

BILL NO. 35-0337

Thirty-Fifth Legislature of the Virgin Islands

September 18, 2024

An Act amending title 15 Virgin Islands Code, article V to allow the Government of the Virgin Islands to implement the federal mandate of the Stephen J. Beck, Jr., Achieving Better Life Experiences, which provides for the establishment of savings accounts for persons with disabilities

PROPOSED BY: Senator Novelle E. Francis, Jr.

1 **WHEREAS**, individuals with disabilities should have the right to save for their future;

2 **WHEREAS**, Stephen J. Beck, Jr. heroically championed the rights of individuals with
3 disabilities to save for their future without jeopardizing their federal benefits;

4 **WHEREAS**, in 2014, the Stephen A. Beck, Jr., Achieving a Better Life Experiences, was
5 passed in the United States Congress, allowing individuals with disabilities to save without fear
6 of losing their federal benefits;

7 **WHEREAS**, individuals with disabilities in the Virgin Islands should be afforded the
8 same opportunities; Now Therefore,

9 ***Be it enacted by the Legislature of the Virgin Islands:***

10 **SECTION 1.** Title 15 Virgin Islands Code, Article V is amended by adding part 5 that
11 reads as follows:

12 **“Part 5-Achieving a Better Life Experience**

1 **§ 5-491 Short Title.** This part may be cited as the “Virgin Islands Achieving a Better
2 Life Experience Act.”

3 **§ 5- 492 Definitions**

4 In this part:

5 (1) “ABLE” means Achieving a Better Life Experience.

6 (2) “Account” means an individual account, a trust account, or a savings account
7 established in accordance with the provisions of this part.

8 (3) “Account owner” means the designated beneficiary.

9 (4) “Department” means the Virgin Islands Department of Finance.

10 (5) “Designated beneficiary” or “beneficiary” means an eligible individual for whom
11 the account was established and whose qualified disability expenses may be paid from this
12 account.

13 (6) “Eligible individual” means a resident of the Virgin Islands who during the taxable
14 year is entitled to benefits based on blindness or disability under Title II or XVI of the federal
15 Social Security Act, 42 U.S.C. § 401 *et seq.* or 1381 *et seq.*, respectively, where the blindness
16 or disability occurred before the date on which the individual attained 26 years of age, or a
17 disability certification meeting the requirements of the federal ABLE Act is filed for that
18 taxable year.

19 (7) “Federal ABLE Act” means the Stephen J. Beck, Jr., Achieving a Better Life
20 Experience Act of 2014, Pub. L. No. 113-295. 128 Stat. 4010, and includes subsequent
21 amendments to that act, as well as regulations promulgated thereunder by the United States
22 Secretary of the Treasury.

23 (8) “Fund” means the ABLE savings accounts program established by the Department
24 of Finance on behalf of the Government of the Virgin Islands separate and apart from all other
25 Government funds.

(9) “Internal Revenue Code” means the Internal Revenue Code of 1986, Public Law 99-514, 26 U.S.C. §1 *et seq.*.

(10) “Nonqualified Withdrawal” means a withdrawal from an account that is not a qualified withdrawal or a rollover distribution.

(11) “Program” means the Virgin Islands Achieving a Better Life Experience Program established by this part.

(12) “Qualified disability expenses” means expenses related to the eligible individual’s blindness or disability that are made for the benefit of the eligible individual who is the designated beneficiary, including expenses for:

- (A) education;
- (B) housing;
- (C) transportation;
- (D) employment training and support;
- (E) assistive technology and personal support services;
- (F) health, prevention and wellness;
- (G) financial management and administrative services;
- (H) legal fees;
- (I) expenses for oversight and monitoring;
- (J) funeral and burial expenses;
- (K) expenses that maintaining or improving health, independency or quality of life; or
- (L) other expenses that are consistent with the purposes of the Federal ABLE Act and approved by the Program.

(13) “Qualified withdrawal” means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(14) “Rollover distribution” means a rollover distribution as used in section 529A of the Internal Revenue Code.

§ 5-493. Virgin Islands ABLE Savings Program Establishment

(a) In accordance with the Federal ABLE Act, the Virgin Islands Department of Finance shall establish and maintain a savings program to allow ABLE savings accounts to be opened for eligible individuals to benefit from the tax incentives provided under the Federal ABLE Act. Notwithstanding any other provision of law, an ABLE savings program established by the Department must be maintained at all times in a manner that ensures the Program’s status as a qualified ABLE program.

