

**Drafted & Reviewed
By Legal Counsel**

s/AWCJR

**AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BILL NO. 36-0035
Offered by Senators Novelle E. Francis, Jr., Marise C. James, Clifford A. Joseph,
Sr., and Kurt A. Violet
Co-sponsored by: Angel L. Bolques, Jr., Ray Fonseca and Hubert L. Frederick**

Bill No. 36-0035 is amended by striking all language after the Whereas clauses and inserting the following new language:

SECTION 1. Title 15 Virgin Islands Code, Article V is amended by adding the following Part 5:

"Part 5-Achieving a Better Life Experience.

§ 5-491. Short Title.

This Part may be cited as the "Virgin Islands Achieving a Better Life Experience Act."

§ 5- 492. Definitions.

In this Part:

- (1) "ABLE" means Achieving a Better Life Experience.
- (2) "Account or Able saving account" means an individual account, a trust account, or a savings account established in accordance with the provisions of this Part.
- (3) "Account owner" means a person or legal entity who enters into a savings agreement authorized under section 529A of the Internal Revenue Code. The account owner may also be the designated beneficiary of the account.
- (4) "Commissioner" means the Commissioner of the Virgin Islands Department of Finance or the Commissioner's designee.
- (5) "Department" means the Virgin Islands Department of Finance.
- (6) "Designated beneficiary" or "beneficiary" means an eligible individual for whom the account was established and whose qualified disability expenses may be paid from this account.

(7) "Eligible individual" means a person who during the taxable year is entitled to benefits based on blindness or disability under Title II or XVI of the federal Social Security Act, 42 U.S.C. § 401 et seq. or 1381 et seq., respectively, where the blindness or disability occurred before the date on which the individual attained the age specified in the federal ABLE Act; or an individual with respect to whom a disability certification, meeting the requirements of the federal ABLE Act, is filed.

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

(9) "Financial organization" means an organization authorized to do business in the Virgin Islands that is:

- (1) licensed or chartered under the banking and insurance laws of V.I.;
- (2) chartered by an agency of the federal government; or
- (3) subject to the jurisdiction and regulation of the federal Securities and Exchange Commission.

(10) "Internal Revenue Code" means the Internal Revenue Code of 1986, Public Law 99-514, 26 U.S.C. §1 et seq., as amended.

(11) "Management contract" means the contract executed by the Commissioner and a financial organization selected to act as a depository and manager of the Program.

(12) "Nonqualified Withdrawal" means a withdrawal from an account that is not a qualified withdrawal or a rollover distribution.

(13) "Program" means the Virgin Islands Achieving a Better Life Experience Program established by this Part.

(14) "Program manager" means a financial organization selected by the Commissioner to act as a depository and manager of the Program.

(15) "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 are for maintaining or improving health, independence, or quality of life; or
- (L) other expenses that are consistent with the purposes of the Federal ABLE Act and approved by the Program.

(16) "Qualified withdrawal" means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(17) "Rollover distribution" means a rollover distribution as used in section 529A of the Internal Revenue Code.

(18) "Savings agreement" means an agreement between the program manager and the account owner.

(19) "Secretary" means the Secretary of the United States Department of the Treasury.

(20) "VI Able Savings Program Trust Fund" means the ABLE savings accounts program established by the Department of Finance on behalf of the Government of the Virgin Islands separate and apart from all other Government funds.

§ 5-493. Virgin Islands ABLE Savings Program Establishment.

In accordance with the Federal ABLE Act, the Commissioner of the Virgin Islands Department of Finance shall establish the Virgin Islands ABLE Savings Program to provide for or facilitate individual savings accounts that empower individuals with a disability and their families to save private funds to support an individual with a disability. Notwithstanding any other provision of law, an ABLE savings program established by the Department must be always maintained in a manner that ensures the Program's status as a qualified ABLE program.

§ 5-494. Functions And Powers of the Commissioner.

(a) The Commissioner shall implement and administer the program under the terms and conditions established by this Part and in conformity with federal law, including the Federal ABLE Act. The Commissioner shall have the authority to:

- (1) develop and implement the program in a manner consistent with this Part;
- (2) engage in the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (3) seek guidance from the Secretary and Internal Revenue Bureau relating to the program;
- (4) make any changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by § 529A of the Internal Revenue Code of 1986, as amended, and as provided under this Part;
- (5) develop marketing plans and promotional materials in consultation with the Department of Human Services and the Disability Rights Center of the Virgin Islands, and conduct ongoing outreach and education efforts to inform eligible individuals and their families about ABLE account benefits and procedures.
- (6) establish the method by which funds shall be allocated to pay for administrative costs; and
- (7) notify the Secretary, if required, when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the Secretary.

