

6516

2015-2016 Regular Sessions

I N A S S E M B L Y

March 26, 2015

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Banks

AN ACT to amend the banking law and the tax 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:

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.

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

12 ARTICLE 2-D

13 NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNT ACT

14 SECTION 90. SHORT TITLE.

15 90-A. DEFINITIONS.

16 90-B. ESTABLISHMENT OF PLAN.

17 90-C. NY ABLE ACCOUNT ADVISORY COMMITTEE.

18 90-D. PROGRAM REQUIREMENTS.

19 90-E. DISTRIBUTION REQUIREMENTS.

20 90-F. POWERS OF THE COMPTROLLER.

21 S 90. SHORT TITLE.

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

24 S 90-A. DEFINITIONS.

25 AS USED IN THIS ARTICLE:

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

LBD10067-01-5

- 1 1. "SUPERINTENDENT" MEANS THE NEW YORK STATE SUPERINTENDENT OF FINAN-
2 CIAL SERVICES.
- 3 2. "FINANCIAL ORGANIZATION" MEANS AN ORGANIZATION AUTHORIZED TO DO
4 BUSINESS IN THE STATE OF NEW YORK AND (A) WHICH IS AN AUTHORIZED FIDUCI-
5 ARY TO ACT AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS
6 ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS SUCH
7 PROVISIONS MAY BE AMENDED FROM TIME TO TIME, OR AN INSURANCE COMPANY;
8 AND (B)(I) IS LICENSED OR CHARTERED BY THE STATE DEPARTMENT OF FINANCIAL
9 SERVICES, (II) IS CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT,
10 (III) IS SUBJECT TO THE JURISDICTION AND REGULATION OF THE SECURITIES
11 AND EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT, OR (IV) IS ANY OTHER
12 ENTITY OTHERWISE AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE PURSUANT
13 TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT
14 INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME
15 TO TIME.
- 16 3. "ACCOUNT" OR "NY ABLE ACCOUNT" SHALL MEAN AN INDIVIDUAL SAVINGS
17 ACCOUNT ESTABLISHED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.
- 18 4. "ACCOUNT OWNER" SHALL MEAN THE DESIGNATED BENEFICIARY WHO OPENS THE
19 NY ABLE ACCOUNT OR OTHER PERSON WHO OPENS THE NY ABLE ACCOUNT ON BEHALF
20 OF THE DESIGNATED BENEFICIARY IN COMPLIANCE WITH SECTION FIVE HUNDRED
21 TWENTY-NINE-A.
- 22 5. "COMPTROLLER" SHALL MEAN THE COMPTROLLER OF THE STATE OF NEW YORK.
- 23 6. "DESIGNATED BENEFICIARY" SHALL MEAN, WITH RESPECT TO AN ACCOUNT OR
24 ACCOUNTS, THE INDIVIDUAL WITH A DISABILITY WHO IS DESIGNATED AS THE
25 INDIVIDUAL WHOSE QUALIFIED EXPENSES ARE EXPECTED TO BE PAID FROM THE
26 ACCOUNT. THE "DESIGNATED BENEFICIARY" MUST BE A RESIDENT OF NEW YORK
27 STATE OR A RESIDENT OF A STATE THAT: (A) DOES NOT HAVE A QUALIFIED ABLE
28 PROGRAM RECOGNIZED UNDER SECTION FIVE HUNDRED TWENTY-NINE-A, AND (B) HAS
29 ENTERED INTO A CONTRACT WITH NEW YORK STATE TO PROVIDE RESIDENTS OF THE
30 CONTRACTING STATE WITH ACCESS TO NEW YORK STATE'S ABLE PROGRAM.
- 31 7. "QUALIFIED EXPENSES" SHALL MEAN "QUALIFIED DISABILITY EXPENSES" AS
32 DEFINED UNDER SECTION FIVE HUNDRED TWENTY-NINE-A.
- 33 8. "QUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT TO
34 PAY FOR THE QUALIFIED EXPENSES OF THE DESIGNATED BENEFICIARY OF THE NY
35 ABLE ACCOUNT.
- 36 9. "NONQUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT
37 OTHER THAN (A) A QUALIFIED WITHDRAWAL, OR (B) A WITHDRAWAL MADE AS THE
38 RESULT OF THE DEATH OF THE DESIGNATED BENEFICIARY OF AN ACCOUNT.
- 39 10. "MANAGEMENT CONTRACT" SHALL MEAN THE CONTRACT EXECUTED BY THE
40 COMPTROLLER AND A FINANCIAL ORGANIZATION SELECTED TO ACT AS A DEPOSITORY
41 AND MANAGER OF THE PROGRAM.
- 42 11. "SAVINGS AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN THE COMP-
43 TROLLER OR A FINANCIAL ORGANIZATION AND THE ACCOUNT OWNER.
- 44 12. "PROGRAM MANAGER" SHALL MEAN A FINANCIAL ORGANIZATION SELECTED BY
45 THE COMPTROLLER TO ACT AS A DEPOSITORY AND MANAGER OF THE PROGRAM.
- 46 13. "INDIVIDUAL WITH A DISABILITY" SHALL MEAN AN INDIVIDUAL WHO IS AN
47 "ELIGIBLE INDIVIDUAL" AS DEFINED UNDER SECTION FIVE HUNDRED
48 TWENTY-NINE-A.
- 49 14. "SECTION FIVE HUNDRED TWENTY-NINE-A" MEANS SECTION FIVE HUNDRED
50 TWENTY-FIVE-A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR ANY
51 SUCCESSOR PROVISION THERETO, AND ANY REGULATIONS PROMULGATED THEREUNDER
52 OR TAX ANNOUNCEMENTS OR OTHER BINDING REGULATORY GUIDANCE PROVIDED WITH
53 RESPECT THERETO.
- 54 S 90-B. ESTABLISHMENT OF PLAN.
- 55 1. THE SUPERINTENDENT SHALL ESTABLISH A NY ABLE ACCOUNT PLAN FOR ALL
56 ELIGIBLE INDIVIDUALS AND FAMILIES FOR THE PURPOSE OF SUPPORTING INDIVID-

