:

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

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

S 84.11 DISTRIBUTION REQUIREMENTS.

DESIGNATED BENEFICIARIES SHALL BE ELIGIBLE FOR A DISTRIBUTION FROM THE ACCUMULATED FUNDS DEFERRED TO THEIR NY ABLE SAVINGS ACCOUNT ESTABLISHED PURSUANT TO THIS ARTICLE, IN FULL AND PARTIAL DISBURSEMENT OPTIONS FOR QUALIFIED EXPENSES.

S 4. Subsection (b) of section 612 of the tax law is amended by adding a new paragraph 42 to read as follows:

(42) DISTRIBUTIONS RECEIVED DURING THE TAXABLE YEAR BY A DESIGNATED BENEFICIARY OF A "NY ABLE ACCOUNT" ESTABLISHED UNDER THE NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNT ACT PROVIDED FOR UNDER ARTICLE EIGHTY-FOUR OF THE MENTAL HYGIENE LAW, TO THE EXTENT SUCH DISTRIBUTIONS ARE NONQUALIFIED WITHDRAWALS WITHIN THE MEANING OF SUBDIVISION SIX OF SECTION 84.03 OF SUCH LAW.

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

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

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

S 6. Paragraph (a) of subdivision 2 of section 366 of the social services law is amended by adding a new subparagraph 11 to read as follows:

(11) SUBJECT TO THE AVAILABILITY OF FEDERAL FINANCIAL PARTICIPATION, ANY AMOUNT, INCLUDING EARNINGS THEREON, IN A QUALIFIED NY ABLE ACCOUNT AS ESTABLISHED PURSUANT TO ARTICLE EIGHTY-FOUR OF THE MENTAL HYGIENE LAW, ANY CONTRIBUTIONS TO SUCH NY ABLE ACCOUNT, AND ANY DISTRIBUTION FOR QUALIFIED DISABILITY EXPENSES FROM SUCH ACCOUNT; PROVIDED HOWEVER, THAT SUCH EXEMPTION SHALL BE CONSISTENT WITH SECTION 529A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

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

S 99-X. NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE (NY ABLE) SAVINGS PROGRAM TRUST FUND. 1. THERE IS HEREBY ESTABLISHED IN THE SOLE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE (NY ABLE) SAVINGS PROGRAM TRUST FUND. ALL PAYMENTS FROM SUCH FUND SHALL BE MADE IN ACCORDANCE WITH ARTICLE EIGHTY-FOUR OF THE MENTAL HYGIENE LAW.

2. THE FUND SHALL BE A TRUST FUND AND SHALL CONSIST OF A TRUST ACCOUNT AND AN OPERATING ACCOUNT. THE TRUST ACCOUNT SHALL INCLUDE AMOUNTS RECEIVED BY THE NY ABLE SAVINGS PROGRAM PURSUANT TO NY ABLE SAVINGS AGREEMENTS, ADMINISTRATIVE CHARGES, FEES, AND ALL OTHER AMOUNTS RECEIVED BY THE PROGRAM FROM OTHER SOURCES, AND INTEREST AND INVESTMENT INCOME EARNED BY THE TRUST FUND. THE COMPTROLLER SHALL, FROM TIME TO TIME, MAKE TRANSFERS FROM THE TRUST ACCOUNT TO THE OPERATING ACCOUNT FOR THE IMME-

DIATE PAYMENT OF OBLIGATIONS UNDER NY ABLE SAVINGS AGREEMENTS, OPERATING EXPENSES AND ADMINISTRATIVE COSTS OF THE NY ABLE SAVINGS PROGRAM. ADMINISTRATIVE COSTS SHALL BE PAID OUT OF THE OPERATING ACCOUNT ACCORDING TO THE TERMS AND CONDITIONS ESTABLISHED PURSUANT TO THE PROVISIONS OF SECTION 84.05 OF THE MENTAL HYGIENE LAW.

