

24101503D

SENATE BILL NO. 140

Offered January 10, 2024

Prefiled January 5, 2024

A BILL to amend and reenact §§ 2.2-3705.5, 2.2-3711, as it is currently effective and as it may become effective, and 2.2-4002 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-283.9, relating to the Fetal and Infant Mortality Review Team established; penalty; report.

Patron—Carroll Foy

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.5, 2.2-3711, as it is currently effective and as it may become effective, and 2.2-4002 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-283.9 as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be disclosed. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants; information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1; information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions that identifies any practitioner who may be, or who is actually, impaired to the extent that disclosure is prohibited by § 54.1-2517; and information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such information that are in the possession of the Prescription Monitoring Program (Program) pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

3. Reports, documentary evidence, and other information as specified in §§ 51.5-122 and 51.5-184 and Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and information and statistical registries required to be kept confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Education in connection with an active investigation of an applicant or licensee pursuant to Chapter 14.1 (§ 22.1-289.02 et seq.) of Title 22.1; other correspondence and information furnished in confidence to the

59 Department of Social Services in connection with an active investigation of an applicant or licensee pursuant
60 to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and information furnished to
61 the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§
62 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However,
63 nothing in this subdivision shall prevent the disclosure of information from the records of completed
64 investigations in a form that does not reveal the identity of complainants, persons supplying information, or
65 other individuals involved in the investigation.

66 5. Information collected for the designation and verification of trauma centers and other specialty care
67 centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§
68 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

69 6. Reports and court documents relating to involuntary admission required to be kept confidential
70 pursuant to § 37.2-818.

71 7. Information acquired (i) during a review of any child death conducted by the State Child Fatality
72 Review Team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the
73 extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any death conducted
74 by a family violence fatality review team to the extent that such information is made confidential by § 32.1-
75 283.3; (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent
76 made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent that such
77 information is made confidential by § 32.1-283.6; (iv) by a local or regional overdose fatality review team to
78 the extent that such information is made confidential by § 32.1-283.7; (v) during a review of any death
79 conducted by the Maternal Mortality Review Team to the extent that such information is made confidential
80 by § 32.1-283.8 or the *Fetal and Infant Mortality Review Team to the extent that such information is made*
81 *confidential by § 32.1-283.9*; or (vi) during a review of any death conducted by the Developmental
82 Disabilities Mortality Review Committee to the extent that such information is made confidential by § 37.2-
83 314.1.

84 8. Patient level data collected by the Board of Health and not yet processed, verified, and released,
85 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health
86 has contracted pursuant to § 32.1-276.4.

87 9. Information relating to a grant application, or accompanying a grant application, submitted to the
88 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter
89 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual
90 patients or (b) proprietary business or research-related information produced or collected by the applicant in
91 the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly
92 issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be
93 harmful to the competitive position of the applicant.

94 10. Any information copied, recorded, or received by the Commissioner of Health in the course of an
95 examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§ 32.1-
96 137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer
97 or other recordings.

98 11. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept
99 confidential pursuant to § 38.2-5002.2.

100 12. Information held by the State Health Commissioner relating to the health of any person subject to an
101 order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of
102 Title 32.1. However, nothing in this subdivision shall be construed to prevent the disclosure of statistical
103 summaries, abstracts, or other information in aggregate form.

104 13. The names and addresses or other contact information of persons receiving transportation services
105 from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42
106 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under §
107 63.2-600.

108 14. Information held by certain health care committees and entities that may be withheld from discovery
109 as privileged communications pursuant to § 8.01-581.17.

110 15. Data and information specified in § 37.2-308.01 relating to proceedings provided for in Article 16 (§
111 16.1-335 et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

112 16. Records of and information held by the Smartchart Network Program required to be kept confidential
113 pursuant to § 32.1-372.

114 **§ 2.2-3711. (Effective until date pursuant to Acts 2023, cc. 756 and 778, cl. 5) Closed meetings**
115 **authorized for certain limited purposes.**

116 A. Public bodies may hold closed meetings only for the following purposes:

117 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
118 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
119 officers, appointees, or employees of any public body; and evaluation of performance of departments or

120 schools of public institutions of higher education where such evaluation will necessarily involve discussion of
 121 the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting
 122 in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some
 123 student and the student involved in the matter is present, provided the teacher makes a written request to be
 124 present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be
 125 construed to authorize a closed meeting by a local governing body or an elected school board to discuss
 126 compensation matters that affect the membership of such body or board collectively.

127 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
 128 involve the disclosure of information contained in a scholastic record concerning any student of any public
 129 institution of higher education in the Commonwealth or any state school system. However, any such student,
 130 legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be
 131 present during the taking of testimony or presentation of evidence at a closed meeting, if such student,
 132 parents, or guardians so request in writing and such request is submitted to the presiding officer of the
 133 appropriate board.

134 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition
 135 of publicly held real property, where discussion in an open meeting would adversely affect the bargaining
 136 position or negotiating strategy of the public body.

137 4. The protection of the privacy of individuals in personal matters not related to public business.

138 5. Discussion concerning a prospective business or industry or the expansion of an existing business or
 139 industry where no previous announcement has been made of the business' or industry's interest in locating or
 140 expanding its facilities in the community.

