

4472--A

2015-2016 Regular Sessions

I N S E N A T E

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Introduced by Sens. CARLUCCI, ADDABBO, AMEDORE, AVELLA, BOYLE, CROCI, DIAZ, DILAN, ESPAILLAT, FARLEY, FELDER, FUNKE, GALLIVAN, GOLDEN, GRIFFO, HAMILTON, HOYLMAN, KLEIN, LANZA, LARKIN, LATIMER, MARCHIONE, MARTINS, MONTGOMERY, NOZZOLIO, O'MARA, ORTT, PANEPINTO, PARKER, PERALTA, RANZENHOFER, RITCHIE, RIVERA, ROBACH, SANDERS, SAVINO, SERRANO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, the social services law, the tax law and the civil practice law and rules, 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) savings account 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 disabilities to maintain
6 health, independence and quality of life; and to provide secure funding
7 for disability related expenses on behalf of designated beneficiaries
8 with disabilities that will supplement, but not supplant, benefits
9 provided through existing sources, including but not limited to means-
10 tested federal programs of assistance.

11 S 3. The banking law is amended by adding a new article 2-D to read as
12 follows:

13 ARTICLE 2-D

14 NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNT ACT

15 SECTION 90. SHORT TITLE.

16 90-A. DEFINITIONS.

17 90-B. ESTABLISHMENT OF PLAN.

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

LBD10067-02-5

1 90-C. NY ABLE ACCOUNT ADVISORY COUNCIL.
2 90-D. PROGRAM REQUIREMENTS.
3 90-E. DISTRIBUTION REQUIREMENTS.
4 90-F. POWERS OF THE COMPTROLLER.

5 S 90. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
6 THE "NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE (NY ABLE) SAVINGS
7 ACCOUNT ACT".

8 S 90-A. DEFINITIONS. AS USED IN THIS ARTICLE:

9 1. "FINANCIAL ORGANIZATION" MEANS AN ORGANIZATION AUTHORIZED TO DO
10 BUSINESS IN THE STATE OF NEW YORK AND (A) WHICH IS AN AUTHORIZED FIDUCI-
11 ARY TO ACT AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS
12 ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS SUCH
13 PROVISIONS MAY BE AMENDED FROM TIME TO TIME, OR AN INSURANCE COMPANY;
14 AND (B)(I) IS LICENSED OR CHARTERED BY THE STATE DEPARTMENT OF FINANCIAL
15 SERVICES, (II) IS CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT,
16 (III) IS SUBJECT TO THE JURISDICTION AND REGULATION OF THE SECURITIES
17 AND EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT, (IV) IS ANY OTHER
18 ENTITY OTHERWISE AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE PURSUANT
19 TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT
20 INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME
21 TO TIME OR AN ENTITY DESCRIBED IN CLAUSE (VI) OF SUBPARAGRAPH TWO OF
22 PARAGRAPH (6) OF SUBDIVISION TWO OF SECTION THREE HUNDRED SIXTY-SIX OF
23 THE SOCIAL SERVICES LAW.

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

26 3. "ACCOUNT OWNER" SHALL MEAN THE DESIGNATED BENEFICIARY WHO OPENS THE
27 NY ABLE ACCOUNT OR OTHER PERSON WHO OPENS THE NY ABLE ACCOUNT ON BEHALF
28 OF THE DESIGNATED BENEFICIARY IN COMPLIANCE WITH SECTION FIVE HUNDRED
29 TWENTY-NINE-A.

30 4. "COMPTROLLER" SHALL MEAN THE COMPTROLLER OF THE STATE OF NEW YORK.

