



THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE

Charlotte Amalie, V.I. 00802
340-774-0001

March 23, 2016

VIA MESSENGER

The Honorable Neville James
President
Thirty First Legislature of the Virgin Islands
Capitol Building
St. Thomas, VI 00802

Re: Governor's Action on Bills numbered 31-0037, 31-0041, 31-0084, 31-0108, 31-0114, 31-0151, 31-0157, 31-0159, 31-0163, 31-0166, 31-0171, 31-0179, 31-0188, 31-0226, 31-0236, 31-0237, 31-0260, and 31-0302.

Dear Mr. President:

I write to advise you that, pursuant to Section 9(d) of the Revised Organic Act of the Virgin Islands of 1954 as amended, I have today acted on Bills numbered 31-0037, 31-0041, 31-0084, 31-0108, 31-0114, 31-0115, 31-0151, 31-0157, 31-0159, 31-0163, 31-0166, 31-0171, 31-0179, 31-0188, 31-0226, 31-0236, 31-0237, 31-0260, and 31-0302.

I have approved Bill No. 31-0037, an act amending 14 VIC § 2203 relating to aggravated identity theft making the theft of a minor's identity an aggravated offense, and increasing the penalties for aggravated identity theft. This measure is timely and necessary to deter individuals who prey upon and take advantage of the most vulnerable in our community—the elderly, dependent adults, and minors.

I have approved Bill No. 31-0041, an act amending 14 VIC §§ 1083 and 1084 to increase the threshold for grand larceny to five hundred dollars (\$500.00) and to require mandatory restitution for a conviction of grand larceny and/or petit larceny. This measure follows the trend of many other jurisdictions in increasing their statutory threshold for grand larceny, and further permits the mandatory restitution for convictions.

I have approved Bill No. 31-0084, an act amending 20 VIC §§ 494 and 512 pertaining to speeding and setting double fines for speeding in a work zone. Many jurisdictions are doubling fines for speeding in work zones, endangering employees. I am hopeful the new law will deter individuals from speeding in work zones where they may cause serious injury or death to an employee working on our roads and thoroughfares.

I have approved Bill No. 31-0108, an act amending 20 VIC § 334(c), which would make it unlawful to place a license plate on the dashboard or the rear window of an automobile except for temporary dealer plates.

I have approved Bill No. 31-0114; however, I have **line item vetoed Section 1** of the bill which reprograms funds from Act No. 7453 to all the Department of Public Works to construct steel roofing structures in the public parks located in Estate Profit and Estate Grove Place. While it is important to provide safe environments for our youth and for families, constructing safer parks is essential to such a mandate, the reprogramming of those funds will have a detrimental effect on our Virgin Islands Energy Office. The funding the measure seeks to reprogram was earmarked for energy conservation initiatives. However, if the funds are reprogrammed, the Energy Office would be unable to meet its financial obligations to their Energy Service Companies who have already performed investment grade audits at local agencies. Therefore, I must line item veto this section.

I have also **line item vetoed Section 9** of the bill which amends the Casino Control Act to allow the Casino Control Commission to waive certain room requirements of a hotel in the enterprise zone.

Let's be clear; section 9 of the bill pretends to waive the completion of the room requirements for the casino to open at Caravelle Hotel, plain and simple. I met with the owner of that entity upon the request of a member of the legislature. In the meeting we all discussed and agreed that while the entity could attain the designation of "casino licensee" an operating certificate to open the casino would not occur until all of the hotel construction requirements were complete.

Following current law, the owner of the gaming establishment would then make a real investment in our economy, construction jobs, painters, masons, electricians, purchasing building materials, etc. before extracting dollars from gambling patrons. Under the proposed section of the bill, the sponsor is seeking to allow the casino commission the authority to waive the hotel requirement and proceed with opening the casino. This is very unfair to the community and a change of the rules in the middle of the game.

Let the owner of the hotel complete the necessary investments in order to open the doors of the casino. To do otherwise is have the gambling patrons build the rooms and spaces. That is not the purpose of the Casino Control Act's requirement that hotels invest and have a total of 75 rooms before they could operate as a casino. Moreover, the section does not provide any criteria or guidance on how the Casino Control Commission would evaluate a request for such a waiver, and it leaves unfettered discretion to the Casino Control Commission members which could lead to subjective and inconsistent approval of waivers. For these reasons, I have to line item veto this section.

