

7903

I N S E N A T E

May 23, 2016

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

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:

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

3 ARTICLE XXVIII

4 NEW YORK STATE FIRST HOME

5 SAVINGS PROGRAM

6 SECTION 1250. PROGRAM ESTABLISHED.

7 1251. PURPOSES.

8 1252. DEFINITIONS.

9 1253. FUNCTIONS OF THE COMPTROLLER.

10 1254. POWERS OF THE COMPTROLLER.

11 1255. PROGRAM REQUIREMENTS; FIRST HOME SAVINGS ACCOUNT.

12 1256. PROGRAM LIMITATIONS; FIRST HOME SAVINGS ACCOUNT.

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

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

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

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

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

LBD15562-02-6

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

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

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

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

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

33 5. "FIRST TIME HOME BUYER" SHALL MEAN AN INDIVIDUAL OR AN INDIVIDUAL
34 AND HIS OR HER SPOUSE, NEITHER OF WHOM HAS OR HAD AN OWNERSHIP INTEREST
35 IN A PRINCIPAL RESIDENCE AT ANY TIME. NO SUCH PERSON SHALL OWN ANY OTHER
36 HOME INCLUDING VACATION OR INVESTMENT RESIDENCES, EXCEPT AS OTHERWISE
37 PROVIDED IN THIS SUBDIVISION. IF EITHER THE INDIVIDUAL OR HIS OR HER
38 SPOUSE IS NOT A FIRST TIME HOME BUYER, NEITHER THE INDIVIDUAL NOR THE
39 SPOUSE SHALL BE CONSIDERED A FIRST TIME HOME BUYER. IF AN INDIVIDUAL'S
40 ONLY POTENTIALLY DISQUALIFYING PRESENT OWNERSHIP INTEREST IS OWNERSHIP
41 OF A MOBILE HOME THAT IS NOT PERMANENTLY ATTACHED TO THE LAND, THE INDI-
42 VIDUAL SHALL BE CONSIDERED A FIRST TIME HOME BUYER AND SHALL BE ELIGIBLE
43 FOR A HOUSE PURCHASE ACCOUNT DEDUCTION. FOR THE PURPOSES OF THIS ARTICLE
44 A "MOBILE HOME" SHALL MEAN A STRUCTURE WHICH IS PERMANENTLY ATTACHED,
45 BEING PERMANENTLY ANCHORED TO REAL PROPERTY AND HAS HAD WHEELS AND OTHER
46 COMPONENTS USED IN TRANSPORTATION REMOVED. IF, DUE TO HIS OR HER OWNER-
47 SHIP OF A MOBILE HOME, THE INDIVIDUAL HAS CLAIMED A REAL ESTATE TAX OR
48 HOME MORTGAGE DEDUCTION ON HIS OR HER PERSONAL INCOME TAX RETURNS, SUCH
49 INDIVIDUAL SHALL NOT BE CONSIDERED A FIRST TIME HOME BUYER REGARDLESS OF
50 WHETHER THE MOBILE HOME WAS PERMANENTLY ATTACHED TO THE LAND.

51 6. "OWNERSHIP INTEREST" SHALL MEAN A FEE SIMPLE INTEREST, A JOINT
52 TENANCY, A TENANCY IN COMMON, A TENANCY BY THE ENTIRETY, THE INTEREST OF
53 A TENANT-SHARE HOLDER IN A COOPERATIVE, A LIFE ESTATE OR A LAND
54 CONTRACT. INTERESTS WHICH DO NOT CONSTITUTE OWNERSHIP INTERESTS INCLUDE
55 THE FOLLOWING: (A) REMAINDER INTERESTS, (B) A LEASE WITH OR WITHOUT AN
56 OPTION TO PURCHASE, (C) A MERE EXPECTANCY TO INHERIT AN INTEREST IN A

1 RESIDENCE, (D) THE INTEREST THAT A PURCHASER OF A RESIDENCE ACQUIRES ON
2 THE EXECUTION OF A PURCHASE CONTRACT AND (E) AN INTEREST IN REAL ESTATE
3 OTHER THAN A RESIDENCE.

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

6 8. "PROGRAM" SHALL MEAN THE NEW YORK FIRST HOME SAVINGS PROGRAM ESTAB-
7 LISHED PURSUANT TO THIS ARTICLE.

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

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

16 11. "QUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT TO
17 PAY THE QUALIFIED FIRST HOME PURCHASE EXPENSE OF THE DESIGNATED BENEFI-
18 CIARY OF THE ACCOUNT.

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

21 (A) A QUALIFIED WITHDRAWAL; OR

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

24 13. "COMPTROLLER" SHALL MEAN THE STATE COMPTROLLER.