31 5. "DESIGNATED BENEFICIARY" SHALL MEAN, WITH RESPECT TO AN ACCOUNT OR
32 ACCOUNTS, THE INDIVIDUAL WITH A DISABILITY WHO IS DESIGNATED AS THE
33 INDIVIDUAL WHOSE QUALIFIED EXPENSES ARE EXPECTED TO BE PAID FROM THE
34 ACCOUNT. THE "DESIGNATED BENEFICIARY" MUST BE A RESIDENT OF NEW YORK
35 STATE OR A RESIDENT OF A STATE THAT: (A) DOES NOT HAVE A QUALIFIED ABLE
36 PROGRAM RECOGNIZED UNDER SECTION FIVE HUNDRED TWENTY-NINE-A, AND (B) HAS
37 ENTERED INTO A CONTRACT WITH NEW YORK STATE TO PROVIDE RESIDENTS OF THE
38 CONTRACTING STATE WITH ACCESS TO NEW YORK STATE'S ABLE PROGRAM.

39 6. "QUALIFIED EXPENSES" SHALL MEAN "QUALIFIED DISABILITY EXPENSES" AS
40 DEFINED UNDER SECTION FIVE HUNDRED TWENTY-NINE-A AS IT SHALL BE INTER-
41 PRETED AND APPLIED BY REGULATION OF THE UNITED STATES SECRETARY OF THE
42 TREASURY.

43 7. "QUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT TO
44 PAY FOR THE QUALIFIED EXPENSES OF THE DESIGNATED BENEFICIARY OF THE NY
45 ABLE ACCOUNT.

46 8. "NONQUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT
47 OTHER THAN (A) A QUALIFIED WITHDRAWAL, OR (B) A WITHDRAWAL MADE AS THE
48 RESULT OF THE DEATH OF THE DESIGNATED BENEFICIARY OF AN ACCOUNT.

49 9. "MANAGEMENT CONTRACT" SHALL MEAN THE CONTRACT EXECUTED BY THE COMP-
50 TROLLER AND A FINANCIAL ORGANIZATION SELECTED TO ACT AS A DEPOSITORY AND
51 MANAGER OF THE PROGRAM.

52 10. "SAVINGS AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN THE COMP-
53 TROLLER OR A FINANCIAL ORGANIZATION AND THE ACCOUNT OWNER.

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

1 12. "INDIVIDUAL WITH A DISABILITY" SHALL MEAN AN INDIVIDUAL WHO IS AN
2 "ELIGIBLE INDIVIDUAL" AS DEFINED UNDER SECTION FIVE HUNDRED
3 TWENTY-NINE-A.

4 13. "SECTION FIVE HUNDRED TWENTY-NINE-A" MEANS SECTION FIVE HUNDRED
5 TWENTY-NINE-A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR ANY
6 SUCCESSOR PROVISION THERETO, AND ANY REGULATIONS PROMULGATED THEREUNDER
7 OR TAX ANNOUNCEMENTS OR OTHER BINDING REGULATORY GUIDANCE PROVIDED WITH
8 RESPECT THERETO.

9 S 90-B. ESTABLISHMENT OF PLAN. 1. THE COMPTROLLER IN CONSULTATION
10 WITH THE COMMISSIONERS OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISA-
11 BILITIES, OFFICE OF MENTAL HEALTH AND THE DEPARTMENT OF HEALTH SHALL
12 ESTABLISH A NY ABLE ACCOUNT PLAN FOR ALL ELIGIBLE INDIVIDUALS AND FAMI-
13 LIES FOR THE PURPOSE OF SUPPORTING INDIVIDUALS WITH DISABILITIES TO
14 MAINTAIN HEALTH, INDEPENDENCE, AND QUALITY OF LIFE. THE COMPTROLLER
15 SHALL PROMULGATE ANY AND ALL RULES AND REGULATIONS NECESSARY FOR THE
16 IMPLEMENTATION OF THIS ARTICLE.

17 2. THE COMPTROLLER SHALL ENTER INTO WRITTEN AGREEMENTS WITH ONE OR
18 MORE FINANCIAL ORGANIZATIONS TO ADMINISTER THE NY ABLE SAVINGS ACCOUNT
19 PLAN FOR ELIGIBLE INDIVIDUALS AND FAMILIES AND TO INVEST FUNDS HELD
20 PURSUANT TO SUCH PLAN. THE COMPTROLLER SHALL ESTABLISH REPORTING
21 REQUIREMENTS FOR SUCH FINANCIAL ORGANIZATIONS INCLUDING BUT NOT LIMITED
22 TO REPORTS TO THE COMPTROLLER, PARTICIPATING INDIVIDUALS AND FAMILIES,
23 PARTICIPATING EMPLOYERS, AND FEDERAL GOVERNMENT AGENCIES, REGARDING THE
24 FISCAL STATUS AND STATUTORY AND REGULATORY COMPLIANCE OF NY ABLE SAVINGS
25 ACCOUNTS.

