

# STATE OF NEW YORK

6047

2019-2020 Regular Sessions

## IN SENATE

May 16, 2019

Introduced by Sens. SAVINO, 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:

### ARTICLE XXVIII

#### NEW YORK STATE FIRST HOME

#### SAVINGS PROGRAM

#### Section 1250. Program established.

##### 1251. Purposes.

##### 1252. Definitions.

##### 1253. Functions of the comptroller.

##### 1254. Powers of the comptroller.

##### 1255. Program requirements; first home savings account.

##### 1256. Program limitations; first home savings account.

13 § 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 § 1251. Purposes. The purposes of the program shall be to authorize  
17 the establishment of first home savings accounts and to provide guide-  
18 lines 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 section  
21 six hundred twelve of the tax law; and

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

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1     2. incentivize residents to save for the purchase of a first home  
2     within the state.

3     § 1252. Definitions. As used in this article, the following terms  
4     shall have the following meanings:

5     1. "Account" or "first home savings account" shall mean an individual  
6     savings account established in accordance with the provisions of this  
7     article for the exclusive benefit of the account owner or designated  
8     beneficiary that is the first time buyer of a home, townhome, condomin-  
9     ium or unit in a cooperative housing corporation.

10    2. "Account owner" shall mean a taxpayer who enters into a first home  
11    savings agreement pursuant to the provisions of this article, including  
12    a person who enters into such an agreement as a fiduciary or agent on  
13    behalf of a trust, estate, partnership, association, company or corpo-  
14    ration.

15    3. "Designated beneficiary" shall mean, with respect to an account or  
16    accounts, the designated individual or individuals whose first home  
17    purchase expenses are expected to be paid from the account or accounts.

18    4. "Financial organization" shall mean an organization authorized to  
19    do business in the state, and (a) which is an authorized fiduciary to  
20    act as a trustee pursuant to the provisions of an act of congress enti-  
21    tled "Employee Retirement Income Security Act of 1974", as such  
22    provisions may be amended from time to time, or an insurance company;  
23    and (b)(i) is licensed or chartered by the department of financial  
24    services, (ii) is chartered by an agency of the federal government,  
25    (iii) is subject to the jurisdiction and regulation of the securities  
26    and exchange commission of the federal government, (iv) is any other  
27    entity otherwise authorized to act in this state as a trustee pursuant  
28    to the provisions of an act of congress entitled "Employee Retirement  
29    Income Security Act of 1974", as such provisions may be amended from  
30    time to time, (v) or any banking organization as defined in subdivision  
31    eleven of section two of the banking law, national banking association,  
32    state chartered credit union, federal mutual savings bank, federal  
33    savings and loan association or federal credit union.

34    5. "First time home buyer" shall mean an individual or individuals,  
35    neither of whom has or had an ownership interest in a principal resi-  
36    dence at any time, including residences owned in the United States or  
37    abroad. No such person shall own any other home including vacation or  
38    investment residences, including residences owned in the United States  
39    or abroad, except as otherwise provided in this subdivision. If either  
40    the individual or individuals are not first time home buyers, neither  
41    the individual or individuals shall be considered a first time home  
42    buyer. If an individual's only potentially disqualifying present owner-  
43    ship interest is ownership of a mobile or manufactured home, the indi-  
44    vidual shall be considered a first time home buyer and shall be eligible  
45    for a first home account deduction. For the purposes of this article a  
46    "mobile or manufactured home" shall mean a structure that is valued as  
47    personal property and not real property. If, due to his or her ownership  
48    of a mobile or manufactured home, the individual has claimed a real  
49    estate tax or home mortgage deduction on his or her personal income tax  
50    returns, such individual shall not be considered a first time home buyer  
51    regardless of whether the mobile or manufactured home was considered  
52    personal or real property.

53    6. "Ownership interest" shall mean a fee simple interest, a joint  
54    tenancy, a tenancy in common, a tenancy by the entirety, the interest of  
55    a tenant-share holder in a cooperative, a life estate or a land  
56    contract. Interests which do not constitute ownership interests include

1 the following: (a) remainder interests, (b) a lease with or without an  
2 option to purchase, (c) a mere expectancy to inherit an interest in a  
3 residence, (d) the interest that a purchaser of a residence acquires on  
4 the execution of a purchase contract and (e) an interest in real estate  
5 other than a residence.

6 7. "Program" shall mean the New York first home savings program estab-  
7 lished pursuant to this article.