141 6. Discussion or consideration of the investment of public funds where competition or bargaining is
 142 involved, where, if made public initially, the financial interest of the governmental unit would be adversely
 143 affected.

144 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or
 145 probable litigation, where such consultation or briefing in open meeting would adversely affect the
 146 negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable litigation"
 147 means litigation that has been specifically threatened or on which the public body or its legal counsel has a
 148 reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall
 149 be construed to permit the closure of a meeting merely because an attorney representing the public body is in
 150 attendance or is consulted on a matter.

151 8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters
 152 requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to
 153 permit the closure of a meeting merely because an attorney representing the public body is in attendance or is
 154 consulted on a matter.

155 9. Discussion or consideration by governing boards of public institutions of higher education of matters
 156 relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or work to be
 157 performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and
 158 contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public
 159 institution of higher education in the Commonwealth shall be subject to public disclosure upon written
 160 request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"
 161 means any government other than the United States government or the government of a state or a political
 162 subdivision thereof, (ii) "foreign legal entity" means any legal entity (a) created under the laws of the United
 163 States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by
 164 foreign governments or foreign persons or if a majority of the membership of any such entity is composed of
 165 foreign persons or foreign legal entities or (b) created under the laws of a foreign government, and (iii)
 166 "foreign person" means any individual who is not a citizen or national of the United States or a trust territory
 167 or protectorate thereof.

168 10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the
 169 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, the Fort Monroe Authority, and
 170 The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private
 171 sources.

172 11. Discussion or consideration of honorary degrees or special awards.

173 12. Discussion or consideration of tests, examinations, or other information used, administered, or
 174 prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

175 13. Discussion, consideration, or review by the appropriate House or Senate committees of possible
 176 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed
 177 by the member, provided the member may request in writing that the committee meeting not be conducted in
 178 a closed meeting.

179 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to
 180 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in

181 open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the
182 governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both.
183 All discussions with the applicant or its representatives may be conducted in a closed meeting.

184 15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
185 activity and estimating general and nongeneral fund revenues.

186 16. Discussion or consideration of medical and mental health records subject to the exclusion in
187 subdivision 1 of § 2.2-3705.5.

188 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
189 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
190 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
191 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3 and
192 subdivision 11 of § 2.2-3705.7.

193 18. Those portions of meetings in which the State Board of Local and Regional Jails discusses or discloses
194 the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
195 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension
196 of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary
197 services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

198 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity
199 threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency
200 service officials concerning actions taken to respond to such matters or a related threat to public safety;
201 discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2, where discussion in
202 an open meeting would jeopardize the safety of any person or the security of any facility, building, structure,
203 information technology system, or software program; or discussion of reports or plans related to the security
204 of any governmental facility, building or structure, or the safety of persons using such facility, building or
205 structure.

206 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of
207 any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of
208 a trust established by one or more local public bodies to invest funds for postemployment benefits other than
209 pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of
210 visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College
211 Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or
212 other ownership interest in an entity, where such security or ownership interest is not traded on a
213 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential
214 analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or
215 a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement
216 system, a local finance board or board of trustees, or the Virginia College Savings Plan under a promise of
217 confidentiality, of the future value of such ownership interest or the future financial performance of the
218 entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed
219 of by the retirement system, a local finance board or board of trustees, the board of visitors of the University
220 of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent
221 the disclosure of information relating to the identity of any investment held, the amount invested or the
222 present value of such investment.

223 21. Those portions of meetings in which individual child death cases are discussed by the State Child
224 Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which individual
225 child death cases are discussed by a regional or local child fatality review team established pursuant to §
226 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence
227 fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual
228 adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5,
229 those portions of meetings in which individual adult death cases are discussed by a local or regional adult
230 fatality review team established pursuant to § 32.1-283.6, those portions of meetings in which individual
231 death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7, those
232 portions of meetings in which individual maternal death cases are discussed by the Maternal Mortality
233 Review Team pursuant to § 32.1-283.8, *those portions of meetings in which individual fetal and infant death*
234 *cases are discussed by the Fetal and Infant Mortality Review Team pursuant to § 32.1-283.9*, and those
235 portions of meetings in which individual death cases of persons with developmental disabilities are discussed
236 by the Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-314.1.

237 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern
238 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons
239 to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia
240 Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-
241 related information pertaining to the operations of the University of Virginia Medical Center or Eastern

242 Virginia Medical School, as the case may be, including business development or marketing strategies and
 243 activities with existing or future joint venturers, partners, or other parties with whom the University of
 244 Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any
 245 arrangement for the delivery of health care, if disclosure of such information would adversely affect the
 246 competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

247 23. Discussion or consideration by the Virginia Commonwealth University Health System Authority or
 248 the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or
 249 disposition by the Authority of real property, equipment, or technology software or hardware and related
 250 goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of
 251 the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and
 252 contracts for services or work to be performed by the Authority; marketing or operational strategies plans of
 253 the Authority where disclosure of such strategies or plans would adversely affect the competitive position of
 254 the Authority; and members of the Authority's medical and teaching staffs and qualifications for
 255 appointments thereto.

256 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the
 257 Department of Health Professions to the extent such discussions identify any practitioner who may be, or who
 258 actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

259 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal
 260 information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf
 261 of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or
 262 savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.