26 3. NY ABLE ACCOUNTS SHALL BE MAINTAINED BY FINANCIAL ORGANIZATIONS
27 UNDER WRITTEN AGREEMENT WITH THE COMPTROLLER. SUCH FINANCIAL ORGANIZA-
28 TIONS SHALL BE SOLELY RESPONSIBLE FOR DISTRIBUTIONS TO PARTICIPANTS
29 PURSUANT TO THIS ARTICLE AND DOCUMENTATION AND REPORTING THEREOF.

30 4. NOTWITHSTANDING ANY OTHER PROVISIONS TO THE CONTRARY, NY ABLE
31 ACCOUNTS SHALL NOT BE CONSIDERED IN DETERMINING ELIGIBILITY FOR ANY
32 FEDERAL, STATE OR LOCAL MEANS-TESTED PROGRAM.

33 S 90-C. NY ABLE ACCOUNT ADVISORY COUNCIL. 1. THE NY ABLE ACCOUNT ADVI-
34 SORY COUNCIL IS HEREBY ESTABLISHED AND SHALL CONSIST OF THE FOLLOWING
35 PERSONS OR THEIR DESIGNEES: THE COMPTROLLER, THE COMMISSIONER OF THE
36 OFFICE OF MENTAL HEALTH, THE COMMISSIONER OF THE OFFICE FOR PEOPLE WITH
37 DEVELOPMENTAL DISABILITIES, THE COMMISSIONER OF THE DEPARTMENT OF
38 HEALTH, THE SUPERINTENDENT, THE COMMISSIONER OF THE DEPARTMENT OF TAXA-
39 TION AND FINANCE, THE COMMISSIONER OF THE OFFICE OF TEMPORARY DISABILITY
40 ASSISTANCE. IN ADDITION, THE COUNCIL SHALL CONSIST OF THE FOLLOWING
41 PERSONS: THREE PERSONS APPOINTED BY THE GOVERNOR, TWO EACH BY THE TEMPO-
42 RARY PRESIDENT OF THE SENATE AND BY THE SPEAKER OF THE ASSEMBLY. THESE
43 INDIVIDUALS MUST HAVE KNOWLEDGE, SKILL AND EXPERTISE IN ISSUES RELATING
44 TO INDIVIDUALS WITH DISABILITIES; EXPERTISE IN SERVICES TO PERSONS WITH
45 DISABILITIES; AND KNOWLEDGE IN MANAGEMENT AND SUPPORT OF THE FISCAL
46 AFFAIRS OF SUCH PERSONS WITH DISABILITIES.

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

49 3. THE ADVISORY COUNCIL SHALL:

50 (A) CONSIDER, STUDY AND REVIEW THE WORK OF THE COMPTROLLER IN RELATION
51 TO THE ESTABLISHMENT OF THE NY ABLE ACCOUNT PROGRAM.

52 (B) ADVISE THE COMPTROLLER AND MAKE RECOMMENDATIONS FOR THE IMPROVE-
53 MENT OF THE NY ABLE ACCOUNT PROGRAM.

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

56 4. THE ADVISORY COUNCIL SHALL MEET AT LEAST FOUR TIMES PER YEAR.

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

5 6. IN NO EVENT SHALL ANY MEMBER, OFFICER, OR EMPLOYEE OF THE ADVISORY
6 COUNCIL BE LIABLE FOR DAMAGES IN ANY CIVIL ACTION FOR ANY ACT DONE,
7 FAILURE TO ACT, OR STATEMENT OR OPINION MADE, WHILE DISCHARGING HIS OR
8 HER DUTIES AS A MEMBER, OFFICER, OR EMPLOYEE OF THE ADVISORY COUNCIL IF
9 HE OR SHE SHALL HAVE ACTED IN GOOD FAITH, WITH REASONABLE CARE.