1 UALS WITH DISABILITIES TO MAINTAIN HEALTH, INDEPENDENCE, AND QUALITY OF
2 LIFE. THE SUPERINTENDENT SHALL PROMULGATE ANY AND ALL RULES AND REGU-
3 LATIONS NECESSARY FOR THE IMPLEMENTATION OF THIS ARTICLE.

4 2. THE SUPERINTENDENT SHALL ENTER INTO WRITTEN AGREEMENTS WITH ONE OR
5 MORE FINANCIAL ORGANIZATIONS TO ADMINISTER THE NY ABLE SAVINGS ACCOUNT
6 PLAN FOR ELIGIBLE INDIVIDUALS AND FAMILIES AND TO INVEST FUNDS HELD
7 PURSUANT TO SUCH PLAN. THE SUPERINTENDENT SHALL ESTABLISH REPORTING
8 REQUIREMENTS FOR SUCH FINANCIAL ORGANIZATIONS INCLUDING BUT NOT LIMITED
9 TO REPORTS TO THE SUPERINTENDENT, PARTICIPATING INDIVIDUALS AND FAMI-
10 LIES, PARTICIPATING EMPLOYERS, AND FEDERAL GOVERNMENT AGENCIES, REGARD-
11 ING THE FISCAL STATUS OF NY ABLE SAVINGS ACCOUNTS.

12 3. NY ABLE ACCOUNTS SHALL BE MAINTAINED BY FINANCIAL ORGANIZATIONS
13 UNDER WRITTEN AGREEMENT WITH THE SUPERINTENDENT. SUCH FINANCIAL ORGAN-
14 IZATIONS SHALL BE SOLELY RESPONSIBLE FOR DISTRIBUTIONS TO PARTICIPANTS
15 PURSUANT TO THIS ARTICLE.

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

19 S 90-C. NY ABLE ACCOUNT ADVISORY COMMITTEE.

20 1. THE SUPERINTENDENT SHALL ESTABLISH A NY ABLE ACCOUNT ADVISORY
21 COMMITTEE.

22 2. THE SUPERINTENDENT SHALL APPOINT MEMBERS OF THE NY ABLE ACCOUNT
23 ADVISORY COMMITTEE IN CONSULTATION WITH THE NEW YORK STATE DEPARTMENT OF
24 HEALTH, THE OFFICE OF MENTAL HEALTH, AND THE OFFICE FOR PERSONS WITH
25 DEVELOPMENTAL DISABILITIES. THE MEMBERS SHALL BE APPOINTED FOR A TERM OF
26 THREE YEARS.

27 (A) AT LEAST ONE HALF OF THE MEMBERS OF THE NY ABLE ACCOUNT ADVISORY
28 COMMITTEE MUST HAVE KNOWLEDGE, SKILL AND EXPERTISE IN ISSUES RELATING TO
29 INDIVIDUALS WITH DISABILITIES.

30 (B) THE MEMBERS SHALL BE REPRESENTATIVE OF ALL GEOGRAPHIC AREAS OF THE
31 STATE.

32 3. THE ADVISORY COMMITTEE SHALL:

33 (A) CONSIDER, STUDY AND REVIEW THE WORK OF THE SUPERINTENDENT AND THE
34 COMPTROLLER IN RELATION TO THE NY ABLE ACCOUNT PROGRAM.

35 (B) ADVISE THE SUPERINTENDENT AND COMPTROLLER AND MAKE RECOMMENDATIONS
36 FOR THE IMPROVEMENT OF THE NY ABLE ACCOUNT PROGRAM.

37 4. THE ADVISORY COMMITTEE SHALL MEET AT LEAST TWICE PER YEAR.