8 8. "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 account owner or designated beneficiary for a  
12 period of not less than two years after purchase.

13 9. "Qualified residential housing" shall mean a house, townhouse,  
14 condominium or unit in a cooperative housing corporation within the  
15 state.

16 10. "Qualified withdrawal" shall mean a withdrawal from an account to  
17 pay the qualified first home purchase expense of the account owner or  
18 designated beneficiary of the account.

19 11. "Nonqualified withdrawal" shall mean a withdrawal from an account  
20 but shall not include:

21 (a) a qualified withdrawal;

22 (b) a withdrawal made as the result of death;

23 (c) an unforeseeable emergency; or

24 (d) need based upon qualifying for military service in the armed forc-  
25 es of the United States as determined by rules an regulations promulgat-  
26 ed by the comptroller.

27 12. "Comptroller" shall mean the state comptroller.

28 13. "Management contract" shall mean the contract executed by the  
29 comptroller and a financial organization selected to act as a depository  
30 and manager of the program.

31 14. "First home savings agreement" shall mean an agreement between the  
32 comptroller or a financial organization and the account owner.

33 15. "Program manager" shall mean a financial organization selected by  
34 the comptroller to act as a depository and manager of the program.

35 16. "Commissioner" shall mean the commissioner of taxation and  
36 finance.

37 § 1253. Functions of the comptroller. 1. The comptroller shall imple-  
38 ment the program under the terms and conditions established by this  
39 article and a memorandum of understanding with the commissioner relating  
40 to any terms or conditions not otherwise expressly provided for in this  
41 article.

42 2. In furtherance of such implementation the comptroller shall:

43 (a) develop and implement the program in a manner consistent with the  
44 provisions of this article through rules and regulations established in  
45 accordance with the state administrative procedure act;

46 (b) engage the services of consultants on a contract basis for render-  
47 ing professional and technical assistance and advice;

48 (c) seek rulings and other guidance from the United States Department  
49 of Treasury and the Internal Revenue Service relating to the program;

50 (d) make changes to the program required for the participants in the  
51 program to obtain the state income tax benefits or treatment provided by  
52 this article;

53 (e) charge, impose and collect administrative fees and service charges  
54 in connection with any agreement, contract or transaction relating to  
55 the program;

56 (f) develop marketing plans and promotion materials;

1 (g) establish the methods by which the funds held in such accounts be  
2 dispersed;

3 (h) establish the method by which funds shall be allocated to pay for  
4 administrative costs; and

5 (i) do all things necessary and proper to carry out the purposes of  
6 this article.

7 § 1254. Powers of the comptroller. 1. The comptroller may implement  
8 the program through use of financial organizations as account deposito-  
9 ries and managers. Under the program, an account owner may establish  
10 accounts directly with an account depository.

11 2. The comptroller may solicit proposals from financial organizations  
12 to act as depositories and managers of the program. Financial organiza-  
13 tions submitting proposals shall describe the investment instrument  
14 which will be held in accounts. The comptroller shall select as program  
15 depositories and managers the financial organization, from among the  
16 bidding financial organizations that demonstrates the most advantageous  
17 combination, both to potential program participants and this state, of  
18 the following factors:

19 (a) financial stability and integrity of the financial organization;

20 (b) the safety of the investment instrument being offered;

21 (c) the ability of the investment instrument to track increasing costs  
22 of residential housing;

23 (d) the ability of the financial organization to satisfy recordkeeping  
24 and reporting requirements;

25 (e) the financial organization's plan for promoting the program and  
26 the investment it is willing to make to promote the program;

27 (f) the fees, if any, proposed to be charged to persons for opening  
28 accounts;

29 (g) the minimum initial deposit and minimum contributions that the  
30 financial organization will require;

31 (h) the ability of banking organizations to accept electronic with-  
32 drawals, including payroll deduction plans; and

33 (i) other benefits to the state or its residents included in the  
34 proposal, including fees payable to the state to cover expenses of oper-  
35 ation of the program.

36 3. The comptroller may enter into a contract with a financial organ-  
37 ization. Such financial organization management may provide one or more  
38 types of investment instrument.

39 4. The comptroller may select more than one financial organization for  
40 the program.