(b) The Department shall manage all deposits and contributions made to accounts, and the earnings on those deposits and contributions, which may include:

- (A) gifts;
 - (B) bequests;
 - (C) endowments;
 - (D) federal and local grants;
 - (E) any fees or charges levied on accounts to cover administrative fees of the Program;
- and
- (F) Any other funds intended for the Program.

(c) All deposits and earnings on those deposits held in the Fund constitutes assets of the Fund and may not be commingled with or revert to the General Fund of the Treasury of the Government of the Virgin Islands or any special, emergency or temporary fund of the Government of the Virgin Islands.

(d) The Fund’s existence can only be terminated by law; therefore, it continues in existence after it no longer holds any deposits, contributions, other assets or owes any individual or entity.

(e) All money in the Fund are transferred from the participants' savings accounts, including fees and charges levied on an account to cover the expenses to administer the Program, contributions and increase in value on the contributions, for distribution to or on behalf of eligible individuals is transferred to the Department on a continuing basis to carry out the provisions of this part.

(f) An eligible individual who seeks to save money for the payment of qualified disability expenses of a designated beneficiary may establish an ABLE account and shall enter into an ABLE Savings Account with the Fund.

(g) The money in the Fund must be invested in accordance with policies established by the Department, providing for an appropriate balance of risk, liquidity and return commensurate with the management of a prudent investor. The Department, the investment managers, program managers and trustees have the authority to invest and reinvest the money in the Fund in all lawful investments.

(h) The Commissioner of Finance, or the Commissioner's designee, shall serve as the trustee of the Program. However, on behalf of the Program, the Department may contract with one or more persons or legal entities to serve as investment managers, program managers or trustee. If the Department contracts with investment managers, program managers or a trustees to fulfill the objectives of the Program, the investment managers, program managers or trustees shall work with the Department to provide a program to develop investment portfolios and to supervise investments and investment programs.

(i) In lieu of the development of a Virgin Islands ABLE program, the Department may effect this part's purpose by entering into a joint venture or contract with another state or states for any of the following:

- (1) to provide all or part of the program to beneficiaries residing in the Virgin Islands;
- (2) to engage in joint efforts to establish and maintain ABLE savings programs.

1 **§ 5-494. Department Powers and Duties**

2 The Department has the powers to:

3 (1) administer the Program and the Fund;

4 (2) enter into contracts with individuals for the establishment of ABLE savings
5 accounts;

6 (3) pay to an account owner or designated beneficiary, or a third party authorized by
7 an account owner, upon receipt of appropriate documentation required by the Department,
8 funds from the account to pay for the eligible individual's qualified disability expenses;

9 (4) contract for goods and services and employ personnel, including contracts with
10 private consultants, actuaries, managers, legal counsel and auditors as necessary for rendering
11 professional, managerial and technical assistance and advice;

12 (5) solicit and accept gifts, grants, loans and other aid from any person, corporation or
13 other entity or from a government entity and participate in any federal, state or local
14 government program that results in additional funds being available to pay for the qualified
15 disability expenses of eligible individuals with ABLE savings accounts;

16 (6) charge and collect administrative fees and charges in connection with any
17 transaction, including continued participation in the Program;

18 (7) close ABLE savings accounts and return any remaining funds, minus any fees, to
19 the account owner;

20 (8) contract for insurance, letters of credit and collateral agreements;

21 (9) adjust the terms of contracts with account owners;

22 (10) solicit answers from appropriate federal agencies regarding the application of
23 security or other federal laws to the program;

24 (11) consider means whereby contributions into an ABLE savings account can be made
25 through payroll deductions;

(12) coordinate with the Department of Human Services to promulgate regulations to implement the provisions of this part; and

(13) take any other action necessary to carry out the purpose of this part incidental to the duties imposed on the Department.

§ 5-495. Operating and Administrative Costs

The Department shall prepare and, submit to the Legislature of the Virgin Islands an annual budget covering the operating and administrative expenses of the Program. Expenses incurred by the Program and the Department must be paid from Program fees and charges or from other available funds.

§ 5-496. Interdepartmental Cooperation

The head of any department, board, commission, agency or instrumentality of the Government of the Virgin Islands, unless otherwise prohibited by law, shall assist the Department in providing information about the Program to potential eligible individuals and their families.

