

4427--B

2015-2016 Regular Sessions

I N A S S E M B L Y

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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:

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.

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

LBD03869-06-6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 11. "QUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT TO
28 PAY THE QUALIFIED FIRST HOME PURCHASE EXPENSE OF THE DESIGNATED BENEFI-
29 CIARY OF THE ACCOUNT.

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

32 (A) A QUALIFIED WITHDRAWAL; OR

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

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

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

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

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

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

45 S 1253. FUNCTIONS OF THE COMPTROLLER. 1. THE COMPTROLLER SHALL IMPLI-
46 MENT THE PROGRAM UNDER THE TERMS AND CONDITIONS ESTABLISHED BY THIS
47 ARTICLE AND A MEMORANDUM OF UNDERSTANDING WITH THE COMMISSIONER RELATING
48 TO ANY TERMS OR CONDITIONS NOT OTHERWISE EXPRESSLY PROVIDED FOR IN THIS
49 ARTICLE.

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

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

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

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

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

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

9 (F) DEVELOP MARKETING PLANS AND PROMOTION MATERIAL;

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

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

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

16 S 1254. POWERS OF THE COMPTROLLER. 1. THE COMPTROLLER MAY IMPLEMENT
17 THE PROGRAM THROUGH USE OF FINANCIAL ORGANIZATIONS AS ACCOUNT DEPOSITO-
18 RIES AND MANAGERS. UNDER THE PROGRAM, INDIVIDUALS MAY ESTABLISH ACCOUNTS
19 DIRECTLY WITH AN ACCOUNT DEPOSITORY.

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

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

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

30 (C) THE ABILITY OF THE INVESTMENT INSTRUMENT TO TRACK INCREASING COSTS
31 OF RESIDENTIAL HOUSING;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (II) THE DESIGNATION OF A DESIGNATED BENEFICIARY;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (B) AN UNFORESEEABLE FINANCIAL EMERGENCY.

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

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

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

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

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

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

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

53 16. (A) A LOCAL GOVERNMENT OR ORGANIZATION DESCRIBED IN SECTION
54 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, MAY OPEN AND
55 BECOME THE ACCOUNT OWNER OF AN ACCOUNT TO FUND SCHOLARSHIPS FOR PERSONS
56 WHOSE IDENTITY WILL BE DETERMINED UPON DISBURSEMENT.

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

7 17. AN ANNUAL FEE MAY BE IMPOSED UPON THE ACCOUNT OWNER FOR THE MAIN-
8 TENANCE OF THE ACCOUNT.

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

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

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

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

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

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

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

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

29 19. FIRST HOME SAVINGS AGREEMENTS SHALL BE SUBJECT TO SECTION FOUR-
30 TEEN-C OF THE BANKING LAW AND THE "TRUTH-IN-SAVINGS" REGULATIONS PROMUL-
31 GATED THEREUNDER.

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

35 21. TO ESTABLISH THAT AN INDIVIDUAL IS A FIRST TIME HOME BUYER, THE
36 INDIVIDUAL SHALL COMPLETE A FORM PROMULGATED BY THE COMPTROLLER CERTIFY-
37 ING, UNDER THE PENALTIES OF PERJURY, THAT SUCH INDIVIDUAL IS A FIRST
38 TIME HOME BUYER.

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

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

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

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

52 (B) GUARANTEE THAT A DESIGNATED BENEFICIARY WILL BE FINANCIALLY QUALI-
53 FIED TO PURCHASE A HOME;

54 (C) CREATE STATE RESIDENCY FOR AN INDIVIDUAL MERELY BECAUSE THE INDI-
55 VIDUAL IS A DESIGNATED BENEFICIARY; OR

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

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

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

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

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

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

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

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

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

29 S 4. This act shall take effect on the one hundred eightieth day after
30 it shall have become a law, and shall apply to taxable years commencing
31 on or after the first of January next succeeding the date on which it
32 shall have become law; provided however, that subdivision 14 of section
33 1255 of the private housing finance law, as added by section one of this
34 act, shall take effect immediately.