

S04472 Summary:

BILL NO S04472D
 SAME AS SAME AS
 SPONSOR CARLUCCI

COSPNSR ADDABBO, AMEDORE, AVELLA, BOYLE, CROCI, DIAZ, DILAN, ESPAILLAT, FARLEY, FELDER, FUNKE, GALLIVAN, GOLDEN, GRIFFO, HAMILTON, HOYLMAN, KLEIN, KRUEGER, LANZA, LARKIN, LATIMER, MARCHIONE, MARTINS, MONTGOMERY, MURPHY, NOZZOLIO, O'MARA, ORTT, PANEPINTO, PARKER, PERALTA, RANZENHOFER, RITCHIE, RIVERA, ROBACH, SANDERS, SAVINO, SERRANO, SQUADRON, VALESKY, YOUNG

MLTSPNSR

Add Art 84 SS84.01 - 84.11, Ment Hyg L; amd S612, Tax L; amd S366, Soc Serv L; add S99-x, St Fin L

Establishes the New York achieving a better life experience (NY ABLE) savings account act to support individuals with disabilities to maintain health, independence and quality of life.

S04472 Actions:

BILL NO S04472D

03/23/2015 REFERRED TO BANKS
 05/04/2015 AMEND (T) AND RECOMMIT TO BANKS
 05/04/2015 PRINT NUMBER 4472A
 05/13/2015 REPORTED AND COMMITTED TO FINANCE
 06/08/2015 AMEND (T) AND RECOMMIT TO FINANCE
 06/08/2015 PRINT NUMBER 4472B
 06/09/2015 AMEND AND RECOMMIT TO FINANCE
 06/09/2015 PRINT NUMBER 4472C
 06/10/2015 COMMITTEE DISCHARGED AND COMMITTED TO RULES
 06/10/2015 ORDERED TO THIRD READING CAL.1461
 06/11/2015 AMENDED ON THIRD READING (T) 4472D
 06/18/2015 PASSED SENATE
 06/18/2015 DELIVERED TO ASSEMBLY
 06/18/2015 referred to ways and means
 06/18/2015 substituted for a7767b
 06/18/2015 ordered to third reading rules cal.679
 06/18/2015 passed assembly
 06/18/2015 returned to senate
 12/18/2015 DELIVERED TO GOVERNOR
 12/22/2015 SIGNED CHAP.576
 12/22/2015 APPROVAL MEMO.30

S04472 Text:

STATE OF NEW YORK

Cal. No. 1461

4472--D

2015-2016 Regular Sessions

IN SENATE

March 23, 2015

Introduced by Sens. CARLUCCI, ADDABBO, AMEDORE, AVELLA, BOYLE, CROCI, DIAZ, DILAN, ESPAILLAT, FARLEY, FELDER, FUNKE, GALLIVAN, GOLDEN, GRIFFO, HAMILTON, HOYLMAN, KLEIN, KRUEGER, LANZA, LARKIN, LATIMER, MARCHIONE, MARTINS, MONTGOMERY, MURPHY, NOZZOLIO, O'MARA, ORTT, PANEPINTO, PARKER, PERALTA, RANZENHOFER, RITCHIE, RIVERA, ROBACH, SANDERS, SAVINO, SERRANO, SQUADRON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the mental hygiene law, the tax law, the social services law and the state finance 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) act".
3 § 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 developmental disabili-
6 ties to maintain health, independence and quality of life; and to
7 provide secure funding for disability related expenses on behalf of
8 designated beneficiaries with intellectual or developmental disabilities
9 that will supplement, but not supplant, benefits provided through exist-
10 ing sources.

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

LBD10067-09-5

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

3 ARTICLE 84

4 NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNT ACT

5 Section 84.01 Short title.

6 84.03 Definitions.

7 84.05 Powers and duties of the comptroller.

8 84.07 NY ABLÉ account advisory council.

9 84.09 Program requirements.

10 84.11 Distribution requirements.

11 § 84.01 Short title.

12 This article shall be known and may be cited as the "New York achiev-
13 ing a better life experience (NY ABLÉ) savings account act".

14 § 84.03 Definitions.