§ 5-497. ABLE Savings Accounts

(a) An ABLE savings account may be opened through a contract entered into by an account owner and the Department. If the account owner is a fiduciary, the account owner shall continue to have signatory authority over the account until the account owner relinquishes that authority.

(b) If federal law requires an eligible individual to be the account owner, any of the persons listed below may enter into an ABLE account contract as fiduciary for an eligible individual who is a minor or who lacks capacity to enter into an ABLE account contract:

(1) a parent or guardian;

(2) a person or legal entity designated in writing by the parent or guardian;

(3) a trustee of a trust for which the eligible individual is a beneficiary;

(4) for an eligible individual receiving benefits based on blindness or a disability under Title II of the Social Security Act, 49 Stat. 620, 42 U.S.C. § 401, or Title XVI of the Social Security Act, 42 U.S.C. § 1381, the representative payee for those benefits; or

(5) any other person or entity authorized under section 529A of the Internal Revenue Code with signature authority over the account

(b) An account owner may change the designated beneficiary named in the ABLE account contract to another eligible individual if permitted under section 529A of the Internal Revenue Code.

§ 5-498. Nonqualified Withdrawals

(a) Upon a full or partial withdrawal of funds from an account that are not used for qualified disability expenses, the account owner or the account owner's designee must receive the market value of the account for the amount requested.

(b) The Department may collect administrative fees or charges for costs upon a nonqualified withdrawal or termination and deduct the fee from the amount otherwise payable. If there is a nonqualified withdrawal, and the amount withdrawn includes earnings on the contributions to the account or contributions to the account that are eligible to be deducted from Virgin Islands income tax for the tax year in which the contributions were made, the amount of earnings and deductible contributions are subject to taxation as income under the laws of the Virgin Islands.

(c) The Department may close an account and return any remaining funds in the account as a nonqualified withdrawal in order to comply with federal law or if the Department, in its sole discretion, determines that termination is in the best interest of the Program or the designated beneficiary. Any person aggrieved by a determination to terminate an account may file an administrative appeal with the Department not later than 30 days after the mailing date of the termination notice. A final resolution of the administrative appeal is the final decision of

the Commissioner of Finance and the aggrieved person may be appeal to the Superior Court of the Virgin Islands. The appeal must be filed not later than 30 days after the mailing date of the final decision of the Commissioner.

§ 5-499. Treatment of Accounts

(a) An account is not subject to attachment, levy or execution by any creditor of a contributor, account owner or designated beneficiary and may not be used as security for a loan.

(b) Amounts contributed to an account, increases in the value of the account and qualified withdrawals from the account may not be used in calculating the personal assets of a designated beneficiary or an account owner in order to determine eligibility for disability, medical assistance, or other health benefits conferred by the Government of the Virgin Islands.

(c) Amounts contributed to an account and increases in the value of the account may not be used in calculating personal asset contributions for determining eligibility or need to qualify for student loan programs, student grant programs, or other student aid programs administered by a territorial agency, except as otherwise may be provided by federal law.

(d) Unless prohibited by federal law, upon the death of a designated beneficiary, proceeds from an account may be transferred to the estate of a designated beneficiary, or to an account for another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary. An agency or instrumentality of the Government of the Virgin Islands may not seek payment under section 529A(f) of the Internal Revenue Code from the account or its proceeds for benefits provided to a designated beneficiary.

§ 5-500. Exemptions

The Program and accounts are exempt from any statute regulating securities. The property of the Program and the earnings from the Program are exempt from all taxation by the Government of the Virgin Islands. Contributions made to an account, any increase in the value of those contributions, the retention or transfer during life or as a result of death of any legal

1 interest in an account, and payment of qualified disability expenses of eligible individuals from
2 an account, are exempt from all taxation by the Government of the Virgin Islands.

3 **SECTION 2.** This act takes effect one year after enactment.

4 **BILL SUMMARY**

5 This bill allows individuals with disabilities to save without fear of losing their federal
6 benefits. The Virgin Islands Program will be maintained by the Department of Finance as
7 trustee. In accordance with the Federal ABLE Act, the Department of Finance shall establish
8 and maintain a savings program to allow ABLE savings accounts to be opened for eligible
9 individuals to benefit from the tax incentives provided under the Federal ABLE Act. An ABLE
10 savings program established by the Department of Finance must be maintained in a manner
11 that ensures the Program's status as a qualified ABLE program.

12 **BR23-0735/August 27, 2024/CBM**