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SENATE BILL NO. 140

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 1, 2024)

(Patron Prior to Substitute—Senator Carroll Foy)

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.*

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 Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§

60 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,
61 nothing in this subdivision shall prevent the disclosure of information from the records of completed
62 investigations in a form that does not reveal the identity of complainants, persons supplying information, or
63 other individuals involved in the investigation.

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

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

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

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

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

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

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

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

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

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

108 15. Data and information specified in § 37.2-308.01 relating to proceedings provided for in Article 16 (§
109 16.1-335 et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

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

112 **§ 2.2-3711. (Effective until date pursuant to Acts 2023, cc. 756 and 778, cl. 5) Closed meetings**
113 **authorized for certain limited purposes.**

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

115 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
116 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
117 officers, appointees, or employees of any public body; and evaluation of performance of departments or
118 schools of public institutions of higher education where such evaluation will necessarily involve discussion of
119 the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting
120 in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some

121 student and the student involved in the matter is present, provided the teacher makes a written request to be
 122 present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be
 123 construed to authorize a closed meeting by a local governing body or an elected school board to discuss
 124 compensation matters that affect the membership of such body or board collectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

182 15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic

183 activity and estimating general and nongeneral fund revenues.

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

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

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

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

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

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

235 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern
236 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons
237 to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia
238 Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-
239 related information pertaining to the operations of the University of Virginia Medical Center or Eastern
240 Virginia Medical School, as the case may be, including business development or marketing strategies and
241 activities with existing or future joint venturers, partners, or other parties with whom the University of
242 Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any
243 arrangement for the delivery of health care, if disclosure of such information would adversely affect the

244 competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.
 245 23. Discussion or consideration by the Virginia Commonwealth University Health System Authority or
 246 the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or
 247 disposition by the Authority of real property, equipment, or technology software or hardware and related
 248 goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of
 249 the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and
 250 contracts for services or work to be performed by the Authority; marketing or operational strategies plans of
 251 the Authority where disclosure of such strategies or plans would adversely affect the competitive position of
 252 the Authority; and members of the Authority's medical and teaching staffs and qualifications for
 253 appointments thereto.
 254 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the
 255 Department of Health Professions to the extent such discussions identify any practitioner who may be, or who
 256 actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.
 257 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal
 258 information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf
 259 of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or
 260 savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.
 261 26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee
 262 created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as defined in § 56-
 263 484.12, related to the provision of wireless E-911 service.
 264 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
 265 Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy
 266 conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or
 267 meetings of health regulatory boards or conference committees of such boards to consider settlement
 268 proposals in pending disciplinary actions or modifications to previously issued board orders as requested by
 269 either of the parties.
 270 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-3705.6
 271 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-
 272 1800, or any independent review panel appointed to review information and advise the responsible public
 273 entity concerning such records.
 274 29. Discussion of the award of a public contract involving the expenditure of public funds, including
 275 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in
 276 an open session would adversely affect the bargaining position or negotiating strategy of the public body.
 277 30. Discussion or consideration of grant or loan application information subject to the exclusion in
 278 subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.
 279 31. Discussion or consideration by the Commitment Review Committee of information subject to the
 280 exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent
 281 predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.
 282 32. Discussion or consideration of confidential proprietary information and trade secrets developed and
 283 held by a local public body providing certain telecommunication services or cable television services and
 284 subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
 285 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).
 286 33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
 287 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets
 288 subject to the exclusion in subdivision 19 of § 2.2-3705.6.
 289 34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security
 290 matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1.
 291 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
 292 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative files.
 293 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
 294 information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and meetings
 295 of the Committee to deliberate concerning the annual maximum scholarship award, review and consider
 296 scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover
 297 scholarship awards.
 298 37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in
 299 subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port
 300 Authority.
 301 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
 302 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by
 303 any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan
 304 acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee

305 appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

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

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

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

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

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

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

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

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

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

338 48. Discussion or development of grant proposals by a regional council established pursuant to Article 26
339 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity
340 Board.

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

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

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

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

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

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

365 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed

366 meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting
367 and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that
368 shall have its substance reasonably identified in the open meeting.

