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SENATE BILL NO. 390

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 Pekarsky)

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 Sudden Unexpected Death in Epilepsy Review Team established; report; penalty.

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 (§

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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~~ (vi) *during a review of any death conducted by the Sudden Unexpected Death in Epilepsy*  
79 *Review Team to the extent that such information is made confidential pursuant by § 32.1-283.9; or (vii)*  
80 *during a review of any death conducted by the Developmental Disabilities Mortality Review Committee to*  
81 *the extent that such information is made confidential by § 37.2-314.1.*

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 death cases are*  
232 *discussed by the Sudden Unexpected Death in Epilepsy Review Team established pursuant to § 32.1-283.9,*  
233 and those portions of meetings in which individual death cases of persons with developmental disabilities are  
234 discussed by the Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-  
235 314.1.

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

244 arrangement for the delivery of health care, if disclosure of such information would adversely affect the  
 245 competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

302 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting  
 303 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by  
 304 any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan

305 acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee  
306 appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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 deaths developed by the Sudden Unexpected Death in Epilepsy Review Team pursuant to § 32.1-*  
741 *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. Sudden Unexpected Death in Epilepsy Review Team; duties; membership; confidentiality;**  
762 **report; penalty.**

763 A. *As used in this section, "Sudden Unexpected Death in Epilepsy" or "SUDEP" means the sudden and*  
764 *unexplained death of a healthy individual with epilepsy that is not by drowning, injury, or other known*  
765 *causes.*

766 B. *There is hereby created the Sudden Unexpected Death in Epilepsy Review Team (the Team), which*  
767 *shall develop and implement procedures to ensure that cases involving a manner of death consistent with*  
768 *SUDEP occurring in the Commonwealth are analyzed in a systematic way. The Team shall review SUDEP*  
769 *cases, up to the amount funded by the Team, involving a manner of death consistent with SUDEP in the*  
770 *Commonwealth through means deemed appropriate by the Team. The Team shall not initiate a SUDEP*  
771 *review until the conclusion of any law-enforcement investigation or criminal prosecution. The Team shall (i)*  
772 *develop and revise as necessary operating procedures for SUDEP reviews, including identification of cases*  
773 *to be reviewed and procedures for coordinating among the agencies and professionals involved; (ii) improve*  
774 *the identification of and data collection and recordkeeping related to causes of SUDEP; (iii) recommend*  
775 *components of programs to increase awareness and prevention of and education about SUDEP; and (iv)*  
776 *recommend training to improve the review of cases involving a manner of death consistent with SUDEP.*  
777 *Such operating procedures shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant*  
778 *to subdivision B 17 of § 2.2-4002.*

779 C. *The Team shall consist of the following persons or their designees: the Chief Medical Examiner, the*  
780 *State Registrar of Vital Records, the Commissioner of the Department of Behavioral Health and*  
781 *Developmental Services, and an appointee of the Epilepsy Foundation of Virginia. In addition, the Governor*  
782 *shall appoint one representative of each of the following: local emergency medical services providers, the*  
783 *Medical Society of Virginia, the Virginia Hospital and Healthcare Association, the Virginia College of*  
784 *Emergency Physicians, experts in chronic disease prevention, and the Virginia Neurological Society. The*  
785 *Chief Medical Examiner and the appointee from the Epilepsy Foundation of Virginia shall serve as co-*  
786 *chairmen of the Team and may appoint additional members of the Team as may be needed to complete*  
787 *SUDEP reviews pursuant to this section.*

788 *After the initial staggering of terms, members other than the Chief Medical Examiner, the State Registrar*  
789 *of Vital Records, the Commissioner of the Department of Behavioral Health and Developmental Services,*  
790 *and the appointee of the Epilepsy Foundation of Virginia shall be appointed for a term of three years.*  
791 *Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies*  
792 *shall be filled in the same manner as the original appointments. All members may be reappointed. The Chief*  
793 *Medical Examiner, the State Registrar of Vital Records, and the appointee of the Epilepsy Foundation of*

794 *Virginia shall serve terms coincident with their terms of office.*

795 *D. Subject to available allocations from the general fund and nongeneral funds, the Team shall, at its*  
796 *discretion, alter its work to meet the available budgetary constraints.*