41 5. A management contract shall include, at a minimum, terms requiring  
42 the financial organization to:

43 (a) take any action required to keep the program in compliance with  
44 requirements of section twelve hundred fifty-five of this article and  
45 any actions not contrary to its contract to manage the program to quali-  
46 fy as a "first home savings account" under paragraph forty-three of  
47 subsection (c) of section six hundred twelve of the tax law;

48 (b) keep adequate records of each account, keep each account segre-  
49 gated from each other account, and provide the comptroller with the  
50 information necessary to prepare the statements required by section  
51 twelve hundred fifty-five of this article;

52 (c) compile and total information contained in statements required to  
53 be prepared under section twelve hundred fifty-five of this article and  
54 provide such compilations to the comptroller;

1 (d) if there is more than one program manager, provide the comptroller  
2 with such information necessary to determine compliance with section  
3 twelve hundred fifty-five of this article;

4 (e) provide the comptroller or his designee access to the books and  
5 records of the program manager to the extent needed to determine compli-  
6 ance with the contract;

7 (f) hold all accounts for the benefit of the account owner;

8 (g) be audited at least annually by a firm of certified public  
9 accountants selected by the program manager and that the results of such  
10 audit be provided to the comptroller;

11 (h) provide the comptroller with copies of all regulatory filings and  
12 reports made by it during the term of the management contract or while  
13 it is holding any accounts, other than confidential filings or reports  
14 that will not become part of the program. The program manager shall make  
15 available for review by the comptroller the results of any periodic  
16 examination of such manager by any state or federal banking, insurance  
17 or securities commission, except to the extent that such report or  
18 reports may not be disclosed under applicable law or the rules of such  
19 commission; and

20 (i) ensure that any description of the program, whether in writing or  
21 through the use of any media, is consistent with the marketing plan as  
22 developed pursuant to the provisions of section twelve hundred fifty-  
23 three of this article.

24 6. The comptroller may provide that an audit shall be conducted of the  
25 operations and financial position of the program depository and manager  
26 at any time if the comptroller has any reason to be concerned about the  
27 financial position, the recordkeeping practices, or the status of  
28 accounts of such program depository and manager.

29 7. During the term of any contract with a program manager, the comp-  
30 troller shall conduct an examination of such manager and its handling of  
31 accounts. Such examination shall be conducted at least biennially if  
32 such manager is not otherwise subject to periodic examination by the  
33 superintendent of financial services, the federal deposit insurance  
34 corporation or other similar entity.

35 8. (a) If selection of a financial organization as a program manager  
36 or depository is not renewed, after the end of its term:

37 (i) accounts previously established and held in investment instruments  
38 at such financial organization may be terminated;

39 (ii) additional contributions may be made to such accounts;

40 (iii) no new accounts may be placed with such financial organization;  
41 and

42 (iv) existing accounts held by such depository shall remain subject to  
43 all oversight and reporting requirements established by the comptroller.

44 (b) If the comptroller terminates a financial organization as a  
45 program manager or depository, he or she shall take custody of accounts  
46 held by such financial organization and shall seek to promptly transfer  
47 such accounts to another financial organization that is selected as a  
48 program manager or depository and into investment instruments as similar  
49 to the original instruments as possible.

50 9. The comptroller may enter into such contracts as it deems necessary  
51 and proper for the implementation of the program.

52 § 1255. Program requirements; first home savings account. 1. First  
53 home savings accounts established pursuant to the provisions of this  
54 article shall be governed by the provisions of this section.

55 2. A first home savings account may be opened by any person who  
56 desires to save money for the payment of the qualified first home

1 purchase expenses of the account owner or designated beneficiary. An  
2 account owner may designate another person as successor owner of the  
3 account in the event of the death of the original account owner. Such  
4 person who opens an account or any successor owner shall be considered  
5 the account owner.

6 (a) An application for such account shall be in the form prescribed by  
7 the program and contain the following:

8 (i) the name, address and social security number or employer identifi-  
9 cation number of the account owner;

10 (ii) the designation of a designated beneficiary;

11 (iii) the name, address, and social security number of the designated  
12 beneficiary; and

13 (iv) such other information as the program may require.

14 (b) The comptroller and the corporation may establish a nominal fee  
15 for such application.

16 3. Any person, including the account owner, may make contributions to  
17 the account after the account is opened.

18 4. Contributions to accounts may be made only in cash.

19 5. An account owner may withdraw all or part of the balance from an  
20 account as authorized under rules governing the program. Such rules  
21 shall include provisions that will generally enable the determination as  
22 to whether a withdrawal is a nonqualified withdrawal or a qualified  
23 withdrawal.

24 6. (a) An account owner may change the designated beneficiary of an  
25 account in accordance with procedures established by the memorandum of  
26 understanding pursuant to the provisions of section twelve hundred  
27 fifty-three of this article.