10 S 90-D. PROGRAM REQUIREMENTS. 1. NY ABLE ACCOUNTS ESTABLISHED PURSU-
11 ANT TO THE PROVISIONS OF THIS ARTICLE SHALL BE GOVERNED BY THE
12 PROVISIONS OF THIS SECTION.

13 2. A NY ABLE ACCOUNT MAY BE OPENED ONLY BY THE DESIGNATED BENEFICIARY
14 UNLESS OTHERWISE PERMITTED UNDER SECTION FIVE HUNDRED TWENTY-NINE-A. IF
15 THE DESIGNATED BENEFICIARY OF THE ACCOUNT IS A MINOR OR HAS A GUARDIAN
16 OR OTHER FIDUCIARY APPOINTED FOR MANAGING THE BENEFICIARY'S FINANCIAL
17 AFFAIRS, THE GUARDIAN OR FIDUCIARY FOR SUCH DESIGNATED BENEFICIARY MAY
18 SERVE AS THE ACCOUNT OWNER IF SUCH FORM OF OWNERSHIP IS PERMITTED OR NOT
19 PROHIBITED UNDER SECTION FIVE HUNDRED TWENTY-NINE-A.

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

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

24 (II) THE DESIGNATION OF A DESIGNATED BENEFICIARY;

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

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

28 (B) THE COMPTROLLER MAY ESTABLISH A MINIMAL NOMINAL FEE FOR SUCH
29 APPLICATION TO OFFSET THE ADMINISTRATIVE COSTS OF THIS PROGRAM.

30 3. AN ACCOUNT OWNER MAY OWN ONLY ONE NY ABLE ACCOUNT UNLESS OTHERWISE
31 PERMITTED BY ANY OTHER FEDERAL OR STATE LAW, RULE OR REGULATION TO THE
32 CONTRARY.

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

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

36 6. CONTRIBUTIONS TO A NY ABLE ACCOUNT SHALL NOT EXCEED THE LIMIT ON
37 ANNUAL CONTRIBUTIONS ESTABLISHED UNDER SECTION FIVE HUNDRED
38 TWENTY-NINE-A.

39 7. AN ACCOUNT OWNER MAY WITHDRAW ALL OR PART OF THE BALANCE FROM AN
40 ACCOUNT ON SIXTY DAYS NOTICE OR SUCH SHORTER PERIOD AS MAY BE AUTHORIZED
41 UNDER RULES GOVERNING THE PROGRAM. SUCH RULES SHALL INCLUDE PROVISIONS
42 THAT WILL GENERALLY ENABLE THE DETERMINATION AS TO WHETHER A WITHDRAWAL
43 IS A NONQUALIFIED WITHDRAWAL OR A QUALIFIED WITHDRAWAL.

44 8. AN ACCOUNT OWNER MAY CHANGE THE DESIGNATED BENEFICIARY OF AN
45 ACCOUNT TO ANOTHER BENEFICIARY WHO IS QUALIFIED UNDER THE PROVISIONS OF
46 THIS ARTICLE ONLY TO THE EXTENT PERMITTED UNDER SECTION FIVE HUNDRED
47 TWENTY-NINE-A.

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

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

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

1 12. THE COMPTROLLER SHALL PROMULGATE RULES AND REGULATIONS TO PREVENT
2 CONTRIBUTIONS ON BEHALF OF A DESIGNATED BENEFICIARY IN EXCESS OF AN
3 AMOUNT THAT WOULD CAUSE THE AGGREGATE ACCOUNT BALANCE TO EXCEED A MAXI-
4 MUM ACCOUNT BALANCE, AS ESTABLISHED FROM TIME TO TIME BY THE COMP-
5 TROLLER. SUCH MAXIMUM AMOUNT SHALL REFLECT REASONABLE EXPENDITURES AND
6 SHALL REFLECT ANY LIMITATIONS DESCRIBED IN SECTION FIVE HUNDRED TWENTY-
7 NINE-A.