15 As used in this article:

16 1. The term "financial organization" means an organization authorized
17 to do business in the state of New York and which: (a) is licensed or
18 chartered by the department of financial services; (b) is licensed or
19 chartered by an agency of the federal government; or (c) is subject to
20 the jurisdiction and regulation of the securities and exchange commis-
21 sion of the federal government.

22 2. "Account" or "NY ABLÉ account" shall mean an individual savings
23 account established in accordance with the provisions of this article.

24 3. "Account owner" shall mean a person who opens a savings account
25 pursuant to the provisions of this article. The account owner may also
26 be the designated beneficiary of the account.

27 4. "Designated beneficiary" shall mean, with respect to an account or
28 accounts, any individual who is an "eligible individual" as defined
29 under paragraph (1) of subsection (e) of section 529A of the Internal
30 Revenue Code of 1986, as amended, or any regulations promulgated there-
31 under and whose qualified expenses are expected to be paid from the
32 account or accounts. A designated beneficiary shall be a resident of
33 New York state or a resident of a state that: (a) does not have a quali-
34 fied ABLÉ program recognized under section 529-A of the Internal Revenue
35 Code of 1986, as amended; and (b) has entered into a contract with New
36 York state to provide residents of the contracting state with access to
37 New York state's ABLÉ program.

38 5. "Qualified expenses" shall mean any qualified disability expense
39 included in paragraph (5) of subsection (e) of section 529A of the
40 Internal Revenue Code of 1986, as amended, or any regulations promulgat-
41 ed thereunder.

42 6. "Nonqualified withdrawal" shall mean a withdrawal from an account
43 for other than a qualified expense, or a withdrawal made as the result
44 of the death or disability of the designated beneficiary of an account.

45 7. "Management contract" shall mean the contract executed by the comp-
46 troller and a financial organization selected to act as a depository and
47 manager of the program.

48 8. "Savings agreement" shall mean an agreement between the comptroller
49 or a financial organization and the account owner.

50 9. "Program manager" shall mean a financial organization selected by
51 the comptroller to act as a depository and manager of the program.

52 § 84.05 Powers and duties of the comptroller.

53 1. The comptroller shall establish a NY ABLÉ account plan for all
54 eligible individuals and families for the purpose of supporting individ-
55 uals with disabilities to maintain health, independence, and quality of
56 life. The comptroller is hereby authorized to promulgate any and all

1 rules and regulations necessary for the implementation of this article
2 in consultation with the commissioners of the office for people with
3 developmental disabilities, the office of mental health, the department
4 of health, and the office of temporary and disability assistance.

5 2. The comptroller may implement the NY ABLE savings account program
6 through use of third party vendors as administrators of such accounts,
7 and financial organizations as account depositories and managers. Under
8 the program, individuals may establish accounts directly with an account
9 depository.

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

18 (a) Financial stability and integrity of the financial organization;
19 (b) The safety of the investment instrument being offered;
20 (c) The ability of the investment instrument to track increasing costs
21 of obtaining care for individuals with disabilities;

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

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

26 (f) The fees, if any, proposed to be charged to persons for opening or
27 maintaining accounts;

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

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

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

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

38 5. The comptroller may select more than one financial organization for
39 the program.

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

42 (a) Take any action required to keep the program in compliance with
43 requirements of section 84.09 of this article and any actions not
44 contrary to its contract to manage the program to qualify as a "Quali-
45 fied ABLE account" under subsection (1) of paragraph (b) of section 529A
46 of the Internal Revenue Code of 1986, as amended.

47 (b) Keep adequate records of each account, keep each account segre-
48 gated from each other account, and provide the comptroller with informa-
49 tion as required;

50 (c) compile and total information contained in statements required to
51 be prepared under section 84.09 of this article and provide such compi-
52 lations to the comptroller.

53 (d) If there is more than one program manager, provide the comptroller
54 with such information necessary to determine compliance;

1 (e) Provide the comptroller or his or her designee access to the books
2 and records of the program manager to the extent needed to determine
3 compliance with the contract;

4 (f) Hold all accounts for the benefit of the account owner;

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

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

17 7. The comptroller may provide that an audit shall be conducted of the
18 operations and financial position of the program depository and manager
19 at any time if the comptroller has any reason to be concerned about the
20 financial position, the recordkeeping practices, or the status of
21 accounts of such program depository and manager.