797 *E. Upon the request of the Chief Medical Examiner in his capacity as a co-chairman of the Team, made*  
798 *after the conclusion of any law-enforcement investigation or prosecution, the Chief Medical Examiner or his*  
799 *designee shall inspect and copy information and records regarding a case involving a manner of death*  
800 *consistent with SUDEP, including any report of the circumstances of the case involving a manner of death*  
801 *consistent with SUDEP maintained by any state or local law-enforcement agency or medical examiner.*  
802 *Information, records, or reports maintained by any attorney for the Commonwealth shall be made available*  
803 *for inspection and copying by the Chief Medical Examiner or his designee pursuant to procedures that shall*  
804 *be developed by the Chief Medical Examiner and the Commonwealth's Attorneys' Services Council*  
805 *established by § 2.2-2617. In addition, the Chief Medical Examiner or his designee may inspect and copy*  
806 *from any health care provider in the Commonwealth, on behalf of the Team, (i) without obtaining consent,*  
807 *subject to any limitations on disclosure under applicable federal and state law, the health records of the*  
808 *decedent and (ii) upon obtaining consent, from the next of kin of the decedent, the decedent's health records.*

809 *F. All information and records obtained or created by the Team or on behalf of the Team regarding a*  
810 *review shall be confidential and excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)*  
811 *pursuant to subdivision 7 of § 2.2-3705.5. All such information and records shall be used by the Team only in*  
812 *the exercise of its proper purpose and function and shall not be disclosed. In preparing information and*  
813 *records for review by the Team, the Department shall remove any individually identifiable health information*  
814 *or information identifying a health care provider, as those terms are defined in 45 C.F.R. § 160.103. Such*  
815 *information shall not be subject to subpoena, subpoena duces tecum, or discovery, be admissible in any civil*  
816 *or criminal proceeding, or be used as evidence in any disciplinary proceeding or regulatory or licensure*  
817 *action of the Department of Health Professions or any health regulatory board. If available from other*  
818 *sources, however, such information and records shall not be immune from subpoena, discovery, or*  
819 *introduction into evidence when obtained through such other sources solely because the information and*  
820 *records were presented to the Team during a SUDEP review. The findings of the Team shall be disclosed or*  
821 *published in statistical or other form but shall not identify any individual. Upon conclusion of the SUDEP*  
822 *review, all information and records concerning such individual shall be shredded or otherwise destroyed by*  
823 *the Office of the Chief Medical Examiner in order to ensure confidentiality.*

824 *The portions of meetings in which individual cases involving a manner of death consistent with SUDEP*  
825 *are discussed by the Team shall be closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the*  
826 *requirements of § 2.2-3712, all Team members and other persons attending closed Team meetings, including*  
827 *any persons presenting information or records on specific cases involving a manner of death consistent with*  
828 *SUDEP to the Team during closed meetings, shall execute a sworn statement to (i) honor the confidentiality*  
829 *of the information, records, discussions, and opinions disclosed during meetings at which the Team reviews a*  
830 *specific case involving a manner of death consistent with SUDEP and (ii) not use any such information,*  
831 *records, discussions, or opinions disclosed during meetings at which the Team reviews a specific case*  
832 *involving a manner of death consistent with SUDEP for any purpose other than the exercise of the proper*  
833 *purpose and function of the Team. Violations of this subsection are punishable as a Class 3 misdemeanor.*

834 *G. Upon notification of a case involving a manner of death consistent with SUDEP, any state or local*  
835 *government agency maintaining records on the decedent that are periodically purged shall retain such*  
836 *records for the longer of 12 months or until such time as the Team has completed its review of the case.*

837 *H. The Team shall compile annual statistical data, which shall be made available to the Governor and the*  
838 *General Assembly. Any statistical compilations prepared by the Team shall be public record and shall not*  
839 *contain any personal identifying information.*

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

846 **2. That the Office of the Chief Medical Examiner may hire such staff as may be necessary to assist the**  
847 **Sudden Unexpected Death in Epilepsy Review Team, as created by this act, if an appropriation**  
848 **effectuating the purposes of this act is included in a general appropriation act passed in 2024 by the**  
849 **General Assembly.**