8 13. THE PROGRAM SHALL ISSUE REPORTS AND NOTICES TO FEDERAL AGENCIES
9 AND DESIGNATED BENEFICIARIES AS REQUIRED UNDER SECTION FIVE HUNDRED
10 TWENTY-NINE-A.

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

- 13 (A) THE TERMS AND CONDITIONS FOR PURCHASING A NY ABLE ACCOUNT;
14 (B) ANY RESTRICTIONS ON THE SUBSTITUTION OF BENEFICIARIES;
15 (C) THE PERSON OR ENTITY ENTITLED TO TERMINATE THE SAVINGS AGREEMENT;
16 (D) THE PERIOD OF TIME DURING WHICH A BENEFICIARY MAY RECEIVE BENEFITS
17 UNDER THE SAVINGS AGREEMENT;
18 (E) THE TERMS AND CONDITIONS UNDER WHICH MONEY MAY BE WHOLLY OR
19 PARTIALLY WITHDRAWN FROM THE PROGRAM, INCLUDING, BUT NOT LIMITED TO, ANY
20 REASONABLE CHARGES AND FEES THAT MAY BE IMPOSED FOR WITHDRAWAL;
21 (F) THE PROBABLE TAX CONSEQUENCES ASSOCIATED WITH CONTRIBUTIONS TO AND
22 DISTRIBUTIONS FROM ACCOUNTS;

23 (G) ALL OTHER RIGHTS AND OBLIGATIONS PURSUANT TO NY ABLE SAVINGS
24 AGREEMENTS, AND ANY OTHER TERMS, CONDITIONS, AND PROVISIONS DEEMED
25 NECESSARY AND APPROPRIATE BY THE COMPTROLLER; AND

26 (H) PURSUANT TO THE ENACTMENT OF FEDERAL REGULATION THAT, IRRESPECTIVE
27 OF THE SOURCE OF NY ABLE ACCOUNT DEPOSITIONS, UPON DEATH OF THE BENEFI-
28 CIARY OR OTHER TERMINATION OF THE ACCOUNT, THE BALANCE REMAINING WILL BE
29 SUBJECT TO STATE RECOVERY FOR MEDICAID PAYMENTS MADE ON BEHALF OF THE
30 BENEFICIARY AFTER THE DATE OF ESTABLISHMENT OF THE ACCOUNT.

31 15. NY ABLE SAVINGS AGREEMENTS SHALL BE SUBJECT TO SECTION FOURTEEN-C
32 OF THIS CHAPTER AND THE "TRUTH-IN-SAVINGS" REGULATIONS PROMULGATED THER-
33 EUNDER.

34 S 90-E. DISTRIBUTION REQUIREMENTS. 1. DESIGNATED BENEFICIARIES SHALL
35 BE ELIGIBLE FOR A DISTRIBUTION FROM THE ACCUMULATED FUNDS DEFERRED TO
36 THEIR NY ABLE SAVING ACCOUNT ESTABLISHED PURSUANT TO THIS ARTICLE, IN
37 FULL AND PARTIAL DISBURSEMENT OPTIONS FOR QUALIFIED EXPENSES.

38 2. UNDER THE NY ABLE SAVINGS ACCOUNT PLAN, AMOUNTS SHALL NOT BE MADE
39 AVAILABLE TO DESIGNATED BENEFICIARIES UNLESS THE DESIGNATED BENEFICIARY
40 HAS BEEN DETERMINED TO BE AN INDIVIDUAL WITH A DISABILITY.

41 S 90-F. POWERS OF THE COMPTROLLER. 1. THE COMPTROLLER MAY IMPLEMENT
42 THE NY ABLE SAVINGS ACCOUNT PROGRAM THROUGH USE OF FINANCIAL ORGANIZA-
43 TIONS AS ACCOUNT DEPOSITORIES AND MANAGERS. UNDER THE PROGRAM, INDIVID-
44 UALS MAY ESTABLISH ACCOUNTS DIRECTLY WITH AN ACCOUNT DEPOSITORY.