263 26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee
 264 created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as defined in § 56-
 265 484.12, related to the provision of wireless E-911 service.

266 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
 267 Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy
 268 conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or
 269 meetings of health regulatory boards or conference committees of such boards to consider settlement
 270 proposals in pending disciplinary actions or modifications to previously issued board orders as requested by
 271 either of the parties.

272 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-3705.6
 273 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-
 274 1800, or any independent review panel appointed to review information and advise the responsible public
 275 entity concerning such records.

276 29. Discussion of the award of a public contract involving the expenditure of public funds, including
 277 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in
 278 an open session would adversely affect the bargaining position or negotiating strategy of the public body.

279 30. Discussion or consideration of grant or loan application information subject to the exclusion in
 280 subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

281 31. Discussion or consideration by the Commitment Review Committee of information subject to the
 282 exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent
 283 predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

284 32. Discussion or consideration of confidential proprietary information and trade secrets developed and
 285 held by a local public body providing certain telecommunication services or cable television services and
 286 subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
 287 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

288 33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
 289 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets
 290 subject to the exclusion in subdivision 19 of § 2.2-3705.6.

291 34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security
 292 matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1.

293 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
 294 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative files.

295 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
 296 information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and meetings
 297 of the Committee to deliberate concerning the annual maximum scholarship award, review and consider
 298 scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover
 299 scholarship awards.

300 37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in
 301 subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port
 302 Authority.

303 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting

304 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by
305 any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan
306 acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee
307 appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

308 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-3705.6
309 related to economic development.

310 40. Discussion or consideration by the Board of Education of information relating to the denial,
311 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

312 41. Those portions of meetings of the Virginia Military Advisory Council or any commission created by
313 executive order for the purpose of studying and making recommendations regarding preventing closure or
314 realignment of federal military and national security installations and facilities located in Virginia and
315 relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a
316 local governing body, during which there is discussion of information subject to the exclusion in subdivision
317 8 of § 2.2-3705.2.

318 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
319 information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable
320 information of donors.

321 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
322 information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information contained
323 in grant applications.

324 44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of
325 information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or charges for
326 the use of projects of, the sale of products of, or services rendered by the Authority and certain proprietary
327 information of a private entity provided to the Authority.

328 45. Discussion or consideration of personal and proprietary information related to the resource
329 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection
330 E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain
331 information that has been certified for release by the person who is the subject of the information or
332 transformed into a statistical or aggregate form that does not allow identification of the person who supplied,
333 or is the subject of, the information.

334 46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control
335 Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to investigations of
336 applicants for licenses and permits and of licensees and permittees.

337 47. Discussion or consideration of grant, loan, or investment application records subject to the exclusion
338 in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-2351 et seq.)
339 of Chapter 22.

340 48. Discussion or development of grant proposals by a regional council established pursuant to Article 26
341 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity
342 Board.

343 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response team
344 established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a
345 child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii) individual cases
346 involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to §§ 15.2-1627.5 and
347 63.2-1605.

348 50. Discussion or consideration by the Board of the Virginia Economic Development Partnership
349 Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the portions
350 of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33
351 of § 2.2-3705.7.

352 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development
353 Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and discuss information
354 received from the Virginia Employment Commission pursuant to subdivision C 2 of § 60.2-114 and the
355 Department of Workforce Development and Advancement pursuant to subsection B of § 2.2-2040.

356 52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership Authority (the
357 Authority), an advisory committee of the Authority, or any other entity designated by the Authority, of
358 information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

359 53. Deliberations of the Virginia Lottery Board conducted pursuant to § 58.1-4105 regarding the denial or
360 revocation of a license of a casino gaming operator, or the refusal to issue, suspension of, or revocation of
361 any license or permit related to casino gaming, and discussion, consideration, or review of matters related to
362 investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

363 54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007 regarding
364 the denial of, revocation of, suspension of, or refusal to renew any license or permit related to sports betting

365 and any discussion, consideration, or review of matters related to investigations excluded from mandatory
366 disclosure under subdivision 1 of § 2.2-3705.3.

367 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed
368 meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting
369 and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that
370 shall have its substance reasonably identified in the open meeting.

371 C. Public officers improperly selected due to the failure of the public body to comply with the other
372 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
373 obtain notice of the legal defect in their election.

374 D. Nothing in this section shall be construed to prevent the holding of conferences between two or more
375 public bodies, or their representatives, but these conferences shall be subject to the same procedures for
376 holding closed meetings as are applicable to any other public body.

377 E. This section shall not be construed to (i) require the disclosure of any contract between the Department
378 of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.)
379 of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial
380 Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial
381 revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies.
382 However, such business or industry shall be identified as a matter of public record at least 30 days prior to the
383 actual date of the board's authorization of the sale or issuance of such bonds.

384 **§ 2.2-3711. (Effective pursuant to Acts 2023, cc. 756 and 778, cl. 5) Closed meetings authorized for**
385 **certain limited purposes.**

386 A. Public bodies may hold closed meetings only for the following purposes:

387 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
388 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
389 officers, appointees, or employees of any public body; and evaluation of performance of departments or
390 schools of public institutions of higher education where such evaluation will necessarily involve discussion of
391 the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting
392 in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some
393 student and the student involved in the matter is present, provided that the teacher makes a written request to
394 be present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be
395 construed to authorize a closed meeting by a local governing body or an elected school board to discuss
396 compensation matters that affect the membership of such body or board collectively.

