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

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2015-2016 Regular Sessions

I N S E N A T E

January 8, 2015

Introduced by Sens. CARLUCCI, ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, 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:

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

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

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

ARTICLE 84

NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNT ACT

SECTION 84.01 SHORT TITLE.
84.03 DEFINITIONS.
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S 84.01 SHORT TITLE.

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

S 84.03 DEFINITIONS.

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

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AS USED IN THIS ARTICLE: 1. "COMMISSIONER" MEANS THE COMMISSIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES.

2. THE TERM "FINANCIAL ORGANIZATION" MEANS AN ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE OF NEW YORK AND (A) WHICH IS AN AUTHORIZED FIDUCIARY TO ACT AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME, OR AN INSURANCE COMPANY; AND (B) (I) IS LICENSED OR CHARTERED BY THE STATE INSURANCE DEPARTMENT, (II) IS LICENSED OR CHARTERED BY THE STATE BANKING DEPARTMENT, (III) IS CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT, (IV) IS SUBJECT TO THE JURISDICTION AND REGULATION OF THE SECURITIES AND EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT, OR (V) IS ANY OTHER ENTITY OTHERWISE AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME.

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

4. "ACCOUNT OWNER" SHALL MEAN A PERSON WHO ENTERS INTO A SAVINGS AGREEMENT PURSUANT TO THE PROVISIONS OF THIS ARTICLE, INCLUDING A PERSON WHO ENTERS INTO SUCH AN AGREEMENT AS A FIDUCIARY OR AGENT ON BEHALF OF A TRUST, ESTATE, PARTNERSHIP, ASSOCIATION, COMPANY OR CORPORATION. THE ACCOUNT OWNER MAY ALSO BE THE DESIGNATED BENEFICIARY OF THE ACCOUNT.

5. "DESIGNATED BENEFICIARY" SHALL MEAN, WITH RESPECT TO AN ACCOUNT OR ACCOUNTS, THE INTELLECTUALLY OR DEVELOPMENTALLY DISABLED INDIVIDUAL DESIGNATED AS THE INDIVIDUAL WHOSE QUALIFIED EXPENSES ARE EXPECTED TO BE PAID FROM THE ACCOUNT OR ACCOUNTS.

6. "QUALIFIED EXPENSES" SHALL MEAN ANY TUITION, AND EDUCATION MATERIAL AND SERVICES, HOUSING EXPENSES FOR A PRIMARY RESIDENCE, INCLUDING RENT, REAL PROPERTY TAXES, AND UTILITY CHARGES, MASS TRANSIT, VEHICLE, AND OTHER TRANSPORTATION EXPENSES, EXPENSES RELATED TO OBTAINING AND MAINTAINING EMPLOYMENT; HEALTH, PREVENTION AND WELLNESS, EXPENSES, INCLUDING INSURANCE PREMIUMS, REHABILITATION SERVICES, DURABLE MEDICAL EQUIPMENT, AND NUTRITIONAL MANAGEMENT; AND OTHER EXPENSES WHICH THE COMMISSIONER SHALL DEEM QUALIFIED IN ACCORDANCE WITH THE PURPOSE OF THIS ARTICLE AND WHICH ARE USED FOR THE DIRECT BENEFIT OF AN INTELLECTUALLY OR DEVELOPMENTALLY DISABLED INDIVIDUAL.

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

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

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

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

11. "INTELLECTUALLY OR DEVELOPMENTALLY DISABLED" AS DEFINED BY THE COMMISSIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES IN CONSULTATION WITH THE COMMISSIONER.

S 84.05 ESTABLISHMENT OF PLAN.

1. THE COMMISSIONER SHALL ESTABLISH A "NY ABLE" ACCOUNT PLAN FOR ALL ELIGIBLE INDIVIDUALS AND FAMILIES FOR THE PURPOSE OF SUPPORTING INDIVIDUALS WITH DISABILITIES TO MAINTAIN HEALTH, INDEPENDENCE, AND QUALITY OF LIFE. THE COMMISSIONER SHALL PROMULGATE ANY AND ALL RULES AND REGULATIONS NECESSARY FOR THE IMPLEMENTATION OF THIS ARTICLE.