28 (b) An account owner may transfer all or a portion of an account to  
29 another first home savings account.

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 to a first home savings account shall be limited to  
48 one hundred thousand dollars per account. This amount shall not take  
49 into 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 at the account owner's federal tax rate in the tax years the  
55 monies were withdrawn, and incur an additional ten percent state penalty  
56 on the amount of earnings. In the event account owners or designated

1 beneficiary does not use the qualified residential housing as a primary  
2 residence for a period of not less than two years after the purchase of  
3 such housing, the account owner shall have the entire account taxed,  
4 including any interest, as though it was ordinary income at the account  
5 owner's federal tax rate in the tax years the monies were withdrawn and  
6 incur an additional ten percent state penalty on the amount of earnings.  
7 For purposes of this article, the two year period shall begin at the  
8 time title is transferred to the first time home buyer. The penalty  
9 shall be in addition to any taxes due pursuant to a non-qualified with-  
10 drawal from a first home savings account.

11 13. Penalties may be waived by the commissioner if the individual can  
12 show proof that the reason the individual did not use the qualified  
13 residential housing as a primary residence for a period of two years or  
14 more after the purchase or construction was due to either:

15 (a) an employment relocation outside the state and such relocation  
16 required the individual to become a resident of another state;

17 (b) an unforeseeable emergency;

18 (c) an absence due to qualifying military service; or

19 (d) death.

20 For purposes of this subdivision, an "unforeseeable emergency" shall  
21 mean a severe financial hardship resulting from illness, accident or  
22 property loss to the account owner, or his or her dependents resulting  
23 in circumstances beyond their control. The circumstances that constitute  
24 an unforeseeable financial emergency will depend on the facts of each  
25 case, however, withdrawal of account funds may not be made, without  
26 penalty, to the extent that such hardship is or may be relieved by  
27 either:

28 (i) reimbursement or compensation by insurance or otherwise; or

29 (ii) liquidation of the individual's assets to the extent the liqui-  
30 dation of such assets would not itself cause severe financial hardship.

31 14. The commissioner and the comptroller are directed to promulgate  
32 all rules and regulations necessary to implement the provisions of this  
33 subsection and are hereby directed to establish, supervise and regulate  
34 first home savings accounts authorized to be created by this section.

35 15. (a) If there is any distribution from a first home savings account  
36 to any individual or for the benefit of any individual during a calendar  
37 year, such distribution shall be reported to the Internal Revenue  
38 Service and the account owner, the designated beneficiary, or the  
39 distributee to the extent required by federal law or regulation.

40 (b) Statements shall be provided to each account owner at least once  
41 each year within sixty days after the end of the twelve month period to  
42 which they relate. The statement shall identify the contributions made  
43 during a preceding twelve month period, the total contributions made to  
44 the account through the end of the period, the value of the account at  
45 the end of such period, distributions made during such period and any  
46 other information that the comptroller shall require to be reported to  
47 the account owner.

48 (c) Statements and information relating to accounts shall be prepared  
49 and filed to the extent required by federal and state tax laws.

50 16. An annual fee may be imposed upon the account owner for the main-  
51 tenance of the account.

52 17. The program shall disclose the following information in writing to  
53 each account owner of a first home savings account:

54 (a) the terms and conditions for establishing a first home savings  
55 account;

56 (b) any restrictions on the substitution of beneficiaries;

1 (c) the person or entity entitled to terminate the first home savings  
2 agreement;

3 (d) the period of time during which a beneficiary may receive benefits  
4 under the first home savings agreement;

5 (e) the terms and conditions under which money may be wholly or  
6 partially withdrawn from the program, including, but not limited to, any  
7 reasonable charges and fees that may be imposed for withdrawal;

8 (f) the probable tax consequences associated with contributions to and  
9 distributions from accounts; and

10 (g) all other rights and obligations pursuant to first home savings  
11 agreements, and any other terms, conditions, and provisions deemed  
12 necessary and appropriate by the terms of the memorandum of understand-  
13 ing entered into pursuant to section twelve hundred fifty-three of this  
14 article.

15 18. First home savings agreements shall be subject to section four-  
16 teen-c of the banking law and the "truth-in-savings" regulations promul-  
17 gated thereunder.

18 19. Nothing in this article or in any first home savings agreement  
19 entered into pursuant to this article shall be construed as a guarantee  
20 by the state that the account owner or designated beneficiary will qual-  
21 ify for the purchase of a home.