45 2. THE COMPTROLLER MAY SOLICIT PROPOSALS FROM FINANCIAL ORGANIZATIONS
46 TO ACT AS DEPOSITORIES AND MANAGERS FROM THE PROGRAM. FINANCIAL ORGAN-
47 IZATIONS SUBMITTING PROPOSALS SHALL DESCRIBE THE INVESTMENT INSTRUMENT
48 WHICH WILL BE HELD IN ACCOUNTS. THE COMPTROLLER SHALL SELECT AS PROGRAM
49 DEPOSITORIES AND MANAGERS FROM THE FINANCIAL ORGANIZATION, FROM AMONG
50 THE BIDDING FINANCIAL ORGANIZATIONS THAT DEMONSTRATES THE MOST ADVANTA-
51 GEOUS COMBINATION, BOTH TO POTENTIAL PROGRAM PARTICIPANTS AND THIS
52 STATE, OF THE FOLLOWING FACTORS:

- 53 (A) FINANCIAL STABILITY AND INTEGRITY OF THE FINANCIAL ORGANIZATION;
54 (B) THE SAFETY OF THE INVESTMENT INSTRUMENT BEING OFFERED;
55 (C) THE ABILITY OF THE INVESTMENT INSTRUMENT TO TRACK INCREASING COSTS
56 OF OBTAINING CARE FOR INDIVIDUALS WITH DISABILITIES;

1 (D) THE ABILITY OF THE FINANCIAL ORGANIZATION TO SATISFY RECORDKEEPING
2 AND REPORTING REQUIREMENTS;

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

5 (F) THE FEES, IF ANY, PROPOSED TO BE CHARGED TO PERSONS FOR OPENING
6 ACCOUNTS OR FEES RELATED TO THE MANAGEMENT OF ACCOUNTS;

7 (G) THE MINIMUM INITIAL DEPOSIT AND MINIMUM CONTRIBUTIONS THAT THE
8 FINANCIAL ORGANIZATION WILL REQUIRE;

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

11 (I) OTHER BENEFITS TO THE STATE OR ITS RESIDENTS INCLUDED IN THE
12 PROPOSAL, INCLUDING FEES PAYABLE TO THE STATE TO COVER EXPENSES OF OPER-
13 ATION OF THE PROGRAM; AND

14 (J) THE FAMILIARITY OF THE FINANCIAL ORGANIZATION WITH ALL ASPECTS OF
15 FEDERAL AND STATE MEANS-TESTED PROGRAMS OF ASSISTANCE INCLUDING ELIGI-
16 BILITY REQUIREMENTS, AVAILABLE PROGRAM AND THE SUPPORT SERVICES AND THE
17 SYSTEMS OF PROVIDERS OF SUCH SERVICES AND SUPPORTS.

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

21 4. THE COMPTROLLER MAY SELECT MORE THAN ONE FINANCIAL ORGANIZATION FOR
22 THE PROGRAM.

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

25 (A) TAKE ANY ACTION REQUIRED TO KEEP THE PROGRAM IN COMPLIANCE WITH
26 REQUIREMENTS OF SECTION 90-C OF THIS ARTICLE;

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

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

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

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

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

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

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

53 7. DURING THE TERM OF ANY CONTRACT WITH A PROGRAM MANAGER, THE COMP-
54 TROLLER SHALL CONDUCT AN EXAMINATION OF SUCH MANAGER AND ITS HANDLING OF
55 ACCOUNTS. SUCH EXAMINATION SHALL BE CONDUCTED AT LEAST BIENNIALY IF
56 SUCH MANAGER IS NOT OTHERWISE SUBJECT TO PERIODIC EXAMINATION BY THE

1 SUPERINTENDENT, THE FEDERAL DEPOSIT INSURANCE CORPORATION OR OTHER SIMI-
2 LAR ENTITY.

3 8. (A) IF THE COMPTROLLER TERMINATES A FINANCIAL ORGANIZATION FOR
4 FRAUD OR MISMANAGEMENT AS A PROGRAM MANAGER OR DEPOSITORY, HE OR SHE
5 SHALL TAKE CUSTODY OF ACCOUNTS HELD BY SUCH FINANCIAL ORGANIZATION AND
6 SHALL SEEK TO PROMPTLY TRANSFER SUCH ACCOUNTS TO ANOTHER FINANCIAL
7 ORGANIZATION THAT IS SELECTED AS A PROGRAM MANAGER OR DEPOSITORY AND
8 INTO INVESTMENT INSTRUMENTS AS SIMILAR TO THE ORIGINAL INSTRUMENTS AS
9 POSSIBLE.