22 8. During the term of any contract with a program manager, the comp-
23 troller shall conduct an examination of such manager and its handling of
24 accounts. Such examination shall be conducted at least biennially if
25 such manager is not otherwise subject to periodic examination by the
26 superintendent of financial services, the federal deposit insurance
27 corporation or other similar entity.

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

30 (i) Accounts previously established and held in investment instruments
31 at such financial organization may be terminated;

32 (ii) Additional contributions may be made to such accounts;

33 (iii) No new accounts may be placed with such financial organization;
34 and

35 (iv) Existing accounts held by such depository shall remain subject to
36 all oversight and reporting requirements established by the comptroller.

37 (b) If the comptroller terminates a financial organization as a
38 program manager or depository, he or she shall take custody of accounts
39 held by such financial organization and shall seek to promptly transfer
40 such accounts to another financial organization that is selected as a
41 program manager or depository and into investment instruments as similar
42 to the original instruments as possible.

43 10. The comptroller may enter into such contracts as it deems neces-
44 sary and proper for the implementation of the program.

45 § 84.07 NY ABLE account advisory council.

46 1. The NY ABLE account advisory council is hereby established and
47 shall consist of the following persons or their designees: the comp-
48 troller, the commissioner of the office of mental health, the commis-
49 sioner of the office for people with developmental disabilities, the
50 commissioner of the department of health, the superintendent of the
51 department of financial services, the commissioner of the department of
52 taxation and finance, the commissioner of the office of temporary disa-
53 bility assistance, three individuals appointed by the governor, and two
54 individuals each by the temporary president of the senate and by the
55 speaker of the assembly. Such executive and legislative appointees shall
56 have knowledge, skill and expertise in issues relating to individuals

1 with disabilities; expertise in services to persons with disabilities;
2 or knowledge in management and support of the fiscal affairs of such
3 disabilities.

4 2. The members shall be appointed for a term of three years and shall
5 be representative of all geographic areas of the state.

6 3. The advisory council shall:

7 (a) Study and review the work of the comptroller in relation to the
8 establishment of the NY ABLE account program;

9 (b) Advise the comptroller and make recommendations for the improve-
10 ment of the NY ABLE account program;

11 (c) Advise the comptroller on legislative and regulatory activity
12 which may be required for compliance; and

13 (d) Advise the comptroller on the development of materials to be
14 provided to account owners, prospective account owners, and designated
15 beneficiaries in accordance with subdivision fourteen of section 84.09
16 of this article.

17 4. The advisory council shall meet at least four times in each full
18 calendar year during the first three years of the implementation of ABLE
19 accounts, annually thereafter, and additionally upon the request of the
20 comptroller.

21 5. The members of the advisory council shall receive no compensation
22 for their services as members, but each shall be allowed the necessary
23 and actual expenses incurred in the performance of his or her duties
24 under this section.

25 § 84.09 Program requirements.

26 1. "NY ABLE" accounts established pursuant to the provisions of this
27 article shall be governed by the provisions of this section.

28 2. A NY ABLE account may be opened by any person who desires to save
29 money for the payment of the qualified living expenses of a designated
30 beneficiary. Such person who opens a NY ABLE account shall be considered
31 the account owner as set forth in this article.

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

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

36 (ii) the designation of a designated beneficiary;

37 (iii) the name, address and social security number of the designated
38 beneficiary; and

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

40 (b) The comptroller may establish a nominal fee for such application.

41 3. An account owner may own only one NY ABLE account unless otherwise
42 permitted by section 529A of the Internal Revenue Code of 1986, as
43 amended.

44 4. Any person, including the account owner, may make contributions to
45 the account after the account is opened.

46 5. Contributions to accounts may be made only in cash.

47 6. Contributions to a NY ABLE account shall not exceed the limit on
48 annual contributions established under paragraph (2) of subsection (b)
49 of section 529A of the Internal Revenue Code of 1986, as amended.

50 7. An account owner may withdraw all or part of the balance from an
51 account on sixty days notice or such shorter period as may be authorized
52 under rules governing the program. Such rules shall include provisions
53 that will generally enable the determination as to whether a withdrawal
54 is a nonqualified withdrawal or a qualified withdrawal. Nonqualified
55 withdrawals shall be subject to any penalties imposed under section 529A
56 of the internal revenue code of 1986, as amended.