22 20. To establish that an account owner or designated beneficiary is a  
23 first time home buyer, the individual shall complete a form promulgated  
24 by the comptroller certifying, under the penalties of perjury, that such  
25 individual is a first time home buyer.

26 21. An individual must not intend to use any portion of the real prop-  
27 erty purchased using the first home savings account funds in a trade or  
28 business, or as a vacation home or as an investment, except as an owner  
29 occupied multiple dwelling with no more than two rental units.

30 22. Monies withdrawn from first home savings accounts and any interest  
31 which has accrued shall not be considered as taxable income to the  
32 account owner for state personal income taxation purposes, so long as  
33 the monies are applied for the purchase or construction of a qualified  
34 first home purchase by the account owner or designated beneficiary of  
35 the account.

36 § 1256. Program limitations; first home savings account. 1. Nothing in  
37 this article shall be construed to:

38 (a) give any designated beneficiary any rights or legal interest with  
39 respect to an account unless the designated beneficiary is the account  
40 owner;

41 (b) guarantee that the account owner or designated beneficiary will be  
42 financially qualified to purchase a home;

43 (c) create state residency for an individual merely because the indi-  
44 vidual is a designated beneficiary; or

45 (d) guarantee that amounts saved pursuant to the program will be  
46 sufficient to cover the down payment or closing costs pursuant to the  
47 purchase of a qualified first home.

48 2. (a) Nothing in this article shall create or be construed to create  
49 any obligation of the comptroller, the state, or any agency or instru-  
50 mentality of the state to guarantee for the benefit of the account owner  
51 or designated beneficiary with respect to:

52 (i) the rate of interest or other return on any account; and

53 (ii) the payment of interest or other return on any account.

54 (b) The comptroller by rule or regulation shall provide that every  
55 contract, application, deposit slip or other similar document that may  
56 be used in connection with a contribution to an account clearly indicate

1 that the account is not insured by the state and neither the principal  
2 deposited nor the investment return is guaranteed by the state.

3 § 2. Subsection (b) of section 612 of the tax law is amended by adding  
4 a new paragraph 42 to read as follows:

5 (42) (A) Excess distributions received during the taxable year by a  
6 distributee of a first home savings account established under the New  
7 York state first home savings program provided for under article twen-  
8 ty-eight of the private housing finance law, to the extent such excess  
9 distributions are deemed attributable to the deductible contributions  
10 under paragraph forty-three of subsection (c) of this section.

11 (B) (i) The term "excess distributions" means distributions which are  
12 not:

13 (I) qualified withdrawals within the meaning of subdivision ten of  
14 section twelve hundred fifty-two of the private housing finance law;

15 (II) withdrawals made as a result of the death or disability of the  
16 designated beneficiary within the meaning of subdivision eleven of  
17 section twelve hundred fifty-two of such law; or

18 (III) transfers described in paragraph (b) of subdivision six of  
19 section twelve hundred fifty-five of such law.

20 (ii) Excess distributions shall be deemed attributable to deductible  
21 contributions to the extent the amount of any such excess distribution,  
22 when added to all previous excess distributions from the account,  
23 exceeds the aggregate of all nondeductible contributions to the account.

24 § 3. Subsection (c) of section 612 of the tax law is amended by adding  
25 two new paragraphs 43 and 44 to read as follows:

26 (43) Contributions made during the taxable year by an account owner to  
27 a first home savings account established under the New York state first  
28 home savings program provided for under article twenty-eight of the  
29 private housing finance law, to the extent not deductible or eligible  
30 for credit for federal income tax purposes, provided, however, the  
31 exclusion provided for in this paragraph shall not exceed five thousand  
32 dollars for an individual or head of household, and for married couples  
33 who file joint tax returns, shall not exceed ten thousand dollars;  
34 provided, further that such exclusion shall be available only to the  
35 account owner and not to any other person.

36 (44) Distributions from a first home savings account established under  
37 the New York state first home savings program provided for under article  
38 twenty-eight of the private housing finance law, to the extent includi-  
39 ble in gross income for federal income tax purposes.

40 § 4. This act shall take effect on the one hundred eightieth day after  
41 it shall have become a law, and shall apply to taxable years commencing  
42 on or after the first of January next succeeding the date on which it  
43 shall have become law; provided, however, that effective immediately,  
44 the commissioner of taxation and finance and the comptroller are author-  
45 ized and directed to promulgate any rules or regulations necessary to  
46 implement the provisions of this act on its effective date on or before  
47 such date.