2. THE COMMISSIONER SHALL ENTER INTO WRITTEN AGREEMENTS WITH ONE OR MORE FINANCIAL ORGANIZATIONS TO ADMINISTER THE NY ABLE SAVINGS ACCOUNT PLAN FOR ELIGIBLE INDIVIDUALS AND FAMILIES AND TO INVEST FUNDS HELD PURSUANT TO SUCH PLAN. THE COMMISSIONER SHALL ESTABLISH REPORTING REQUIREMENTS FOR SUCH FINANCIAL ORGANIZATIONS INCLUDING BUT NOT LIMITED TO REPORTS TO THE COMMISSIONER, PARTICIPATING INDIVIDUALS AND FAMILIES, AND PARTICIPATING EMPLOYERS, REGARDING THE FISCAL STATUS OF NY ABLE SAVINGS ACCOUNTS.

3. THE RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER SHALL ESTABLISH STANDARDS FOR THE SELECTION OF FINANCIAL ORGANIZATIONS AUTHORIZED TO DO BUSINESS IN THIS STATE TO ADMINISTER IN SUCH PLANS, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING CRITERIA: (A) RATES OF COMMISSION, BROKERAGE AND OTHER FEES, ADMINISTRATIVE EXPENSES AND RELATED SERVICE CHARGES IMPOSED BY THE FINANCIAL ORGANIZATION; (B) VARIETY OF TYPES OF INVESTMENT OPPORTUNITIES OFFERED BY THE FINANCIAL ORGANIZATION AND/OR AMONG THE FINANCIAL ORGANIZATIONS SELECTED AND THE ABILITY TO TRANSFER AMONG SUCH OPPORTUNITIES; (C) THE STABILITY OF THE FINANCIAL ORGANIZATION AS EVIDENCED BY EXPERIENCE, REPUTATION, ASSETS AND HOLDINGS, ABILITY TO GUARANTEE SPECIFIC RATES OF RETURN; (D) ABILITY TO COMPLY WITH REPORTING REQUIREMENTS TO THE COMMISSIONER AND TO PARTICIPANTS IN SUCH A PLAN; AND (E) SUCH OTHER FACTORS WHICH WOULD BE CONSIDERED BY A PRUDENT INVESTOR IN SUCH A PLAN.

4. NY ABLE SAVINGS ACCOUNTS SHALL BE MAINTAINED BY FINANCIAL ORGANIZATIONS UNDER WRITTEN AGREEMENT WITH THE COMMISSIONER. SUCH FINANCIAL ORGANIZATIONS SHALL BE SOLELY RESPONSIBLE FOR DISTRIBUTIONS TO PARTICIPANTS PURSUANT TO THIS ARTICLE.

5. THE COMMISSIONER SHALL ESTABLISH A PROCESS FOR CERTIFICATION OF MENTAL DISABILITY FOR THE PURPOSE OF ESTABLISHING THE VALIDITY OF ACCOUNTS AND EXPENDITURES FROM ACCOUNTS ESTABLISHED UNDER THIS ARTICLE.

S 84.07 PROGRAM REQUIREMENTS.

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

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

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

(I) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER OF THE ACCOUNT OWNER;

(II) THE DESIGNATION OF A DESIGNATED BENEFICIARY;

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

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

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

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

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

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

6. (A) AN ACCOUNT OWNER MAY CHANGE THE DESIGNATED BENEFICIARY OF AN ACCOUNT TO ANOTHER BENEFICIARY WHO IS QUALIFIED UNDER THE PROVISIONS OF THIS ARTICLE.

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

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

8. NO ACCOUNT OWNER OR DESIGNATED BENEFICIARY OF ANY ACCOUNT SHALL BE PERMITTED TO DIRECT THE INVESTMENT OF ANY CONTRIBUTIONS TO AN ACCOUNT OR THE EARNINGS THEREON.