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

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

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

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

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

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

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

23 9. SUBJECT TO ANY REGULATIONS AND RESTRICTIONS PRESCRIBED BY THE
24 SUPERINTENDENT OF FINANCIAL SERVICES, A SAVINGS BANK SHALL HAVE POWER TO
25 ACT AS TRUSTEE OF A NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE (NY
26 ABLE) SAVINGS ACCOUNT ESTABLISHED PURSUANT TO ARTICLE TWO-D OF THIS
27 CHAPTER, PROVIDED THAT THE PROVISIONS OF THE WRITTEN GOVERNING INSTRU-
28 MENT CREATING THE TRUST REQUIRE THE FUNDS OF SUCH TRUST TO BE INVESTED
29 EXCLUSIVELY IN DEPOSITS IN SAVINGS BANKS.

30 S 5. Subdivision 7 of section 100-c of the banking law, as amended by
31 chapter 134 of the laws of 2002, is amended to read as follows:

32 7. As used in this section, subject to subdivision eight of this
33 section the term "trust company" shall mean any trust company, any bank
34 duly authorized to exercise fiduciary powers and any national bank
35 having a principal, branch or trust office in this state and duly
36 authorized to exercise fiduciary powers; the term "estate" shall mean
37 the assets held by an executor or an administrator, with or without the
38 will annexed, of the goods, chattels and credits of a decedent, but not
39 a temporary administrator; the term "trust" shall mean the assets of any
40 trust however created held by the trustee thereof, including, but with-
41 out limitation, any assets held by a fiduciary as donee of a power
42 during minority to manage property vested in an infant; the term "fund"
43 shall include the assets of an infant held by the guardian thereof, the
44 assets of an incompetent person held by the committee thereof, [and] the
45 assets of a conservatee held by the conservator thereof AND ASSETS
46 CONSISTING OF A "NY ABLE ACCOUNT" HELD FOR THE BENEFIT OF AN "ACCOUNT
47 OWNER", AS SUCH TERMS ARE DEFINED IN SECTION NINETY-A OF THIS CHAPTER.
48 The term "donee of a power during minority to manage property vested in
49 an infant" shall for the purposes of this section include only a fiduci-
50 ary who has power during a period measured by a minority to hold and
51 invest moneys under the terms of an instrument under which the fiduciary
52 had theretofore held such moneys as executor or as personal or testamen-
53 tary trustee.

54 S 6. Subsection (c) of section 612 of the tax law is amended by adding
55 two new paragraphs 42 and 43 to read as follows:

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

5 (43) DISTRIBUTIONS FOR QUALIFIED EXPENSES OF A DESIGNATED BENEFICIARY
6 FROM A "NY ABLE" ACCOUNT ESTABLISHED UNDER ARTICLE TWO-D OF THE BANKING
7 LAW, TO THE EXTENT INCLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME TAX
8 PURPOSES.

9 S 7. Subparagraph 2 of paragraph (b) of subdivision 2 of section 366
10 of the social services law is amended by adding a new clause (vi) to
11 read as follows:

