

COMMITTEE ON HEALTH, HOSPITALS AND HUMAN SERVICES

04/22/2025-REPORTED OUT TO THE COMMITTEE ON RULES AND JUDICIARY

BILL NO. 36-0035

Thirty-Sixth Legislature of the Virgin Islands

February 27, 2025

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: Senators Novelle E. Francis, Jr., and Kurt A. Vialet
Co-sponsors Marise C. James, Hubert L. Frederick, Ray Fonseca,
Angel L. Bolques, Jr., Clifford A. Joseph, Sr., Avery L. Lewis and
Milton E. Potter

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 the following
11 part 5:

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

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

4 **§ 5- 492 Definitions**

5 In this part:

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

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

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

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

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

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

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

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

4 (9) “Internal Revenue Code” means the Internal Revenue Code of 1986, Public Law
5 99-514, 26 U.S.C. §1 *et seq.*..

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

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

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

13 (A) education;

14 (B) housing;

15 (C) transporation;

16 (D) employment training and support;

17 (E) assistive technology and personal support services;

18 (F) health, prevention and wellness;

19 (G) financial management and administrative services;

20 (H) legal fees;

21 (I) expenses for oversight and monitoring;

22 (J) funeral and burial expenses;

23 (K) expenses that maintaining or improving health, independency or quality of
24 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
ility 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 used 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 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

1 Government of the Virgin Islands or any special, emergency or temporary fund of the
2 Government of the Virgin Islands.

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

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

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

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

19 (h) The Commissioner of Finance, or the Commissioner's designee, shall serve as the
20 trustee of the Program. However, on behalf of the Program, the Department may contract with
21 one or more persons or legal entities to serve as investment managers, program managers or
22 trustee. If the Department contracts with investment managers, program managers or a trustees
23 to fulfill the objectives of the Program, the investment managers, program managers or trustees

1 shall work with the Department to provide a program to develop investment portfolios and to
2 supervise investments and investment programs.

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

6 (1) to provide all or part of the program to beneficiaries residing in the Virgin
7 Islands;

8 (2) to engage in joint efforts to establish and maintain ABLE savings programs.

9 **§ 5-494. Department Powers and Duties**

10 The Department has the powers to:

11 (1) administer the Program and the Fund;

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

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

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

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

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

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

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

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

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

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

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

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

15 **§ 5-495. Operating and Administrative Costs**

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

20 **§ 5-496. Interdepartmental Cooperation**

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

1 **§ 5-497. ABLE Savings Accounts**

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

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

9 (1) a parent or guardian;
10 (2) a person or legal entity designated in writing by the parent or guardian;
11 (3) a trustee of a trust for which the eligible individual is a beneficiary;
12 (4) for an eligible individual receiving benefits based on blindness or a disability
13 under Title II of the Social Security Act, 49 Stat. 620, 42 U.S.C. § 401, or Title XVI of
14 the Social Security Act, 42 U.S.C. § 1381, the representative payee for those benefits; or
15 (5) any other person or entity authorized under section 529A of the Internal
16 Revenue Code with signature authority over the account

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

20 **§ 5-498. Nonqualified Withdrawals**

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

1 (b) The Department may collect administrative fees or charges for costs upon a

2 nonqualified withdrawal or termination and deduct the fee from the amount otherwise payable.

3 If there is a nonqualified withdrawal, and the amount withdrawn includes earnings on the

4 contributions to the account or contributions to the account that are eligible to be deducted from

5 Virgin Islands income tax for the tax year in which the contributions were made, the amount of

6 earnings and deductible contributions are subject to taxation as income under the laws of the

7 Virgin Islands.

8 (c) The Department may close an account and return any remaining funds in the

9 account as a nonqualified withdrawal in order to comply with federal law or if the Department,

10 in its sole discretion, determines that termination is in the best interest of the Program or the

11 designated beneficiary. Any person aggrieved by a determination to terminate an account may

12 file an administrative appeal with the Department not later than 30 days after the mailing date

13 of the termination notice. A final resolution of the administrative appeal is the final decision of

14 the Commissioner of Finance and the aggrieved person may appeal to the Superior Court of

15 the Virgin Islands. The appeal must be filed not later than 30 days after the mailing date of the

16 final decision of the Commissioner.

17 **§ 5-499. Treatment of Accounts**

18 (a) An account is not subject to attachment, levy or execution by any creditor of a

19 contributor, account owner or designated beneficiary and may not be used as security for a loan.

20 (b) Amounts contributed to an account, increases in the value of the account and

21 qualified withdrawals from the account may not be used in calculating the personal assets of a

22 designated beneficiary or an account owner in order to determine eligibility for disability,

23 medical assistance, or other health benefits conferred by the Government of the Virgin Islands.

1 (c) Amounts contributed to an account and increases in the value of the account may

2 not be used in calculating personal asset contributions for determining eligibility or need to

3 qualify for student loan programs, student grant programs, or other student aid programs

4 administered by a territorial agency, except as otherwise may be provided by federal law.

5 (d) Unless prohibited by federal law, upon the death of a designated beneficiary,

6 proceeds from an account may be transferred to the estate of a designated beneficiary, or to an

7 account for another eligible individual specified by the designated beneficiary or the estate of

8 the designated beneficiary. An agency or instrumentality of the Government of the Virgin

9 Islands may not seek payment under section 529A(f) of the Internal Revenue Code from the

10 account or its proceeds for benefits provided to a designated beneficiary.

11 **§ 5-500. Exemptions**

12 The Program and accounts are exempt from any statute regulating securities. The

13 property of the Program and the earnings from the Program are exempt from all taxation by the

14 Government of the Virgin Islands. Contributions made to an account, any increase in the value

15 of those contributions, the retention or transfer during life or as a result of death of any legal

16 interest in an account, and payment of qualified disability expenses of eligible individuals from

17 an account, are exempt from all taxation by the Government of the Virgin Islands.

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

19 **BILL SUMMARY**

20 This bill allows individuals with disabilities to save without fear of losing their federal

21 benefits. The Virgin Islands Program will be maintained by the Department of Finance as

22 trustee. In accordance with the Federal ABLE Act, the Department of Finance shall establish

23 and maintain a savings program to allow ABLE savings accounts to be opened for eligible

24 individuals to benefit from the tax incentives provided under the Federal ABLE Act. An ABLE

- 1 savings program established by the Department of Finance must be maintained in a manner
- 2 that ensures the Program's status as a qualified ABLE program.
- 3 **BR25-0379/February 24, 2025/CBM**