397 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
398 involve the disclosure of information contained in a scholastic record concerning any student of any public
399 institution of higher education in the Commonwealth or any state school system. However, any such student,
400 legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be
401 present during the taking of testimony or presentation of evidence at a closed meeting, if such student,
402 parents, or guardians so request in writing and such request is submitted to the presiding officer of the
403 appropriate board.

404 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition
405 of publicly held real property, where discussion in an open meeting would adversely affect the bargaining
406 position or negotiating strategy of the public body.

407 4. The protection of the privacy of individuals in personal matters not related to public business.

408 5. Discussion concerning a prospective business or industry or the expansion of an existing business or
409 industry where no previous announcement has been made of the business' or industry's interest in locating or
410 expanding its facilities in the community.

411 6. Discussion or consideration of the investment of public funds where competition or bargaining is
412 involved, where, if made public initially, the financial interest of the governmental unit would be adversely
413 affected.

414 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or
415 probable litigation, where such consultation or briefing in open meeting would adversely affect the
416 negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable litigation"
417 means litigation that has been specifically threatened or on which the public body or its legal counsel has a
418 reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall
419 be construed to permit the closure of a meeting merely because an attorney representing the public body is in
420 attendance or is consulted on a matter.

421 8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters
422 requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to
423 permit the closure of a meeting merely because an attorney representing the public body is in attendance or is
424 consulted on a matter.

425 9. Discussion or consideration by governing boards of public institutions of higher education of matters

426 relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or work to be
427 performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and
428 contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public
429 institution of higher education in the Commonwealth shall be subject to public disclosure upon written
430 request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"
431 means any government other than the United States government or the government of a state or a political
432 subdivision thereof, (ii) "foreign legal entity" means any legal entity (a) created under the laws of the United
433 States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by
434 foreign governments or foreign persons or if a majority of the membership of any such entity is composed of
435 foreign persons or foreign legal entities or (b) created under the laws of a foreign government, and (iii)
436 "foreign person" means any individual who is not a citizen or national of the United States or a trust territory
437 or protectorate thereof.

438 10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the
439 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, the Fort Monroe Authority, and
440 The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private
441 sources.

442 11. Discussion or consideration of honorary degrees or special awards.

443 12. Discussion or consideration of tests, examinations, or other information used, administered, or
444 prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

445 13. Discussion, consideration, or review by the appropriate House or Senate committees of possible
446 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed
447 by the member, provided that the member may request in writing that the committee meeting not be
448 conducted in a closed meeting.

449 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to
450 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in
451 open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the
452 governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both.
453 All discussions with the applicant or its representatives may be conducted in a closed meeting.

454 15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
455 activity and estimating general and nongeneral fund revenues.

456 16. Discussion or consideration of medical and mental health records subject to the exclusion in
457 subdivision 1 of § 2.2-3705.5.

458 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
459 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
460 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
461 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3 and
462 subdivision 11 of § 2.2-3705.7.

463 18. Those portions of meetings in which the State Board of Local and Regional Jails discusses or discloses
464 the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
465 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension
466 of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary
467 services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

468 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity
469 threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency
470 service officials concerning actions taken to respond to such matters or a related threat to public safety;
471 discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2, where discussion in
472 an open meeting would jeopardize the safety of any person or the security of any facility, building, structure,
473 information technology system, or software program; or discussion of reports or plans related to the security
474 of any governmental facility, building or structure, or the safety of persons using such facility, building or
475 structure.

476 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of
477 any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of
478 a trust established by one or more local public bodies to invest funds for postemployment benefits other than
479 pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of
480 visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College
481 Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or
482 other ownership interest in an entity, where such security or ownership interest is not traded on a
483 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential
484 analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or
485 a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement
486 system, a local finance board or board of trustees, or the Virginia College Savings Plan under a promise of

487 confidentiality, of the future value of such ownership interest or the future financial performance of the
 488 entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed
 489 of by the retirement system, a local finance board or board of trustees, the board of visitors of the University
 490 of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent
 491 the disclosure of information relating to the identity of any investment held, the amount invested or the
 492 present value of such investment.

493 21. Those portions of meetings in which individual child death cases are discussed by the State Child
 494 Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which individual
 495 child death cases are discussed by a regional or local child fatality review team established pursuant to §
 496 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence
 497 fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual
 498 adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5,
 499 those portions of meetings in which individual adult death cases are discussed by a local or regional adult
 500 fatality review team established pursuant to § 32.1-283.6, those portions of meetings in which individual
 501 death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7, those
 502 portions of meetings in which individual maternal death cases are discussed by the Maternal Mortality
 503 Review Team pursuant to § 32.1-283.8, *those portions of meetings in which individual fetal and infant death*
 504 *cases are discussed by the Fetal and Infant Mortality Review Team pursuant to 32.1-283.9*, and those
 505 portions of meetings in which individual death cases of persons with developmental disabilities are discussed
 506 by the Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-314.1.