I have approved Bill No. 31-0151, an act amending Title 2, Chapter 2 of the Virgin Islands Code to require the executive branch to submit, along with its annual budget, a certified statement of federal grants and other external funding. This bill is a well-intentioned effort to implement accountability and reporting measures, so that the funding authority is fully informed of federal

monies to the agencies and the territory. It will also improve information-sharing regarding actual funding available for government programs and services.

I have approved Bill No. 31-0157, an act amending 20 VIC § 501(f) to provide that all monies collected pursuant to subsection (f) be disbursed, one half to the District Public Road Fund for the repair of roads and one half to the Peace Officer Training Fund for police training. This measure will bring additional resources to the Department of Public Works and the Virgin Islands Police Department so that they may achieve their mission.

I have approved Bill No. 31-0159, an act amending Title 14, Chapter 113 of the Virgin Islands Code adding a new section relating to persons committing crimes while wearing body armor. By creating a felony offense for such conduct, there may be a deterrent effect necessary to ensure the continued safety of the community and our law enforcement officers.

I have approved Bill No. 31-0163, an act amending 23 VIC § 125 relating to the penalty for damaging public streets, roads or places. By increasing the penalties, the measure would bring additional revenue into the treasury. Moreover, the bill places the liability for damages to the public streets, roads or places on heavy equipment operators rather than place that burden on the Government. In essence, the measure appropriately places the responsibility on the violator.

I have approved Bill No. 31-0166, an act amending Title 19, Chapter 37 of the Virgin Islands Code to require the Department of Health, through the local registrar as designated pursuant to 19 VIC § 803, to compile a report of all death certificates on a biannual basis to ensure that various exemptions are applicable to deceased persons do not continued beyond their demise. To the extent that there are those in our community who would exhibit dishonest behavior by improperly utilizing exemptions which would cease upon an individual's death in order to defraud others.

I have approved Bill No. 31-0171, an act authorizing viNGN to transfer the Ditch Witch underground construction equipment to the Department of Public Works.

I have approved Bill No. 31-0179, an act amending Title 3, Virgin Islands Code, § 531 relating to the implementation of a statute of limitations to file an appeal to the Public Employees' Relations Board for discrimination. Currently, the Virgin Islands is among the minority of jurisdictions that do not provide for a statute of limitations for employment discrimination. This has proven difficult. Often cases will not be filed for two to three years after the alleged discrimination, and, as Justice White pointed out, by that time records may have been discarded; memories may have faded as to the relevant facts of the case; and witnesses may have changed jobs or even relocated back to the mainland—making it difficult to locate them. This Bill is one simple solution to a real problem. Employees that alleged they have been discriminated against deserve to be heard, but the Government should have a right to expect that it may conduct its business without the perpetual possibility of having to fight stale claims that often extend back many years.

I have approved Bill No. 31-0188, an act amending Title 19, Chapter 58 to establish a Virgin Islands Blood Donation Program. It appears that the bill's intent is to increase and enhance the blood donation efforts in the territory by providing periodic leave to government employees to donate blood.

I am honored to have approved Bill No. 31-0236, an act amending Title 24, Chapter 1 to incrementally increase the minimum wage in the US Virgin Islands to \$10.50 per hour by January 1, 2018, and further to appoint members to the Virgin Islands Wage Board. The bill would further increase the base wage of tip service workers from 30 percent to 40 percent of the minimum wage. I understand that the Chamber of Commerce met with the Legislature and while they agreed to an increase, the Legislature increased the tip service workers amount beyond their purported agreement with the Chamber of Commerce. This is a good bill for the territory and it is consistent with my administration's efforts to increase pay to public employees. I sincerely commend the sponsors of this legislation.

I have approved Bill No. 31-0302, an act appropriating funds to the Department of Public Works for the construction of a mausoleum to house the remains of the late Governor Juan Francisco Luis.

I have vetoed Bill No. 31-0226, amending Title 9, Chapter 11 of the Virgin Islands Code to add various provisions that would alter the common law construction of multiple person accounts and what occurs after the death of one joint account holder.

It should be noted that the 29th Legislature, through Act No. 7150 (2010) previously—and without much hearing or consideration—passed a comprehensive Uniform Probate and Fiduciary Code that substantially altered Title 15 of the Virgin Islands Code. After enactment, the legal community voiced concerns and, after hearings, the Legislature fully repealed the Act, through Act No. 7254 (2011), when it was revealed that the full import of Act 7150 was to deprive persons with little assets from their greatest source of wealth to distribute (i.e. life insurance). It was also revealed that the Act would have placed into probate other sources of property that was not previously required to go through the probate process. Like Act 7150, this measure is again another attempt to insert one of the most controversial provisions of Act 7150 into law by targeting life insurance proceeds and targeting joint bank accounts which are not in question.