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

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

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

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

34 S 1253. FUNCTIONS OF THE COMPTROLLER. 1. THE COMPTROLLER SHALL IMPL-
35 MENT THE PROGRAM UNDER THE TERMS AND CONDITIONS ESTABLISHED BY THIS
36 ARTICLE AND A MEMORANDUM OF UNDERSTANDING WITH THE COMMISSIONER RELATING
37 TO ANY TERMS OR CONDITIONS NOT OTHERWISE EXPRESSLY PROVIDED FOR IN THIS
38 ARTICLE.

39 2. IN FURTHERANCE OF SUCH IMPLEMENTATION THE COMPTROLLER SHALL:

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

43 (B) ENGAGE THE SERVICES OF CONSULTANTS ON A CONTRACT BASIS FOR RENDER-
44 ING PROFESSIONAL AND TECHNICAL ASSISTANCE AND ADVICE;

45 (C) SEEK RULINGS AND OTHER GUIDANCE FROM THE UNITED STATES DEPARTMENT
46 OF TREASURY AND THE INTERNAL REVENUE SERVICE RELATING TO THE PROGRAM;

47 (D) MAKE CHANGES TO THE PROGRAM REQUIRED FOR THE PARTICIPANTS IN THE
48 PROGRAM TO OBTAIN THE STATE INCOME TAX BENEFITS OR TREATMENT PROVIDED BY
49 THIS ARTICLE;

50 (E) CHARGE, IMPOSE AND COLLECT ADMINISTRATIVE FEES AND SERVICE CHARGES
51 IN CONNECTION WITH ANY AGREEMENT, CONTRACT OR TRANSACTION RELATING TO
52 THE PROGRAM;

53 (F) DEVELOP MARKETING PLANS AND PROMOTION MATERIAL;

54 (G) ESTABLISH THE METHODS BY WHICH THE FUNDS HELD IN SUCH ACCOUNTS BE
55 DISPERSED;

1 (H) ESTABLISH THE METHOD BY WHICH FUNDS SHALL BE ALLOCATED TO PAY FOR
2 ADMINISTRATIVE COSTS; AND

3 (I) DO ALL THINGS NECESSARY AND PROPER TO CARRY OUT THE PURPOSES OF
4 THIS ARTICLE.

5 S 1254. POWERS OF THE COMPTROLLER. 1. THE COMPTROLLER MAY IMPLEMENT
6 THE PROGRAM THROUGH USE OF FINANCIAL ORGANIZATIONS AS ACCOUNT DEPOSITO-
7 RIES AND MANAGERS. UNDER THE PROGRAM, INDIVIDUALS MAY ESTABLISH ACCOUNTS
8 DIRECTLY WITH AN ACCOUNT DEPOSITORY.

9 2. THE COMPTROLLER MAY SOLICIT PROPOSALS FROM FINANCIAL ORGANIZATIONS
10 TO ACT AS DEPOSITORIES AND MANAGERS OF THE PROGRAM. FINANCIAL ORGANIZA-
11 TIONS SUBMITTING PROPOSALS SHALL DESCRIBE THE INVESTMENT INSTRUMENT
12 WHICH WILL BE HELD IN ACCOUNTS. THE COMPTROLLER SHALL SELECT AS PROGRAM
13 DEPOSITORIES AND MANAGERS THE FINANCIAL ORGANIZATION, FROM AMONG THE
14 BIDDING FINANCIAL ORGANIZATIONS THAT DEMONSTRATES THE MOST ADVANTAGEOUS
15 COMBINATION, BOTH TO POTENTIAL PROGRAM PARTICIPANTS AND THIS STATE, OF
16 THE FOLLOWING FACTORS:

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

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

19 (C) THE ABILITY OF THE INVESTMENT INSTRUMENT TO TRACK INCREASING COSTS
20 OF RESIDENTIAL HOUSING;

21 (D) THE ABILITY OF THE FINANCIAL ORGANIZATION TO SATISFY RECORDKEEPING
22 AND REPORTING REQUIREMENTS;

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

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

27 (G) THE MINIMUM INITIAL DEPOSIT AND MINIMUM CONTRIBUTIONS THAT THE
28 FINANCIAL ORGANIZATION WILL REQUIRE;

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

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

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

37 4. THE COMPTROLLER MAY SELECT MORE THAN ONE FINANCIAL ORGANIZATION FOR
38 THE PROGRAM.