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

10. THE COMPTROLLER SHALL PROMULGATE RULES OR REGULATIONS TO PREVENT CONTRIBUTIONS ON BEHALF OF A DESIGNATED BENEFICIARY IN EXCESS OF AN AMOUNT THAT WOULD CAUSE THE AGGREGATE ACCOUNT BALANCE FOR ALL ACCOUNTS FOR A DESIGNATED BENEFICIARY TO EXCEED A MAXIMUM ACCOUNT BALANCE, AS ESTABLISHED FROM TIME TO TIME BY THE COMPTROLLER. SUCH MAXIMUM AMOUNT SHALL REFLECT REASONABLE EXPENDITURES AND SHALL BE DETERMINED IN CONSULTATION WITH THE COMMISSIONER.

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

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

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

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

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

(B) ANY RESTRICTIONS ON THE SUBSTITUTION OF BENEFICIARIES;

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

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

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

(F) THE PROBABLY TAX CONSEQUENCES ASSOCIATED WITH CONTRIBUTIONS TO AND DISTRIBUTIONS FROM ACCOUNTS; AND

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

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

S 84.09 DISTRIBUTION REQUIREMENTS.

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

(B) THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS DEFINING QUALIFIED EXPENSES WHICH SHALL, AT A MINIMUM, INCLUDE EXPENSES ASSOCIATED WITH: TUITION AND EDUCATIONAL MATERIAL AND SERVICES; HOUSING EXPENSES FOR A PRIMARY RESIDENCE, INCLUDING RENT, REAL PROPERTY TAXES, AND UTILITY CHARGES; MASS TRANSIT, VEHICLE, AND OTHER TRANSPORTATION EXPENSES; EXPENSES RELATED TO OBTAINING AND MAINTAINING EMPLOYMENT; HEALTH, PREVENTION, AND WELLNESS EXPENSES, INCLUDING INSURANCE PREMIUMS, REHABILITATION SERVICES, DURABLE MEDICAL EQUIPMENT, AND NUTRITIONAL MANAGEMENT; AND OTHER EXPENSES WHICH THE COMMISSIONER SHALL DEEM QUALIFIED IN ACCORDANCE WITH THE PURPOSES OF THIS ARTICLE.

2. UNDER THE NY ABLE SAVINGS ACCOUNT PLAN, AMOUNTS SHALL NOT BE MADE AVAILABLE TO PARTICIPANTS OR BENEFICIARIES UNLESS THE PARTICIPANT OR BENEFICIARY HAS BEEN DETERMINED TO BE MENTALLY DISABLED AS DEFINED IN SECTION 1.03 OF THIS CHAPTER.

S 84.11 POWERS OF THE COMPTROLLER.

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

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

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

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

(C) THE ABILITY OF THE INVESTMENT INSTRUMENT TO TRACK INCREASING COSTS OF HIGHER EDUCATION;

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

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

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

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

(H) THE ABILITY OF BANKING ORGANIZATIONS TO ACCEPT ELECTRONIC WITHDRAWALS, INCLUDING PAYROLL DEDUCTION PLANS; AND

(I) OTHER BENEFITS TO THE STATE OR ITS RESIDENTS INCLUDED IN THE PROPOSAL, INCLUDING FEES PAYABLE TO THE STATE TO COVER EXPENSES OF OPERATION OF THE PROGRAM.

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

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

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

(A) TAKE ANY ACTION REQUIRED TO KEEP THE PROGRAM IN COMPLIANCE WITH REQUIREMENTS OF SECTION 84.07 OF THIS ARTICLE;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 4. Section 237 of the banking law is amended by adding a new subdivision 9 to read as follows:

9. SUBJECT TO ANY REGULATIONS AND RESTRICTIONS PRESCRIBED BY THE SUPERINTENDENT OF FINANCIAL SERVICES, A SAVINGS BANK SHALL HAVE POWER TO ACT AS TRUSTEE OF A NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE (NY

ABLE) SAVINGS ACCOUNT ESTABLISHED PURSUANT TO ARTICLE EIGHTY-FOUR OF THE MENTAL HYGIENE LAW, PROVIDED THAT THE PROVISIONS OF THE WRITTEN GOVERNING INSTRUMENT CREATING THE TRUST REQUIRE THE FUNDS OF SUCH TRUST TO BE INVESTED EXCLUSIVELY IN DEPOSITS IN SAVINGS BANKS.

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

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

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

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