

HOUSE BILL NO. 1398

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations

on _____)

(Patrons Prior to Substitute—Delegates Franklin, M.A. and Anthony [HB 336])

A BILL to amend and reenact §§ 2.2-3705.5, 2.2-3711, as it is currently effective and as it shall 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 shall 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 (§ 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, nothing in this subdivision shall prevent the disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or

other individuals involved in the investigation.

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

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

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

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

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

10. Any information copied, recorded, or received by the Commissioner of Health in the course of an examination, investigation, or review of a managed care health insurance plan licensee pursuant to

§§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

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

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

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

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

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

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

17. Information submitted to the acute psychiatric bed registry pursuant to § 37.2-308.1.

§ 2.2-3711. (Effective until July 1, 2026) Closed meetings authorized for certain limited purposes.

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

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided that the teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be 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 that the member may request in writing that the committee meeting not be
176 conducted in 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.

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

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

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

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

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

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Commonwealth Savers Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential 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 Commonwealth Savers Plan or provided to the retirement
214 system, a local finance board or board of trustees, or the Commonwealth Savers 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 Commonwealth Savers Plan. Nothing in this subdivision shall be construed to prevent the
219 disclosure of information relating to the identity of any investment held, the amount invested or the present
220 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 *fetal and infant death cases are discussed by the Fetal and Infant Mortality Review Team pursuant to*
227 *§ 32.1-283.9*, those portions of meetings in which individual adult death cases are discussed by the state
228 Adult Fatality Review Team established pursuant to § 32.1-283.5, those portions of meetings in which
229 individual adult death cases are discussed by a local or regional adult fatality review team established
230 pursuant to § 32.1-283.6, those portions of meetings in which individual death cases are discussed by
231 overdose fatality review teams established pursuant to § 32.1-283.7, those portions of meetings in which
232 individual maternal death cases are discussed by the Maternal Mortality Review Team pursuant to
233 § 32.1-283.8, and those portions of meetings in which individual death cases of persons with developmental
234 disabilities are discussed by the Developmental Disabilities Mortality Review Committee established
235 pursuant to § 37.2-314.1.

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

parties with whom the University of Virginia Medical Center or the Eastern Virginia Health Sciences Center at Old Dominion University, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the University of Virginia Medical Center or the Eastern Virginia Health Sciences Center at Old Dominion University, as the case may be.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

344 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response team
345 established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a
346 child by a child sexual abuse response team established pursuant to § 15.2-1627.5, (iii) individual cases
347 involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to §§ 15.2-1627.5 and
348 63.2-1605, or (iv) individual human trafficking cases by any human trafficking response team established
349 pursuant to § 15.2-1627.6.

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

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

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

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

365 54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007 regarding

the denial of, revocation of, suspension of, or refusal to renew any license or permit related to sports betting and any discussion, consideration, or review of matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

55. Meetings or portions of meetings of the Board of Criminal Justice Services or the Department of Criminal Justice Services concerning the decertification of an identifiable law-enforcement or jail officer.

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

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

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

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

§ 2.2-3711. (Effective July 1, 2026) Closed meetings authorized for certain limited purposes.

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

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

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

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

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

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

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

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

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

424 8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters

requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

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

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

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

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

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

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

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

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

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

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

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

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

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Commonwealth

Savers Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Commonwealth Savers Plan or provided to the retirement system, a local finance board or board of trustees, or the Commonwealth Savers Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Commonwealth Savers Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

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

22. Those portions of meetings of the board of visitors of the University of Virginia or Old Dominion University, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or the Eastern Virginia Health Sciences Center at Old Dominion University, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or the

515 Eastern Virginia Health Sciences Center at Old Dominion University, as the case may be, including business
516 development or marketing strategies and activities with existing or future joint venturers, partners, or other
517 parties with whom the University of Virginia Medical Center or the Eastern Virginia Health Sciences Center
518 at Old Dominion University, as the case may be, has formed, or forms, any arrangement for the delivery of
519 health care, if disclosure of such information would adversely affect the competitive position of the
520 University of Virginia Medical Center or the Eastern Virginia Health Sciences Center at Old Dominion
521 University, as the case may be.

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

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

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

538 26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee
539 created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as defined in
540 § 56-484.12, related to the provision of wireless E-911 service.

541 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
542 Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy
543 conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or
544 meetings of health regulatory boards or conference committees of such boards to consider settlement

proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

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

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

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

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

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

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

34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1 and review by the State Board of Elections of complaints related to the personal use of campaign funds pursuant to § 24.2-948.7.