12 (VI) NOTWITHSTANDING THE PROVISIONS OF CLAUSES (I) AND (II) OF THIS
13 SUBPARAGRAPH, IN THE CASE OF AN APPLICANT WHO IS THE ACCOUNT OWNER AND
14 DESIGNATED BENEFICIARY OF A "NY ABLE ACCOUNT", AS THAT TERM IS DEFINED
15 IN SECTION NINETY-A OF THE BANKING LAW, THE DEPARTMENT MUST NOT CONSIDER
16 AS AVAILABLE INCOME OR RESOURCES THE CORPUS OF INCOME OF SUCH NY ABLE
17 ACCOUNT, FOR SO LONG AS AND TO THE EXTENT THAT SUCH ACCOUNT COMPLIES IN
18 ALL RESPECTS WITH APPLICABLE FEDERAL AND STATE LAW REQUIREMENTS AS TO
19 CONTRIBUTIONS THERETO, THE BALANCE THEREOF AND REPORTING, AND AS
20 REQUIRED. NOTWITHSTANDING ANY LAWS TO THE CONTRARY, A NOT-FOR-PROFIT
21 CORPORATION MAY, WITH THE APPROVAL OF THE COMPTROLLER AND IN FURTHERANCE
22 OF OR AS AN ADJUNCT TO ITS CORPORATE PURPOSES, ACT AS A "FINANCIAL
23 ORGANIZATION", AS SUCH TERM IS DEFINED IN SECTION NINETY-A OF THE BANK-
24 ING LAW, IN THE ADMINISTRATION OF A NY ABLE ACCOUNT, PROVIDED THAT A
25 TRUST COMPANY, AS DEFINED IN SUBDIVISION SEVEN OF SECTION ONE HUNDRED-C
26 OF THE BANKING LAW, ACTS AS A CO-PROGRAM MANAGER OF SUCH ACCOUNT.

27 S 8. Subdivision (j) of section 5205 of the civil practice law and
28 rules, as added by chapter 546 of the laws of 1997, is amended to read
29 as follows:

30 (j) Exemption for New York state college choice tuition savings
31 program trust fund payment monies AND FOR QUALIFIED NY ABLE ACCOUNTS.
32 Monies in an account created pursuant to article fourteen-A of the
33 education law are exempt from application to the satisfaction of a money
34 judgment as follows:

35 1. one hundred percent of monies in an account established in
36 connection with a scholarship program established pursuant to such arti-
37 cle is exempt;

38 2. one hundred percent of monies in an account is exempt where the
39 judgment debtor is the account owner and designated beneficiary of such
40 account and is a minor; and

41 3. an amount not exceeding ten thousand dollars in an account, or in
42 the aggregate for more than one account, is exempt where the judgment
43 debtor is the account owner of such account or accounts.

44 MONIES IN A NY ABLE ACCOUNT CREATED PURSUANT TO AND MAINTAINED IN
45 COMPLIANCE WITH ARTICLE TWO-D OF THE BANKING LAW ARE EXEMPT FROM APPLI-
46 CATION TO THE SATISFACTION OF A MONEY JUDGEMENT: ONE HUNDRED PERCENT OF
47 MONIES IN A QUALIFIED NY ABLE ACCOUNT, ESTABLISHED AND MAINTAINED IN
48 COMPLIANCE WITH SUCH ARTICLE WITH THE EXCEPTION OF:

49 1. A MONEY JUDGMENT FOR A DEBT INCURRED BY OR ON BEHALF OF THE DESIG-
50 NATED BENEFICIARY OF THE ACCOUNT FOR A QUALIFIED DISABILITY EXPENSE; AND

51 2. A MONEY JUDGMENT ACCRUING FROM A CLAIM BY THE STATE FOR THE TOTAL
52 MEDICAL ASSISTANCE PAID FOR THE DESIGNATED BENEFICIARY OF THE ACCOUNT
53 AFTER THE ESTABLISHMENT OF THE ACCOUNT, NET OF PREMIUMS PAID IN FOR ANY
54 MEDICAL ASSISTANCE BUY-IN PROGRAM.

1 For purposes of this subdivision, the terms "account owner" and
2 "designated beneficiary" shall have the meanings ascribed to them in
3 article fourteen-A of the education law.

4 S 9. This act shall take effect on the one hundred eightieth day after
5 it shall have become a law; provided, however, that effective immediate-
6 ly, the addition, amendment and/or repeal of any rules or regulations
7 necessary for the implementation of this act on its effective date are
8 authorized and directed to be made and completed on or before such
9 effective date.