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

41 (A) TAKE ANY ACTION REQUIRED TO KEEP THE PROGRAM IN COMPLIANCE WITH
42 REQUIREMENTS OF SECTION TWELVE HUNDRED FIFTY-FIVE OF THIS ARTICLE AND
43 ANY ACTIONS NOT CONTRARY TO ITS CONTRACT TO MANAGE THE PROGRAM TO QUALI-
44 FY AS A "FIRST HOME SAVINGS ACCOUNT" UNDER SUBSECTION (W) OF SECTION SIX
45 HUNDRED TWELVE OF THE TAX LAW;

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

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

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

1 (E) PROVIDE THE COMPTROLLER OR HIS DESIGNEE ACCESS TO THE BOOKS AND
2 RECORDS OF THE PROGRAM MANAGER TO THE EXTENT NEEDED TO DETERMINE COMPLI-
3 ANCE WITH THE CONTRACT;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 2. A FIRST HOME SAVINGS ACCOUNT MAY BE OPENED BY ANY PERSON WHO
53 DESIRES TO SAVE MONEY FOR THE PAYMENT OF THE QUALIFIED FIRST HOME
54 PURCHASE EXPENSES OF A DESIGNATED BENEFICIARY. AN ACCOUNT OWNER MAY
55 DESIGNATE ANOTHER PERSON AS SUCCESSOR OWNER OF THE ACCOUNT IN THE EVENT

1 OF THE DEATH OF THE ORIGINAL ACCOUNT OWNER. SUCH PERSON WHO OPENS AN
2 ACCOUNT OR ANY SUCCESSOR OWNER SHALL BE CONSIDERED THE ACCOUNT OWNER.

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

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

7 (II) THE DESIGNATION OF A DESIGNATED BENEFICIARY;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 12. IN THE EVENT THAT AN INDIVIDUAL MAKES A "NONQUALIFIED WITHDRAWAL"
52 OF MONIES FROM THE FIRST HOME SAVINGS ACCOUNT SUCH INDIVIDUAL SHALL HAVE
53 THE ENTIRE ACCOUNT TAXED, INCLUDING ANY INTEREST, AS THOUGH IT WAS
54 INCOME IN THE TAX YEARS THE MONIES WERE WITHDRAWN. IN THE EVENT THE
55 INDIVIDUAL DOES NOT USE THE QUALIFIED RESIDENTIAL HOUSING AS A PRIMARY
56 RESIDENCE FOR A PERIOD OF NOT LESS THAN TWO YEARS AFTER THE PURCHASE OR

1 CONSTRUCTION OF SUCH HOUSING, THE INDIVIDUAL SHALL HAVE THE ENTIRE
2 ACCOUNT TAXED, INCLUDING ANY INTEREST, AS THOUGH IT WAS INCOME IN THE
3 TAX YEARS THE MONIES WERE WITHDRAWN. FOR PURPOSES OF THIS ARTICLE, THE
4 TWO YEAR PERIOD SHALL BEGIN AT THE TIME TITLE IS TRANSFERRED TO THE
5 FIRST TIME HOME BUYER. THE PENALTY SHALL BE IN ADDITION TO ANY TAXES DUE
6 FOR THE INAPPROPRIATE USE OF MONIES IN A FIRST HOME SAVINGS ACCOUNT.

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

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

13 (B) AN UNFORESEEABLE FINANCIAL EMERGENCY.

14 FOR PURPOSES OF THIS SUBDIVISION, AN "UNFORESEEABLE FINANCIAL EMERGEN-
15 CY" SHALL MEAN A SEVERE FINANCIAL HARDSHIP TO THE INDIVIDUAL RESULTING
16 FROM A SUDDEN AND UNEXPECTED ILLNESS OR ACCIDENT OF THE INDIVIDUAL OR OF
17 A DEPENDENT. THE CIRCUMSTANCES THAT CONSTITUTE AN UNFORESEEABLE FINAN-
18 CIAL EMERGENCY WILL DEPEND ON THE FACTS OF EACH CASE, HOWEVER, WITH-
19 DRAWAL OF ACCOUNT FUNDS MAY NOT BE MADE, WITHOUT PENALTY, TO THE EXTENT
20 THAT SUCH HARDSHIP IS OR MAY BE RELIEVED BY EITHER:

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

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

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

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

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

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

43 16. (A) A LOCAL GOVERNMENT OR ORGANIZATION DESCRIBED IN SECTION
44 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, MAY OPEN AND
45 BECOME THE ACCOUNT OWNER OF AN ACCOUNT TO FUND SCHOLARSHIPS FOR PERSONS
46 WHOSE IDENTITY WILL BE DETERMINED UPON DISBURSEMENT.

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

53 17. AN ANNUAL FEE MAY BE IMPOSED UPON THE ACCOUNT OWNER FOR THE MAIN-
54 TENANCE 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.

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

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

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

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

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

20 S 4. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law, and shall apply to taxable years commencing
22 on or after the first of January next succeeding the date on which it
23 shall have become law; provided however, that subdivision 14 of section
24 1255 of the private housing finance law, as added by section one of this
25 act, shall take effect immediately.