1 8. An account owner may change the designated beneficiary of an
2 account to another beneficiary who is qualified under the provisions of
3 this article.

4 9. The program shall provide a separate accounting for each designated
5 beneficiary.

6 10. An account owner shall be permitted to direct the investment of
7 any contributions to an account or the earnings thereon no more than two
8 times in a calendar year.

9 11. Neither an account owner nor a designated beneficiary may use an
10 interest in an account as security for a loan. Any pledge of an interest
11 in an account shall be of no force and effect.

12 12. The comptroller shall promulgate rules or regulations to prevent
13 contributions on behalf of a designated beneficiary in excess of an
14 amount that would cause the aggregate account balance for all accounts
15 for a designated beneficiary to exceed a maximum account balance, as
16 established from time to time by the comptroller. Such maximum amount
17 shall reflect reasonable expenditures and shall be determined in accord-
18 ance with any applicable state or federal law, rule, or regulation. Such
19 maximum amount shall not exceed one hundred thousand dollars unless
20 otherwise permitted by law.

21 13. (a) If there is any distribution from an account to any individual
22 or for the benefit of any individual during a calendar year, such
23 distribution shall be reported to the Internal Revenue Service and the
24 account owner, the designated beneficiary, or the distributee to the
25 extent required by federal law or regulation.

26 (b) Statements shall be provided to each account owner at least once
27 each year within sixty days after the end of the twelve month period to
28 which they relate. The statement shall identify the contributions made
29 during a preceding twelve month period, the total contributions made to
30 the account through the end of the period, the value of the account at
31 the end of such period, distributions made during such period and any
32 other information that the comptroller shall require to be reported to
33 the account owner.

34 (c) Statements and information relating to accounts shall be prepared
35 and filed to the extent required by federal and state tax law.

36 14. The program shall disclose the following information in writing to
37 each account owner and prospective account owner of a NY ABLE account:

38 (a) the terms and conditions for purchasing a NY ABLE account;

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

40 (c) the person or entity entitled to terminate the savings agreement;

41 (d) the period of time during which a beneficiary may receive benefits
42 under the savings agreement;

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

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

48 (g) all other rights and obligations pursuant to NY ABLE savings
49 agreements, including but not limited to the potential impact on means
50 tested programs, that upon the death of the beneficiary any remaining
51 balance may be subject to state recovery for Medicaid payments and any
52 other terms, conditions, and provisions deemed necessary and appropriate
53 by the commissioner, the advisory council, and the comptroller.

54 15. NY ABLE savings agreements shall be subject to section fourteen-c
55 of the banking law and the "truth-in-savings" regulations promulgated
56 thereunder.

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1 16. Notwithstanding any other provisions of law, rule, or regulation
2 to the contrary, assets contained in NY ABLE account, that is in compli-
3 ance with all applicable state and federal laws, rules, and regulations,
4 shall not be used in determining the eligibility of a designated benefi-
5 ciary for any federal, state, or local means-tested program.

6 17. Subject to any outstanding payments due for qualified disability
7 expenses, upon the death of the designated beneficiary, all amounts
8 remaining will be subject to state recovery for medical assistance
9 payments made on behalf of the beneficiary after the date of establish-
10 ment of the account.

11 18. Nothing in this article shall create or be construed to create any
12 obligation of the comptroller, the state, or any agency or instrumentality
13 of the state to guarantee for the benefit of any account owner or
14 designated beneficiary with respect to:

15 (a) the rate of interest or other return on any account; and

16 (b) the payment of interest or other return on any account.

17 § 84.11 Distribution requirements.

18 Designated beneficiaries shall be eligible for a distribution from the
19 accumulated funds deferred to their NY ABLE savings account established
20 pursuant to this article, in full and partial disbursement options for
21 qualified expenses.

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

24 (42) Distributions received during the taxable year by a designated
25 beneficiary of a "NY ABLE account" established under the New York
26 achieving a better life experience savings account act provided for
27 under article eighty-four of the mental hygiene law, to the extent such
28 distributions are nonqualified withdrawals within the meaning of subdivi-
29 sion six of section 84.03 of such law.

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

32 (42) Contributions made during the taxable year by an account owner to
33 one or more "NY ABLE" accounts established under article eighty-four of
34 the mental hygiene law, provided, however that such exclusion shall be
35 available only to the account owner and not to any other person.