507 22. Those portions of meetings of the board of visitors of the University of Virginia or Old Dominion
 508 University, as the case may be, and those portions of meetings of any persons to whom management
 509 responsibilities for the University of Virginia Medical Center or the Eastern Virginia Health Sciences Center
 510 at Old Dominion University, as the case may be, have been delegated, in which there is discussed proprietary,
 511 business-related information pertaining to the operations of the University of Virginia Medical Center or the
 512 Eastern Virginia Health Sciences Center at Old Dominion University, as the case may be, including business
 513 development or marketing strategies and activities with existing or future joint venturers, partners, or other
 514 parties with whom the University of Virginia Medical Center or the Eastern Virginia Health Sciences Center
 515 at Old Dominion University, as the case may be, has formed, or forms, any arrangement for the delivery of
 516 health care, if disclosure of such information would adversely affect the competitive position of the
 517 University of Virginia Medical Center or the Eastern Virginia Health Sciences Center at Old Dominion
 518 University, as the case may be.

519 23. Discussion or consideration by the Virginia Commonwealth University Health System Authority or
 520 the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or
 521 disposition by the Authority of real property, equipment, or technology software or hardware and related
 522 goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of
 523 the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and
 524 contracts for services or work to be performed by the Authority; marketing or operational strategies plans of
 525 the Authority where disclosure of such strategies or plans would adversely affect the competitive position of
 526 the Authority; and members of the Authority's medical and teaching staffs and qualifications for
 527 appointments thereto.

528 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the
 529 Department of Health Professions to the extent such discussions identify any practitioner who may be, or who
 530 actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

531 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal
 532 information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf
 533 of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or
 534 savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.

535 26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee
 536 created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as defined in § 56-
 537 484.12, related to the provision of wireless E-911 service.

538 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
 539 Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy
 540 conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or
 541 meetings of health regulatory boards or conference committees of such boards to consider settlement
 542 proposals in pending disciplinary actions or modifications to previously issued board orders as requested by
 543 either of the parties.

544 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-3705.6
 545 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-
 546 1800, or any independent review panel appointed to review information and advise the responsible public
 547 entity concerning such records.

548 29. Discussion of the award of a public contract involving the expenditure of public funds, including

549 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in
550 an open session would adversely affect the bargaining position or negotiating strategy of the public body.

551 30. Discussion or consideration of grant or loan application information subject to the exclusion in
552 subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

553 31. Discussion or consideration by the Commitment Review Committee of information subject to the
554 exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent
555 predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

556 32. Discussion or consideration of confidential proprietary information and trade secrets developed and
557 held by a local public body providing certain telecommunication services or cable television services and
558 subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
559 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

560 33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
561 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets
562 subject to the exclusion in subdivision 19 of § 2.2-3705.6.

563 34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security
564 matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1.

565 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
566 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative files.

567 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
568 information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and meetings
569 of the Committee to deliberate concerning the annual maximum scholarship award, review and consider
570 scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover
571 scholarship awards.

572 37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in
573 subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port
574 Authority.

575 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
576 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by
577 any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan
578 acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee
579 appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

580 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-3705.6
581 related to economic development.

582 40. Discussion or consideration by the Board of Education of information relating to the denial,
583 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

584 41. Those portions of meetings of the Virginia Military Advisory Council or any commission created by
585 executive order for the purpose of studying and making recommendations regarding preventing closure or
586 realignment of federal military and national security installations and facilities located in Virginia and
587 relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a
588 local governing body, during which there is discussion of information subject to the exclusion in subdivision
589 8 of § 2.2-3705.2.

590 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
591 information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable
592 information of donors.

593 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
594 information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information contained
595 in grant applications.

596 44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of
597 information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or charges for
598 the use of projects of, the sale of products of, or services rendered by the Authority and certain proprietary
599 information of a private entity provided to the Authority.

600 45. Discussion or consideration of personal and proprietary information related to the resource
601 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection
602 E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain
603 information that has been certified for release by the person who is the subject of the information or
604 transformed into a statistical or aggregate form that does not allow identification of the person who supplied,
605 or is the subject of, the information.

606 46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control
607 Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to investigations of
608 applicants for licenses and permits and of licensees and permittees.

609 47. Discussion or consideration of grant, loan, or investment application records subject to the exclusion

610 in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-2351 et seq.)
611 of Chapter 22.

612 48. Discussion or development of grant proposals by a regional council established pursuant to Article 26
613 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity
614 Board.

615 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response team
616 established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a
617 child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii) individual cases
618 involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to §§ 15.2-1627.5 and
619 63.2-1605.

620 50. Discussion or consideration by the Board of the Virginia Economic Development Partnership
621 Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the portions
622 of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33
623 of § 2.2-3705.7.

624 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development
625 Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and discuss information
626 received from the Virginia Employment Commission pursuant to subdivision C 2 of § 60.2-114 and the
627 Department of Workforce Development and Advancement pursuant to subsection B of § 2.2-2040.