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

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

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

579 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
580 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by
581 any local retirement system, acting pursuant to § 51.1-803, by the Board of the Commonwealth Savers Plan
582 acting pursuant to § 23.1-706, or by the Commonwealth Savers Plan's Investment Advisory Committee
583 appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

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

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

588 41. Those portions of meetings of the Virginia Military Advisory Council or any commission created by
589 executive order for the purpose of studying and making recommendations regarding preventing closure or
590 realignment of federal military and national security installations and facilities located in Virginia and
591 relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a
592 local governing body, during which there is discussion of information subject to the exclusion in subdivision
593 8 of § 2.2-3705.2.

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

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

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

604 45. Discussion or consideration of personal and proprietary information related to the resource
605 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection
606 E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain

information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

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

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

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

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, (iii) individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to §§ 15.2-1627.5 and 63.2-1605, or (iv) individual human trafficking cases by any human trafficking response team established pursuant to § 15.2-1627.6.

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

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

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

53. Deliberations of the Virginia Lottery Board conducted pursuant to § 58.1-4105 regarding the denial or revocation of a license of a casino gaming operator, or the refusal to issue, suspension of, or revocation of

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

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

55. Meetings or portions of meetings of the Board of Criminal Justice Services or the Department of Criminal Justice Services concerning the decertification of an identifiable law-enforcement or jail officer.

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

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

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

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

§ 2.2-4002. Exemptions from chapter generally.

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

1. The General Assembly.

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

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

4. The Virginia Housing Development Authority.

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

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

7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales, and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing, and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.2-1164.

11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23.1-207.

12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.

13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601, subsection B of § 3.2-3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206, and subsection A of § 3.2-5406.

14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

698 15. The Commissioner of the Department of Veterans Services in adopting regulations pursuant to
699 § 2.2-2001.3.

700 16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to
701 § 22.1-203.2.

702 17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in
703 matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse
704 racing at race meetings licensed by the Commission.

705 18. The Virginia Small Business Financing Authority.

706 19. The Virginia Economic Development Partnership Authority.

707 20. The Board of Agriculture and Consumer Services in adopting, amending, or repealing regulations
708 pursuant to subsection A (ii) of § 59.1-156.

709 21. The Insurance Continuing Education Board pursuant to § 38.2-1867.

710 22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of
711 Health pursuant to § 32.1-35 and in adopting, amending, or repealing regulations pursuant to subsection C of
712 § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food
713 service.

714 23. The Board of Pharmacy when specifying special subject requirements for continuing education for
715 pharmacists pursuant to § 54.1-3314.1.

716 24. The Virginia Department of Veterans Services when promulgating rules and regulations pursuant to
717 § 58.1-3219.7 or 58.1-3219.11.

718 25. The Virginia Department of Criminal Justice Services when developing, issuing, or revising any
719 training standards established by the Criminal Justice Services Board under § 9.1-102, provided such actions
720 are authorized by the Governor in the interest of public safety.

721 B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:

722 1. Money or damage claims against the Commonwealth or agencies thereof.

723 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

724 3. The location, design, specifications, or construction of public buildings or other facilities.

725 4. Grants of state or federal funds or property.

726 5. The chartering of corporations.

727 6. Customary military, militia, naval, or police functions.

7. The selection, tenure, dismissal, direction, or control of any officer or employee of an agency of the Commonwealth.

8. The conduct of elections or eligibility to vote.

9. Inmates of prisons or other such facilities or parolees therefrom.

10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

11. Traffic signs, markers, or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.

13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.).

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the Virginia Lottery Board, and provided that such regulations are published and posted.

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

758 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

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

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

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

762 24. Any rules adopted by the Department of Agriculture and Consumer Services for the approval and
763 conduct of game variations for the conduct of raffles, bingo, network bingo, and instant bingo games,
764 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
765 and (ii) published and posted.

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

769 **§ 32.1-283.9. Fetal and Infant Mortality Review Team; duties; membership; confidentiality; penalty;**
770 **report.**

771 A. As used in this section:

772 "Fetal death" means a fetal death as described in § 32.1-258.1 for which the State Registrar is required to
773 issue a Certificate of Birth Resulting in Stillbirth.

774 "Infant death" means the natural death of a child under 12 months.