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

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

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

382 **§ 2.2-3711. (Effective pursuant to Acts 2023, cc. 756 and 778, cl. 5) Closed meetings authorized for**
383 **certain limited purposes.**

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

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

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

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

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

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

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

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

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

423 9. Discussion or consideration by governing boards of public institutions of higher education of matters
424 relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or work to be
425 performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and
426 contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public

427 institution of higher education in the Commonwealth shall be subject to public disclosure upon written
428 request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"
429 means any government other than the United States government or the government of a state or a political
430 subdivision thereof, (ii) "foreign legal entity" means any legal entity (a) created under the laws of the United
431 States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by
432 foreign governments or foreign persons or if a majority of the membership of any such entity is composed of
433 foreign persons or foreign legal entities or (b) created under the laws of a foreign government, and (iii)
434 "foreign person" means any individual who is not a citizen or national of the United States or a trust territory
435 or protectorate thereof.

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

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

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

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

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

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

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

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

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

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

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

488 of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent
 489 the disclosure of information relating to the identity of any investment held, the amount invested or the
 490 present value of such investment.

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

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

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

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

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

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

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

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

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

549 30. Discussion or consideration of grant or loan application information subject to the exclusion in

550 subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

610 48. Discussion or development of grant proposals by a regional council established pursuant to Article 26

611 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity
612 Board.

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

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

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

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

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

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

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

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

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

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

654 **§ 2.2-4002. Exemptions from chapter generally.**

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

658 1. The General Assembly.

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

661 3. The Department of Wildlife Resources in promulgating regulations regarding the management of
662 wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§
663 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.

664 4. The Virginia Housing Development Authority.

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

667 6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031, such
668 educational institutions shall be exempt from the publication requirements only with respect to regulations
669 that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion, and disciplining of faculty and
670 employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.

671 7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii)

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

finfish, or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

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

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

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

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

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

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

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

24. Any rules adopted by the Department of Agriculture and Consumer Services for the approval and conduct of game variations for the conduct of raffles, bingo, network bingo, and instant bingo games, 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 and (ii) published and posted.

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

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

A. *As used in this section:*

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

"Infant" means any child under the age of 12 months.

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

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

C. *There is hereby created the Fetal and Infant Mortality Review Team, which shall develop and implement procedures to ensure that certain fetal and infant deaths occurring in the Commonwealth are analyzed in a systematic way. The purpose of the Team is to decrease the incidence of preventable fetal and infant deaths. The Team shall coordinate with the State Child Fatality Review Team established in § 32.1-283.1 and the Maternal Mortality Review Team established in § 32.1-283.8 to avoid duplicative work. The Team shall develop criteria for the selection and review of fetal and infant death in the Commonwealth, excluding those resulting from a voluntary or therapeutic termination of pregnancy and any infant death covered by the review of the State Child Fatality Review Team. The Team shall not initiate a fetal or infant death review until the conclusion of any law-enforcement investigation or criminal prosecution. The Team shall (i) develop and revise as necessary operating procedures for fetal and infant death reviews, including identification of cases to be reviewed and procedures for coordinating among the agencies and professionals involved; (ii) improve the identification of and data collection and recordkeeping related to causes of fetal and natural infant deaths; (iii) recommend components of programs to increase awareness and prevention of and education about fetal and infant deaths; (iv) recommend training to improve the review of fetal and infant deaths; (v) develop recommendations to assess the service systems and community resources that support and promote the health and well-being of women, infants, and families; (vi) develop and recommend plans for implementing changes to existing state services, state programs, and organizations that serve families, children, and pregnant women; (vii) select a number of cases for in-depth review and interviews of parents, families, and medical personnel to develop a full picture of the causes of fetal or infant death, evaluate gaps in services or access that may have played a part in such death, and evaluate the supports available to families before and after such death; and (viii) provide aggregate data, trends, and patterns regarding fetal and infant deaths to stakeholders as requested. The Team shall also provide evidence-based policy recommendations to both prevent preventable fetal and infant deaths and ensure that families receive necessary support pre-fetal or infant death and post-fetal or infant death. In cases where the team conducts in-depth interviews and reviews of specific cases, the Team will ensure that such families have access to grief counseling and other necessary resources to be determined by the team. Such operating procedures shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 17 of § 2.2-4002.*