628 52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership Authority (the
629 Authority), an advisory committee of the Authority, or any other entity designated by the Authority, of
630 information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

631 53. Deliberations of the Virginia Lottery Board conducted pursuant to § 58.1-4105 regarding the denial or
632 revocation of a license of a casino gaming operator, or the refusal to issue, suspension of, or revocation of
633 any license or permit related to casino gaming, and discussion, consideration, or review of matters related to
634 investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

635 54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007 regarding
636 the denial of, revocation of, suspension of, or refusal to renew any license or permit related to sports betting
637 and any discussion, consideration, or review of matters related to investigations excluded from mandatory
638 disclosure under subdivision 1 of § 2.2-3705.3.

639 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed
640 meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting
641 and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that
642 shall have its substance reasonably identified in the open meeting.

643 C. Public officers improperly selected due to the failure of the public body to comply with the other
644 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
645 obtain notice of the legal defect in their election.

646 D. Nothing in this section shall be construed to prevent the holding of conferences between two or more
647 public bodies, or their representatives, but these conferences shall be subject to the same procedures for
648 holding closed meetings as are applicable to any other public body.

649 E. This section shall not be construed to (i) require the disclosure of any contract between the Department
650 of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.)
651 of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial
652 Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial
653 revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies.
654 However, such business or industry shall be identified as a matter of public record at least 30 days prior to the
655 actual date of the board's authorization of the sale or issuance of such bonds.

656 **§ 2.2-4002. Exemptions from chapter generally.**

657 A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the
658 following agencies shall be exempted from the provisions of this chapter, except to the extent that they are
659 specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031:

660 1. The General Assembly.

661 2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted
662 any of the powers of a court of record.

663 3. The Department of Wildlife Resources in promulgating regulations regarding the management of
664 wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§
665 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

666 4. The Virginia Housing Development Authority.

667 5. Municipal corporations, counties, and all local, regional, or multijurisdictional authorities created under
668 this Code, including those with federal authorities.

669 6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031, such
670 educational institutions shall be exempt from the publication requirements only with respect to regulations

- 671 that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion, and disciplining of faculty and
672 employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.
- 673 7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii)
674 classification and allocation of milk, computation of sales, and shrinkage, and (iii) class prices for producers'
675 milk, time and method of payment, butterfat testing, and differential.
- 676 8. The Virginia Resources Authority.
- 677 9. Agencies expressly exempted by any other provision of this Code.
- 678 10. The Department of General Services in promulgating standards for the inspection of buildings for
679 asbestos pursuant to § 2.2-1164.
- 680 11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines
681 pursuant to § 23.1-207.
- 682 12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to
683 subsection B of § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.
- 684 13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer
685 Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601, subsection B of § 3.2-
686 3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206, and subsection A of § 3.2-
687 5406.
- 688 14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines,
689 and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists
690 pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.
- 691 15. The Commissioner of the Department of Veterans Services in adopting regulations pursuant to § 2.2-
692 2001.3.
- 693 16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2
694 .
- 695 17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in
696 matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse
697 racing at race meetings licensed by the Commission.
- 698 18. The Virginia Small Business Financing Authority.
- 699 19. The Virginia Economic Development Partnership Authority.
- 700 20. The Board of Agriculture and Consumer Services in adopting, amending, or repealing regulations
701 pursuant to subsection A (ii) of § 59.1-156.
- 702 21. The Insurance Continuing Education Board pursuant to § 38.2-1867.
- 703 22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of
704 Health pursuant to § 32.1-35 and in adopting, amending, or repealing regulations pursuant to subsection C of
705 § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food
706 service.
- 707 23. The Board of Pharmacy when specifying special subject requirements for continuing education for
708 pharmacists pursuant to § 54.1-3314.1.
- 709 24. The Virginia Department of Veterans Services when promulgating rules and regulations pursuant to §
710 58.1-3219.7 or 58.1-3219.11.
- 711 25. The Virginia Department of Criminal Justice Services when developing, issuing, or revising any
712 training standards established by the Criminal Justice Services Board under § 9.1-102, provided such actions
713 are authorized by the Governor in the interest of public safety.
- 714 B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:
715 1. Money or damage claims against the Commonwealth or agencies thereof.
- 716 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
- 717 3. The location, design, specifications, or construction of public buildings or other facilities.
- 718 4. Grants of state or federal funds or property.
- 719 5. The chartering of corporations.
- 720 6. Customary military, militia, naval, or police functions.
- 721 7. The selection, tenure, dismissal, direction, or control of any officer or employee of an agency of the
722 Commonwealth.
- 723 8. The conduct of elections or eligibility to vote.
- 724 9. Inmates of prisons or other such facilities or parolees therefrom.
- 725 10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other state
726 institutions as well as the treatment, supervision, or discharge of such persons.
- 727 11. Traffic signs, markers, or control devices.
- 728 12. Instructions for application or renewal of a license, certificate, or registration required by law.
- 729 13. Content of, or rules for the conduct of, any examination required by law.
- 730 14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.).
- 731 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with

732 duly adopted regulations of the Virginia Lottery Board, and provided that such regulations are published and
733 posted.

734 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
735 finfish, or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

736 17. Any operating procedures for review of child deaths developed by the State Child Fatality Review
737 Team pursuant to § 32.1-283.1, any operating procedures for review of adult deaths developed by the Adult
738 Fatality Review Team pursuant to § 32.1-283.5, any operating procedures for review of adult deaths
739 developed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, *any operating procedures for*
740 *review of fetal and infant deaths developed by the Fetal and Infant Mortality Review Team pursuant to §*
741 *32.1-283.9, and any operating procedures for review of the deaths of persons with a developmental disability*
742 *developed by the Developmental Disabilities Mortality Review Committee pursuant to § 37.2-314.1.*

743 18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the
744 activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-2515
745 et seq.) of Title 54.1.