The bill is an attempt to get through the back door what was previously rejected through Act 7254 when the 29th Legislature realized the full devastating impact of the Probate Code that was hastily enacted and approved. Persons with little means usually rely on life insurance proceeds to beneficiaries to take care of their survivors and on joining accounts to manage their household needs before and after death. Why are we complicating this well-established process by requiring life insurance proceeds be entered into the probate process? Under this circumstance, a good portion of the death benefit will ultimately be withered away or transferred to the pockets of attorneys and not be there for the needs of families. The issues with joint accounts have long been resolved in the common law and through the Uniform Commercial Code affecting banks and their responsibilities, as well as case precedents. This is not an issue that is unsettled or an issue of

confusion in the banking community necessitating legislative intrusion or action. Under these circumstances I can do nothing more than veto this bill.

I have vetoed Bill No. 31-0237, an act amending Title 19, Virgin Islands Code, Chapter 16 adding a new subchapter creating the Virgin Islands Caregiver Advice, Record and Enabling Act establishing the requirement for all Virgin Islands hospitals to allow a patient an opportunity to designate a caregiver upon entry into the hospital.

Section 252 states that the purpose of the subchapter is to facilitate the discharge of patients who require long-term caregiver services, provide notice to, and involve caregivers in the hospitals discharge plans for the patient, and assist patients and their caregivers by providing discharge plans that effectively explain and instruct all after-care tasks necessary to maintain the patient's ability to reside at home.

It is unclear the real purpose of this measure as most of the issues it addresses are already being done by the Territory's hospitals. The measure also appears to unnecessarily intertwine caregivers with a patient's ability to set health care directives. In fact section 257 of the measure provides that nothing in the bill may be construed to affect the rights of an agent operating under a valid power-of-attorney or health care directive. If that is the case, why this bill? This measure creates additional bureaucratic layers to an already convoluted health care system.

More profoundly though is that this the measure mandates that full time government employees, including personnel of authorities, independent boards, commissions, agencies, and other instrumentalities of the Government of the Virgin Islands, who are caregivers as defined in 19 VIC § 253(c) be given four (4) hours of administrative leave with pay each month for the purpose of performing their caregiver duties. First does the senate realize that it is granting every public employee who state they are a caregiver six (6) addition days off with pay per year? Does the senate recognize that the language contained in this bill does not distinguish between caregiving of a parent, sibling, spouse or child whether they are ill or not? See section 253(c) of the bill which defines who qualify as caregivers.

I have served as a caregiver for my mother for over six (6) years, I am intimately familiar with the importance of providing responsible care to individuals in need of long-term caregiving services and the level of responsibility required on the part of the caregiver. I am also a member of the caregivers support group sponsored by the Department of Human Services. This measure should be revisited; it is a giveaway of paid leave and invites abuse even by those who are not caregivers in the true meaning of the term.

I have vetoed Bill No. 31-0260, an act amending Title 5, VIC §§ 4201 and 4203 to permit the collection of a DNA sample from any person charged with an applicable offense. The Attorney General for the Virgin Islands has advised me that after further consideration and deliberation of the measure, he has reconsidered his position. While the Attorney General still supports the collection of DNA samples, he requests that it be restricted to buccal cell collection (saliva swabbing). I agree with the Attorney General. However, this bill as written runs afoul of the

Fourth Amendment, and in its entirety, does not comport with the standard approved in *Maryland v. King*, 133 S. Ct. 1958 (2013).

While the bill references *Maryland v. King* as support, it fails to acknowledge that the U.S. Supreme Court's decision was expressly limited to the factual considerations in the case before it, i.e. use of a cheek swab along with the statutory safeguards against government misuse of the information collected. The existing statute for convicted persons is simply not amenable to application to arrested, but not convicted, persons through the simple barebones amendments in the bill. Without additional work, this measure would not pass constitutional muster. I invite the sponsors of this measure to meet with the Attorney General and me to further discuss amendments to the statute which will comport with the standards approved by the U.S. Supreme Court.

As always, thank you for your continued work on behalf of the people of the Virgin Islands.

Sincerely,



Kenneth E. Mapp
Governor

Enclosures