36 (43) Distributions for qualified expenses of a designated beneficiary
37 from a "NY ABLE" account established under article eighty-four of the
38 mental hygiene law, to the extent includible in gross income for federal
39 income tax purposes.

40 § 6. Paragraph (a) of subdivision 2 of section 366 of the social
41 services law is amended by adding a new subparagraph 11 to read as
42 follows:

43 (11) subject to the availability of federal financial participation,
44 any amount, including earnings thereon, in a qualified NY ABLE account
45 as established pursuant to article eighty-four of the mental hygiene
46 law, any contributions to such NY ABLE account, and any distribution for
47 qualified disability expenses from such account; provided however, that
48 such exemption shall be consistent with section 529A of the Internal
49 Revenue Code of 1986, as amended.

50 § 7. The state finance law is amended by adding a new section 99-x to
51 read as follows:

52 § 99-x. New York achieving a better life experience (NY ABLE) savings
53 program trust fund. 1. There is hereby established in the sole custody
54 of the state comptroller a special fund to be known as the New York
55 achieving a better life experience (NY ABLE) savings program trust fund.

1 All payments from such fund shall be made in accordance with article
2 eighty-four of the mental hygiene law.

3 2. The fund shall be a trust fund and shall consist of a trust account
4 and an operating account. The trust account shall include amounts
5 received by the NY ABLE savings program pursuant to NY ABLE savings
6 agreements, administrative charges, fees, and all other amounts received
7 by the program from other sources, and interest and investment income
8 earned by the trust fund. The comptroller shall, from time to time, make
9 transfers from the trust account to the operating account for the imme-
10 diat payment of obligations under NY ABLE savings agreements, operating
11 expenses and administrative costs of the NY ABLE savings program. Admin-
12 istrative costs shall be paid out of the operating account according to
13 the terms and conditions established pursuant to the provisions of
14 section 84.05 of the mental hygiene law.

15 3. (a) The comptroller, as trustee, shall invest the assets of the
16 trust fund in investments authorized by article four-A of the retirement
17 and social security law, provided however, that: (i) the provisions of
18 paragraph (a) of subdivision two of section one hundred seventy-seven of
19 the retirement and social security law shall not apply except for the
20 first clause of subparagraph (ii) of such paragraph; and (ii) notwith-
21 standing the provisions of subdivision seven of section one hundred
22 seventy-seven of the retirement and social security law or any other law
23 to the contrary, the assets of the trust fund may be invested in any
24 funding agreement issued in accordance with section three thousand two
25 hundred twenty-two of the insurance law by a domestic life insurance
26 company or a foreign life insurance company doing business in this
27 state, subject to the following: (1) such a funding agreement may
28 provide for a guaranteed minimum rate of return; (2) such a funding
29 agreement may be allocated as either a separate account or a general
30 account of the issuer, as the comptroller may decide; (3) total invest-
31 ments of the trust fund pursuant to this paragraph in any funding agree-
32 ments issued by a single life insurance company which are allocated as a
33 general account of the issuer shall not, in the aggregate, exceed three
34 hundred fifty million dollars; and (4) no assets of the trust fund shall
35 be invested in any such funding agreement unless, at the time of such
36 investment, the general obligations or financial strength of the issuer
37 have received either the highest or second highest rating by two
38 nationally recognized rating services or by one nationally recognized
39 rating service in the event that only one such service rates such obli-
40 gations.

41 (b) Trust fund assets shall be kept separate and shall not be commin-
42 gled with other assets, except as provided herein. The comptroller may
43 enter into contracts to provide for investment advice and management,
44 custodial services, and other professional services for the adminis-
45 tration and investment of the program. Administrative fees, costs and
46 expenses, including investment fees and expenses, shall be paid from the
47 assets of the fund.

48 4. The comptroller shall provide for the administration of the trust
49 fund, including maintaining participant records and accounts, and
50 providing annual audited reports. The comptroller may enter into
51 contracts to provide administrative services and reporting.

52 § 8. This act shall take effect April 1, 2016; provided, however, that
53 effective immediately, the addition, amendment and/or repeal of any
54 rules or regulations necessary for the implementation of this act on its
55 effective date are authorized and directed to be made and completed on
56 or before such effective date.