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

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

778 C. There is hereby created the Fetal and Infant Mortality Review Team, which shall develop and
779 implement procedures to ensure that certain fetal and infant deaths occurring in the Commonwealth are
780 analyzed in a systematic way. The purpose of the Team is to decrease the incidence of preventable fetal and
781 infant deaths. The Team shall coordinate with the State Child Fatality Review Team established in §
782 32.1-283.1 and the Maternal Mortality Review Team established in § 32.1-283.8 to avoid duplicative work.
783 The Team shall develop criteria for the selection and review of fetal and infant death in the Commonwealth,
784 excluding those resulting from a voluntary or therapeutic termination of pregnancy and any infant death
785 covered by the review of the State Child Fatality Review Team. The Team shall not initiate a fetal or infant
786 death review until the conclusion of any law-enforcement investigation or criminal prosecution. The Team
787 shall (i) develop and revise as necessary operating procedures for fetal and infant death reviews, including
788 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 Director of the Office of Family Health of the Department of Health, the State Registrar of Vital Records, the Commissioner of Behavioral Health and Developmental Services, and the Director of the Department of Criminal Justice Services shall serve *ex officio* with voting privileges. In addition, the Governor shall appoint one representative of each of the following entities: local law enforcement, local fire departments, local emergency medical services providers, local departments of social services, community services boards, attorneys for the Commonwealth, the Medical Society of Virginia, the Virginia Hospital and Healthcare Association, the Virginia College of Emergency Physicians, the Virginia Section of the American College of Obstetricians and Gynecologists, the Virginia Affiliate of the American College of Nurse-Midwives, the Virginia Chapter of the Association of Women's Health, Obstetric and Neonatal Nurses, the Virginia Neonatal Perinatal Collaborative, the Virginia Midwives Alliance, and the Virginia Academy of Nutrition and Dietetics, and, in a number to make up no less than one-third of the total Team, representatives of community organizations who work directly with the community on issues of fetal and infant mortality, including doulas, midwives, members of local nonprofits, individuals from geographically representative areas of the Commonwealth, experts as determined by the Team, and other stakeholders, to rotate every four

820 years. The Chief Medical Examiner and a co-chair to be determined by the chair shall serve as co-chairs of
821 the Team and may invite additional individuals to serve on the Team.

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

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

847 F. All information and records obtained or created by the Team or on behalf of the Team regarding a
848 review shall be confidential and excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
849 pursuant to subdivision 7 of § 2.2-3705.5. All such information and records shall be used by the Team only in
850 the exercise of its proper purpose and function and shall not be disclosed. In preparing information and

records for review by the Team, the Department shall remove any individually identifiable information or information identifying a health care provider, as those terms are defined in 45 C.F.R. § 160.103. Such information shall not be subject to subpoena, subpoena duces tecum, or discovery, be admissible in any civil or criminal proceeding, or be used as evidence in any disciplinary proceeding or regulatory or licensure action of the Department of Health Professions or any health regulatory board. If available from other sources, however, such information and records shall not be immune from subpoena, discovery, or introduction into evidence when obtained through such other sources solely because the information and records were presented to the Team during a fetal or infant death review. The findings of the Team may be disclosed or published in statistical or other form but shall not identify any individual. Upon conclusion of the fetal or infant death review, all information and records concerning the family shall be shredded or otherwise destroyed by the Office of the Chief Medical Examiner in order to ensure confidentiality.

The portions of meetings in which individual fetal or infant deaths are discussed by the Team shall be closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the requirements of § 2.2-3712, all Team members and other persons attending closed Team meetings, including any persons presenting information or records on specific fetal or infant deaths to the Team during closed meetings, shall execute a sworn statement to (i) honor the confidentiality of the information, records, discussions, and opinions disclosed during meetings at which the Team reviews a specific fetal or infant death and (ii) not use any such information, records, discussions, or opinions disclosed during meetings at which the Team reviews a specific fetal or infant death for any purpose other than the exercise of the proper purpose and function of the Team. Violations of this subsection are punishable as a Class 3 misdemeanor.

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

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

I. Members of the Team, as well as their agents and employees, shall be immune from civil liability for any act or omission made in connection with participation in a review by the Team, unless such act or omission was the result of gross negligence or willful misconduct. Any organization, institution, or person

882 *furnishing information, data, testimony, reports, or records to the Team as part of such review shall be*
883 *immune from civil liability for any act or omission in furnishing such information, unless such act or*
884 *omission was the result of gross negligence or willful misconduct.*

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