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

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

47 S 90-D. PROGRAM REQUIREMENTS.

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

50 2. A NY ABLE ACCOUNT MAY BE OPENED ONLY BY THE DESIGNATED BENEFICIARY
51 UNLESS OTHERWISE PERMITTED UNDER SECTION FIVE HUNDRED TWENTY-NINE-A. IF
52 THE DESIGNATED BENEFICIARY OF THE ACCOUNT IS A MINOR OR HAS A GUARDIAN
53 OR OTHER FIDUCIARY APPOINTED FOR MANAGING THE BENEFICIARY'S FINANCIAL
54 AFFAIRS, THE GUARDIAN OR FIDUCIARY FOR SUCH DESIGNATED BENEFICIARY MAY
55 SERVE AS THE ACCOUNT OWNER IF SUCH FORM OF OWNERSHIP IS PERMITTED OR NOT
56 PROHIBITED UNDER SECTION FIVE HUNDRED TWENTY-NINE-A.

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

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

5 (II) THE DESIGNATION OF A DESIGNATED BENEFICIARY;

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

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

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

10 3. AN ACCOUNT OWNER MAY OWN ONLY ONE NY ABLE ACCOUNT UNLESS OTHERWISE
11 PERMITTED BY SECTION FIVE HUNDRED TWENTY-NINE-A.

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

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

15 6. CONTRIBUTIONS TO A NY ABLE ACCOUNT SHALL NOT EXCEED THE LIMIT ON
16 ANNUAL CONTRIBUTIONS ESTABLISHED UNDER SECTION FIVE HUNDRED
17 TWENTY-NINE-A.

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

23 8. AN ACCOUNT OWNER MAY CHANGE THE DESIGNATED BENEFICIARY OF AN
24 ACCOUNT TO ANOTHER BENEFICIARY WHO IS QUALIFIED UNDER THE PROVISIONS OF
25 THIS ARTICLE ONLY TO THE EXTENT PERMITTED UNDER SECTION FIVE HUNDRED
26 TWENTY-NINE-A.

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

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

32 11. NEITHER AN ACCOUNT OWNER NOT A DESIGNATED BENEFICIARY MAY USE AN
33 INTEREST IN AN ACCOUNT AS SECURITY FOR A LOAN. ANY PLEDGE OF AN INTEREST
34 IN AN ACCOUNT SHALL BE OF NO FORCE AND EFFECT.

35 12. THE COMPTROLLER SHALL PROMULGATE RULES AND REGULATIONS TO PREVENT
36 CONTRIBUTIONS ON BEHALF OF A DESIGNATED BENEFICIARY IN EXCESS OF AN
37 AMOUNT THAT WOULD CAUSE THE AGGREGATE ACCOUNT BALANCE TO EXCEED A MAXI-
38 MUM ACCOUNT BALANCE, AS ESTABLISHED FROM TIME TO TIME BY THE COMP-
39 TROLLER. SUCH MAXIMUM AMOUNT SHALL REFLECT REASONABLE EXPENDITURES AND
40 SHALL REFLECT ANY LIMITATIONS DESCRIBED IN SECTION FIVE HUNDRED TWENTY-
41 NINE-A.

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

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

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

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

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

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

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

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

1 (G) ALL OTHER RIGHTS AND OBLIGATIONS PURSUANT TO NY ABLE SAVINGS
2 AGREEMENTS, AND ANY OTHER TERMS, CONDITIONS, AND PROVISIONS DEEMED
3 NECESSARY AND APPROPRIATE BY THE SUPERINTENDENT AND THE COMPTROLLER.

4 15. NY ABLE SAVINGS AGREEMENTS SHALL BE SUBJECT TO SECTION FOURTEEN-C
5 OF THIS CHAPTER AND THE "TRUTH-IN-SAVINGS" REGULATIONS PROMULGATED THERE-
6 UNDER.

7 S 90-E. DISTRIBUTION REQUIREMENTS.

8 1. DESIGNATED BENEFICIARIES SHALL BE ELIGIBLE FOR A DISTRIBUTION FROM
9 THE ACCUMULATED FUNDS DEFERRED TO THEIR NY ABLE SAVING ACCOUNT ESTAB-
10 LISHED PURSUANT TO THIS ARTICLE, IN FULL AND PARTIAL DISBURSEMENT
11 OPTIONS FOR QUALIFIED EXPENSES.

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

15 S 90-F. POWERS OF THE COMPTROLLER.

16 1. THE COMPTROLLER MAY IMPLEMENT THE NY ABLE SAVINGS ACCOUNT PROGRAM
17 THROUGH USE OF FINANCIAL ORGANIZATIONS AS ACCOUNT DEPOSITORIES AND
18 MANAGERS. UNDER THE PROGRAM, INDIVIDUALS MAY ESTABLISH ACCOUNTS DIRECTLY
19 WITH AN ACCOUNT DEPOSITORY.

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

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 90-C OF THIS ARTICLE;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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