(b) The Commissioner may implement the program using financial organizations as account depositories and managers. The Commissioner may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations that submit proposals shall describe the investment instruments which will be held in accounts. The Commissioner may select more than one (1) financial organization and investment instrument for the program. The Commissioner shall select as program depositories and managers of the financial organization or organizations, from among the financial organizations seeking the contract, that demonstrate the most advantageous combination, both to potential program participants and to the Virgin Islands, of the following factors:

- (1) financial stability and integrity of the financial organization;
- (2) the safety of the investment instrument being offered;
- (3) the ability of the financial organization to satisfy record-keeping and reporting requirements;
- (4) the financial organization's plan for promoting the program and the investment the organization's willingness to make to promote the program;
- (5) the fees, if any, proposed to be charged to the account of owners;
- (6) the minimum initial deposit and minimum contributions that the financial organization will require;
- (7) the availability of debit cards;
- (8) the ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and
- (9) other benefits to the Virgin Islands or its residents included in the proposal, including fees payable to the Department to cover expenses of operation of the program.

(c) The Commissioner may enter into contracts and agreements with a financial organization or organizations necessary to implement this Part.

§ 5-495. Management Contract; Terms.

(a) A management contract shall include, at a minimum, terms requiring the financial organization to:

(1) take any action required to keep the program in compliance with the requirements of this Part and take any action not contrary to the management contract to qualify as a qualified ABLE program as defined in § 529A of the Internal Revenue Code of 1986, as amended;

(2) keep accurate records of each account, keep each account segregated from other accounts, and provide the Commissioner with the information necessary to prepare the statements required by § 5-496 of this Part;

(3) compile total information contained in statements required to be prepared under § 5-496 of this Part, and provide the compilations to the Commissioner;

(4) if there is more than one (1) program manager, provide the Commissioner with the information necessary to determine compliance with § 5-496 of this Part;

(5) provide the Commissioner with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this Part, and § 529A of the Internal Revenue Code of 1986, as amended;

(6) hold all accounts for the benefit of the account owner or owners;

(7) be audited every 2 years by a firm of certified public accountants selected by the program manager, with the consent of the Commissioner and provide the results of the audit to the Commissioner. An audit shall be conducted of the operations and financial position of the program manager at any time if the Commissioner has any reason to be concerned about the financial position, the record-keeping practices, or the status of accounts of the program manager; and

(8) provide the Commissioner with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization 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 Commissioner the results of any periodic examination of the program manager by any state, territory or federal banking, insurance, or securities commission, except to the extent that the report or reports may not be disclosed under law; and

(9) ensure that any description of the program, whether in writing or through the use of any media, is consistent with a marketing plan developed pursuant to this Part.

(b) The Commissioner may terminate or not renew a management agreement. If the Commissioner terminates or does not renew a management agreement, the Commissioner shall take custody of accounts held by the program manager and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager and into investment instruments as similar to the original instruments as possible.

(c) The Bureau of Internal Revenue, the Department of Health and Human Services, and the ADA Coordinator are authorized to exchange data regarding eligible individuals to carry out the purposes of this Part.

(d) The Department shall include in its 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. Virgin Islands Able Savings Accounts; Terms and Conditions.

(a) An ABLE savings account established pursuant to this Part may be opened by a designated beneficiary provided that the designated beneficiary shall be an eligible individual at the time the account is established. 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) Each beneficiary or authorized legal representative may hold only one (1) account. The Commissioner may establish an annual maintenance fee for each account, not to exceed fifty dollars. An application for an account shall be in the form specified by the Commissioner and shall contain:

- (1) the name, address, and social security number of the account owner;
- (2) the name, address, and social security number of the designated beneficiary, if the account owner is the beneficiary's trustee or guardian;
- (3) certification relating to no excess contributions; and
- (4) additional information as the Commissioner may require.

(c) Any person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by § 529A of the Internal Revenue Code of 1986, as amended, or any rules and regulations adopted by the Secretary and applicable to this Part.

(d) The Commissioner or program manager shall reject or promptly withdraw a contribution:

- (1) if the contribution would cause the aggregate balance to exceed the limits established pursuant to section 529A of the Internal Revenue Code; or
- (2) if the designated beneficiary is not an eligible individual in the current calendar year.