D. *The Team shall consist of the following persons or their designees: the Chief Medical Examiner, the*

795 *Director of the Office of Family Health of the Department of Health, the State Registrar of Vital Records, the*
796 *Commissioner of Behavioral Health and Developmental Services, and the Director of the Department of*
797 *Criminal Justice Services shall serve ex officio with voting privileges. In addition, the Governor shall appoint*
798 *one representative of each of the following entities: local law enforcement, local fire departments, local*
799 *emergency medical services providers, local departments of social services, community services boards,*
800 *attorneys for the Commonwealth, the Medical Society of Virginia, the Virginia Hospital and Healthcare*
801 *Association, the Virginia College of Emergency Physicians, the Virginia Section of the American College of*
802 *Obstetricians and Gynecologists, the Virginia Affiliate of the American College of Nurse-Midwives, the*
803 *Virginia Chapter of the Association of Women's Health, Obstetric and Neonatal Nurses, the Virginia*
804 *Neonatal Perinatal Collaborative, the Virginia Midwives Alliance, and the Virginia Academy of Nutrition*
805 *and Dietetics, and, in a number to make up no less than one-third of the total Team, representatives of*
806 *community organizations who work directly with the community on issues of fetal and infant mortality,*
807 *including doulas, midwives, members of local nonprofits, individuals from geographically representative*
808 *areas of the Commonwealth, experts as determined by the Team, and other stakeholders, to rotate every four*
809 *years. The Chief Medical Examiner and a co-chair to be determined by the Chair shall serve as co-chairs of*
810 *the Team and may invite additional individuals to serve on the Team.*

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

815 *E. Upon the request of the Chief Medical Examiner in his capacity as a co-chair of the Team, made after*
816 *the conclusion of any law-enforcement investigation or prosecution, the Chief Medical Examiner or his*
817 *designee may inspect and copy information and records regarding a fetal or infant death, including (i) any*
818 *report of the circumstances of the death maintained by any state or local law-enforcement agency or medical*
819 *examiner and (ii) information or records about the mother and family maintained by any social services*
820 *agency or court. Information, records, or reports maintained by any attorney for the Commonwealth shall be*
821 *made available for inspection and copying by the Chief Medical Examiner or his designee pursuant to*
822 *procedures that shall be developed by the Chief Medical Examiner and the Commonwealth's Attorneys'*
823 *Services Council established by § 2.2-2617. Any presentence report prepared pursuant to § 19.2-299 for any*
824 *person convicted of a crime that led to the death of a fetus or infant shall be made available for inspection*
825 *and copying by the Chief Medical Examiner or his designee. In addition, the Chief Medical Examiner or his*
826 *designee may inspect and copy from any health care provider in the Commonwealth, on behalf of the Team,*
827 *(a) without obtaining consent, subject to any limitations on disclosure under applicable federal and state law,*
828 *the health and mental health records of the fetus or infant and mother and those prenatal medical records*
829 *regarding the infant or fetus and (b) upon obtaining consent, from each adult regarding his records. With the*
830 *consent of the mother, father, or other legal guardian, when deemed appropriate, trained interviewers on*
831 *behalf of the Team may conduct interviews of any person if the interview is deemed necessary to the work of*
832 *the Team. The Team shall develop trauma-informed protocols for (1) the conduct of such interviews and (2)*
833 *ensuring that the interviewer has a list of resources that may be made available to the interviewee, including*
834 *resources related to bereavement and mental health services. Any record of the interview or interviews shall*
835 *be treated the same as any other record related to the work of the team under subsection F.*

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

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

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

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

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

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

873 J. The co-chairs are authorized to name qualified persons to fetal and infant mortality advisory panels to
 874 discuss data trends, recommendations, and other items related to fetal and natural infant death. Panels shall
 875 be convened at a minimum of one time per fiscal year. Panels shall consist of grassroots organizations,
 876 community members, parents who have experienced fetal or natural infant death, agencies of the
 877 Commonwealth not involved with the Team in any other manner, emergency medical services personnel,
 878 mental health professionals, and other professionals with knowledge and vested interest in fetal and infant
 879 deaths. The recommendations of such advisory panels may be included in the triannual report provided by
 880 the Team to the General Assembly.

881 **2. That continued work of the Fetal and Infant Mortality Review Team (the Team) established**
 882 **pursuant to § 32.1-283.9 of the Code of Virginia, as created by this act, shall be contingent on ongoing**
 883 **funding, and the Team may, at its discretion, alter its work to meet budgetary constraints. The Office**
 884 **of the Chief Medical Examiner may hire such staff as may be necessary to assist the Team if an**
 885 **appropriation effectuating the purposes of this act is included in a general appropriation act passed in**
 886 **2024 by the General Assembly that becomes law.**