746 19. The process of reviewing and ranking grant applications submitted to the Commonwealth
747 Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title
748 51.5.

749 20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§
750 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

751 21. The Virginia Breeders Fund created pursuant to § 59.1-372.

752 22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

753 23. The administration of medication or other substances foreign to the natural horse.

754 24. Any rules adopted by the Department of Agriculture and Consumer Services for the approval and
755 conduct of game variations for the conduct of raffles, bingo, network bingo, and instant bingo games,
756 provided that such rules are (i) consistent with Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2
757 and (ii) published and posted.

758 C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia
759 Register Act (§ 2.2-4100 et seq.), made by the Virginia Code Commission pursuant to § 30-150, shall be
760 exempt from the provisions of this chapter.

761 **§ 32.1-283.9. Fetal and Infant Mortality Review Team; duties; membership; confidentiality; penalty;**
762 **report.**

763 A. *As used in this section:*

764 *"Fetal death" has the same meaning as provided in § 32.1-249.*

765 *"Infant" means any child under the age of 18 months.*

766 *"Team" means the Fetal and Infant Mortality Review Team established in this section.*

767 B. *This section shall not apply to the review of a fetal death that is the result of a voluntary or therapeutic*
768 *termination of pregnancy.*

769 C. *There is hereby created the Fetal and Infant Mortality Review Team, which shall develop and*
770 *implement procedures to ensure that certain fetal and infant deaths occurring in the Commonwealth are*
771 *analyzed in a systematic way. The purpose of the Team is to decrease the incidence of preventable fetal and*
772 *infant deaths. The Team shall coordinate with the State Child Fatality Review Team established in § 32.1-*
773 *283.1 to avoid duplicative work. The Team shall review every reported fetal and infant death in the*
774 *Commonwealth, excluding those resulting from a voluntary or therapeutic termination of pregnancy. The*
775 *Team shall not initiate a fetal or infant death review until the conclusion of any law-enforcement*
776 *investigation or criminal prosecution. The Team shall (i) develop and revise as necessary operating*
777 *procedures for fetal and infant death reviews, including identification of cases to be reviewed and procedures*
778 *for coordinating among the agencies and professionals involved; (ii) improve the identification of and data*
779 *collection and recordkeeping related to causes of fetal and infant deaths; (iii) recommend components of*
780 *programs to increase awareness and prevention of and education about fetal and infant deaths; (iv)*
781 *recommend training to improve the review of fetal and infant deaths; (v) develop recommendations to assess*
782 *the service systems and community resources that support and promote the health and well-being of women,*
783 *infants, and families; (vi) provide technical support to any established local fetal and infant mortality review*
784 *teams and local child fatality review teams; (vii) develop and recommend plans for implementing changes to*
785 *existing state services, state programs, and organizations that serve families, children, and pregnant women;*
786 *and (viii) select a number of cases for in-depth review and interviews of parents, families, and medical*
787 *personnel to develop a full picture of the causes of fetal or infant death, evaluate gaps in services or access*
788 *that may have played a part in such death, and evaluate the supports available to families before and after*
789 *such death. The Team shall also provide evidence-based policy recommendations to both prevent preventable*
790 *fetal and infant deaths and ensure that families receive necessary support pre-fetal or infant death and post-*
791 *fetal or infant death. In cases where the team conducts in-depth interviews and reviews of specific cases, the*
792 *Team will ensure that such families have access to grief counseling and other necessary resources to be*

793 *determined by the team. Such operating procedures shall be exempt from the Administrative Process Act (§*
794 *2.2-4000 et seq.) pursuant to subdivision B 17 of § 2.2-4002.*

795 *D. The Team shall consist of the following persons or their designees: the Chief Medical Examiner, the*
796 *Director of the Office of Family Health of the Department of Health, the State Registrar of Vital Records, the*
797 *Commissioner of Behavioral Health and Developmental Services, and the Director of the Department of*
798 *Criminal Justice Services shall serve ex officio with voting privileges. In addition, the Governor shall appoint*
799 *one representative of each of the following entities: local law enforcement, local fire departments, local*
800 *emergency medical services providers, local departments of social services, community services boards,*
801 *attorneys for the Commonwealth, the Medical Society of Virginia, the Virginia Hospital and Healthcare*
802 *Association, the Virginia College of Emergency Physicians, the Virginia Section of the American College of*
803 *Obstetricians and Gynecologists, the Virginia Affiliate of the American College of Nurse-Midwives, the*
804 *Virginia Chapter of the Association of Women's Health, Obstetric and Neonatal Nurses, the Virginia*
805 *Neonatal Perinatal Collaborative, the Virginia Midwives Alliance, and the Virginia Academy of Nutrition*
806 *and Dietetics, and at least eight members of community organizations who work directly with the community*
807 *on issues of fetal and infant mortality, including doulas, midwives, members of local nonprofits, and other*
808 *stakeholders, to rotate every four years and to be representative of the geographic diversity of the*
809 *Commonwealth. The Chief Medical Examiner and the Director of the Office of Family Health of the*
810 *Department of Health shall serve as co-chairs of the Team and a majority of the Team members specified*
811 *herein may invite additional individuals to serve on the Team.*