(e) An account owner may:

- (1) change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the Commissioner; and
- (2) transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in § 529A of the Internal Revenue Code of 1986, as amended.
- (3) not 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.

(f) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, the distribution shall be reported to Bureau of Internal Revenue and

to the account owner, designated beneficiary, or distributee to the extent required by Virgin Islands or federal law.

(g) Statements shall be provided to each account owner at least four (4) times each year within thirty (30) days after the end of the three (3)-month period to which a statement relates. The statement shall identify the contributions made during the preceding three (3)-month period, the total contributions made to the account through the end of the period, the value of the account at the end of the period, distributions made during the period, and any other information that the Commissioner requires to be reported to the account owner. Statements and information relating to accounts shall be prepared and filed to the extent required by this Part and any other Virgin Islands or federal law.

(h) The program shall provide a separate accounting for each designated beneficiary.

§ 5-497. Accounts Not Guaranteed by the Virgin Islands.

(a) Nothing in this Part shall create or be construed to create any obligation of the Commissioner, the Government of Virgin Islands, or any agency or instrumentality of the Government of Virgin Islands to guarantee for the benefit of any account owner or designated beneficiary with respect to the:

- (1) return of principal;
- (2) rate of interest or other return on any account; or
- (3) payment of interest or other return on any account.

(b) The Commissioner shall adopt rules to provide that every contract, obligation, application, or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the Government of Virgin Islands, and that the principal deposited and the investment return are not guaranteed by the Government of Virgin Islands.

§ 5-498. 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.

§ 5-499. Virgin Islands Able Savings Program Trust Fund.

(a) There is established the Virgin Islands ABLE Savings Program Trust Fund (Fund) within the Treasury of Virgin Islands. The Fund shall consist of monies received from an ABLE savings program manager, any governmental or private grants, and any General Fund appropriations for the program.

(b) At the end of any fiscal year, all unexpended and unencumbered monies in the Virgin Islands ABLE Savings Program Trust Fund shall remain in the Virgin Islands ABLE Savings Program Trust Fund and shall not be credited or transferred to the General Fund, or any other fund.

(c) All expenses incurred by the Commissioner in developing and administering the ABLE savings program shall be payable from the Virgin Islands ABLE Savings Program Trust Fund.

(d) Five Hundred Thousand Dollars (\$500,000) is hereby authorized from the Southern Trust Company Settlement Fund to the Department of Finance to assist in the implementation of the Virgin Islands ABLE Savings Program pursuant to this Part. The funds shall be used for, but are not limited to, the following purposes:

- (a) engaging the services of consultants to assist in launching the program;
- (b) engaging a Program Manager for the purposes of managing the Virgin Islands ABLE Savings Program; and
- (c) to assist with associated start-up fees and overhead.

§ 5-500. 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 Program Manager may collect administrative fees or charges for costs upon a non-qualified 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 Program Manager 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 Program Manager, 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.

§ 5-501. 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 loan.

(b) Amounts contributed to an account, increases in the value of the account and qualified withdrawals from the account shall not be considered when determining eligibility or benefit levels for housing assistance programs, including the Housing Choice Voucher program (Section 8) and programs administered by the Federal Housing Administration and the Department of Housing and Urban Development, nutrition programs such as the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), financial assistance programs, including Temporary Assistance for Needy Families (TANF); energy and utility assistance programs, including the Low Income Energy Assistance Program (LIHEAP), Vocational Rehabilitation Services, medical assistance such as Medicaid, or other means tested 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 federal student aid, 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) A person or entity may make contributions to an ABLE account on behalf of a beneficiary. Contributions to an account made by persons or entities other than the designated beneficiary become the property of the designated beneficiary. Contributions to an account shall be considered as a transfer

of assets for fair market value. A person or entity does not acquire an interest in an ABLE account by making contributions to an account. A contribution to any account for a beneficiary must be rejected if the contribution would cause either the aggregate balance of the account to exceed five hundred and fifty thousand dollars (\$550,000).

(e) 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.

§ 5-501. 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 interest in an account, and payment of qualified disability expenses of eligible individuals from an account, are exempt from all taxation by the Government of the Virgin Islands.

SECTION 2. The Department of Finance shall promote awareness of the availability and advantages of the ABLE account plan to assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities.

SECTION 3. The Commissioner of Finance shall provide an implementation plan to the President of the Legislature no later than 45 days after enactment.

SECTION 4. This act takes effect immediately.

Amendment No. 36-380/June 12, 2025/CBM