3. (A) THE COMPTROLLER, AS TRUSTEE, SHALL INVEST THE ASSETS OF THE TRUST FUND IN INVESTMENTS AUTHORIZED BY ARTICLE FOUR-A OF THE RETIREMENT AND SOCIAL SECURITY LAW, PROVIDED HOWEVER, THAT: (I) THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SEVENTY-SEVEN OF THE RETIREMENT AND SOCIAL SECURITY LAW SHALL NOT APPLY EXCEPT FOR THE FIRST CLAUSE OF SUBPARAGRAPH (II) OF SUCH PARAGRAPH; AND (II) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION SEVEN OF SECTION ONE HUNDRED SEVENTY-SEVEN OF THE RETIREMENT AND SOCIAL SECURITY LAW OR ANY OTHER LAW TO THE CONTRARY, THE ASSETS OF THE TRUST FUND MAY BE INVESTED IN ANY FUNDING AGREEMENT ISSUED IN ACCORDANCE WITH SECTION THREE THOUSAND TWO HUNDRED TWENTY-TWO OF THE INSURANCE LAW BY A DOMESTIC LIFE INSURANCE COMPANY OR A FOREIGN LIFE INSURANCE COMPANY DOING BUSINESS IN THIS STATE, SUBJECT TO THE FOLLOWING: (1) SUCH A FUNDING AGREEMENT MAY PROVIDE FOR A GUARANTEED MINIMUM RATE OF RETURN; (2) SUCH A FUNDING AGREEMENT MAY BE ALLOCATED AS EITHER A SEPARATE ACCOUNT OR A GENERAL ACCOUNT OF THE ISSUER, AS THE COMPTROLLER MAY DECIDE; (3) TOTAL INVESTMENTS OF THE TRUST FUND PURSUANT TO THIS PARAGRAPH IN ANY FUNDING AGREEMENTS ISSUED BY A SINGLE LIFE INSURANCE COMPANY WHICH ARE ALLOCATED AS A GENERAL ACCOUNT OF THE ISSUER SHALL NOT, IN THE AGGREGATE, EXCEED THREE HUNDRED FIFTY MILLION DOLLARS; AND (4) NO ASSETS OF THE TRUST FUND SHALL BE INVESTED IN ANY SUCH FUNDING AGREEMENT UNLESS, AT THE TIME OF SUCH INVESTMENT, THE GENERAL OBLIGATIONS OR FINANCIAL STRENGTH OF THE ISSUER HAVE RECEIVED EITHER THE HIGHEST OR SECOND HIGHEST RATING BY TWO NATIONALLY RECOGNIZED RATING SERVICES OR BY ONE NATIONALLY RECOGNIZED RATING SERVICE IN THE EVENT THAT ONLY ONE SUCH SERVICE RATES SUCH OBLIGATIONS.

(B) TRUST FUND ASSETS SHALL BE KEPT SEPARATE AND SHALL NOT BE COMMINGLED WITH OTHER ASSETS, EXCEPT AS PROVIDED HEREIN. THE COMPTROLLER MAY ENTER INTO CONTRACTS TO PROVIDE FOR INVESTMENT ADVICE AND MANAGEMENT, CUSTODIAL SERVICES, AND OTHER PROFESSIONAL SERVICES FOR THE ADMINISTRATION AND INVESTMENT OF THE PROGRAM. ADMINISTRATIVE FEES, COSTS AND EXPENSES, INCLUDING INVESTMENT FEES AND EXPENSES, SHALL BE PAID FROM THE ASSETS OF THE FUND.

4. THE COMPTROLLER SHALL PROVIDE FOR THE ADMINISTRATION OF THE TRUST FUND, INCLUDING MAINTAINING PARTICIPANT RECORDS AND ACCOUNTS, AND PROVIDING ANNUAL AUDITED REPORTS. THE COMPTROLLER MAY ENTER INTO CONTRACTS TO PROVIDE ADMINISTRATIVE SERVICES AND REPORTING.

S 8. This act shall take effect April 1, 2016; provided, however, that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.