812 *Ex officio members shall serve terms coincident with their terms of office. After the initial staggering of*
813 *terms, other members shall be appointed for a term of four years. Appointments to fill vacancies, other than*
814 *by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the*
815 *original appointments. All members except the eight community representatives may be reappointed.*

816 *E. Upon the request of the Chief Medical Examiner in his capacity as a co-chair of the Team, made after*
817 *the conclusion of any law-enforcement investigation or prosecution, the Chief Medical Examiner or his*
818 *designee may inspect and copy information and records regarding a fetal or infant death, including (i) any*
819 *report of the circumstances of the death maintained by any state or local law-enforcement agency or medical*
820 *examiner and (ii) information or records about the mother and family maintained by any social services*
821 *agency or court. Information, records, or reports maintained by any attorney for the Commonwealth shall be*
822 *made available for inspection and copying by the Chief Medical Examiner or his designee pursuant to*
823 *procedures that shall be developed by the Chief Medical Examiner and the Commonwealth's Attorneys'*
824 *Services Council established by § 2.2-2617. Any presentence report prepared pursuant to § 19.2-299 for any*
825 *person convicted of a crime that led to the death of a fetus or infant shall be made available for inspection*
826 *and copying by the Chief Medical Examiner or his designee. In addition, the Chief Medical Examiner or his*
827 *designee may inspect and copy from any health care provider in the Commonwealth, on behalf of the Team,*
828 *(a) without obtaining consent, subject to any limitations on disclosure under applicable federal and state law,*
829 *the health and mental health records of the fetus or infant and mother and those prenatal medical records*
830 *regarding the infant or fetus and (b) upon obtaining consent, from each adult regarding his records. With the*
831 *consent of the mother and other relevant adults, when deemed appropriate, designated members of the Team*
832 *or team designees may conduct interviews of any person deemed necessary to the investigative work of the*
833 *Team. Any record of the interview or interviews shall be treated the same as any other record related to the*
834 *work of the team under subsection F.*

835 *F. All information and records obtained or created by the Team or on behalf of the Team regarding a*
836 *review shall be confidential and excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)*
837 *pursuant to subdivision 7 of § 2.2-3705.5. All such information and records shall be used by the Team only in*
838 *the exercise of its proper purpose and function and shall not be disclosed. In preparing information and*
839 *records for review by the Team, the Department shall remove any individually identifiable information or*
840 *information identifying a health care provider, as those terms are defined in 45 C.F.R. § 160.103. Such*
841 *information shall not be subject to subpoena, subpoena duces tecum, or discovery, be admissible in any civil*
842 *or criminal proceeding, or be used as evidence in any disciplinary proceeding or regulatory or licensure*
843 *action of the Department of Health Professions or any health regulatory board. If available from other*
844 *sources, however, such information and records shall not be immune from subpoena, discovery, or*
845 *introduction into evidence when obtained through such other sources solely because the information and*
846 *records were presented to the Team during a fetal or infant death review. The findings of the Team may be*
847 *disclosed or published in statistical or other form, but shall not identify any individual. Upon conclusion of*
848 *the fetal or infant death review, all information and records concerning the family shall be shredded or*
849 *otherwise destroyed by the Office of the Chief Medical Examiner in order to ensure confidentiality.*

850 *The portions of meetings in which individual fetal or infant deaths are discussed by the Team shall be*
851 *closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the requirements of § 2.2-3712, all Team*
852 *members and other persons attending closed Team meetings, including any persons presenting information*
853 *or records on specific fetal or infant deaths to the Team during closed meetings, shall execute a sworn*

854 *statement to (i) honor the confidentiality of the information, records, discussions, and opinions disclosed*
855 *during meetings at which the Team reviews a specific fetal or infant death and (ii) not use any such*
856 *information, records, discussions, or opinions disclosed during meetings at which the Team reviews a*
857 *specific fetal or infant death for any purpose other than the exercise of the proper purpose and function of the*
858 *Team. Violations of this subsection are punishable as a Class 3 misdemeanor.*

859 *G. Upon notification of a fetal or infant death, any state or local government agency maintaining records*
860 *on the fetus or infant or the fetus or infant's family that are periodically purged shall retain such records for*
861 *the longer of 12 months or until such time as the Team has completed its review of the case.*

862 *H. The Team shall compile triennial statistical data, which shall be made available to the Governor, the*
863 *General Assembly, and the Department. Any statistical compilations prepared by the Team shall be public*
864 *record and shall contain no personal identifying information. The team shall include policy recommendations*
865 *where appropriate consistent with the purpose of the team as specified in subsection C.*

866 *I. Members of the Team, as well as their agents and employees, shall be immune from civil liability for*
867 *any act or omission made in connection with participation in a review by the Team, unless such act or*
868 *omission was the result of gross negligence or willful misconduct. Any organization, institution, or person*
869 *furnishing information, data, testimony, reports, or records to the Team as part of such review shall be*
870 *immune from civil liability for any act or omission in furnishing such information, unless such act or*
871 *omission was the result of gross negligence or willful misconduct.*

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