

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 518

An Act to amend and reenact §§ 2.1-342.01, 63.1-53, and 63.1-209 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.1-209.1, relating to confidentiality of public assistance and social services records and information; penalty.

[S 1096]

Approved March 23, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342.01, 63.1-53 and 63.1-209 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.1-209.1 as follows:

§ 2.1-342.01. Exclusions to application of chapter.

A. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical 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 medical 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. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical 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.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.1-342. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of medical and mental records is under the age of eighteen, 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 or a court of competent jurisdiction has restricted or denied such

access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § 2.1-39.1.

7. Written advice of legal counsel to state, regional or local public bodies or public officials and any other records protected by the attorney-client privilege.

8. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter which is properly the subject of a closed meeting under § 2.1-344.

9. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

10. Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

11. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (i) any scoring key for any such test or examination and (ii) any other document which would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

12. 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. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

13. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.1-344. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

15. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

16. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or § 62.1-134.1.

17. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

18. Vendor proprietary information software which may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

19. Financial statements not publicly available filed with applications for industrial development financings.

20. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative

records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

21. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

23. Information which was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

25. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

26. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

27. Fisheries data which would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

28. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

29. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or of formulating advisory opinions to members on standards of conduct, or both.

30. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

31. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.1-724, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

32. 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; and 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 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1. However, nothing in this section shall prohibit 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.

33. Personal information, as defined in § 2.1-379, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's own information shall not be denied.

34. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body which has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations which cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit which would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

40. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 2.2 (§ 2.1-191.5 et seq.) of Chapter 14 of this title, or by any county, city, or town.

41. Information and records 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.

42. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

43. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

44. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

45. Documentation or other information which describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

46. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

47. In the case of corporations organized by the Virginia Retirement System (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate, the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

48. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

49. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

50. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

51. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

52. Information required to be provided pursuant to § 54.1-2506.1.

53. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

54. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local or regional child fatality review team established pursuant to § 32.1-283.2, and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § 32.1-283.3.

55. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

56. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995.

57. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to antiterrorist activity.

58. All records of the University of Virginia or the University of Virginia Medical Center which contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center.

59. 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.

60. Records of the Virginia Commonwealth University Health System Authority pertaining to any of

the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

61. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

62. Confidential proprietary records which are provided by a franchisee under § 15.2-2108 to its franchising authority pursuant to a promise of confidentiality from the franchising authority which relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

63. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

64. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) 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, if the disclosure of such information would be harmful to the competitive position of the applicant.

65. Information which would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

67. Personal information, as defined in § 2.1-379, provided to the Board of the Virginia College Savings Plan 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 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form which does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

68. Any record 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.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse

controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

71. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

72. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

73. Records of the Department for Rights of Virginians with Disabilities consisting of documentary evidence received or maintained by the Department or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Department and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Department may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

74. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10.01 (§ 2.1-116.01 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

75. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

76. *Records, information and statistical registries required to be kept confidential pursuant to §§ 63.1-53 and 63.1-209.*

B. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to (i) contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4 of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

§ 63.1-53. Allowing access to records and information for public assistance programs; penalty.

A. All records, *information* and statistical registries of the State Department of Social Services and of the local boards and other information, ~~which records, registries and information that~~ pertain to *public assistance and services provided to or on behalf of* any individual; shall be confidential and shall not be disclosed except to persons having a legitimate interest and persons specified hereinafter and in § 63.1-209. Upon receipt of a request and documentation of an indictment or issuance of a warrant, local boards and the State Department of Social Services may disclose from client records to the extent permitted by *state and* federal law, ~~to the requesting law-enforcement agency, the address of an individual who has been indicted or for whom a warrant for arrest for a crime punishable by incarceration has been issued and regulation.~~ The local boards shall allow the Commissioner, the Commissioner of the Virginia Department for the Visually Handicapped, and *his* duly authorized agents

and employees of each, at all times, to have access to the records of the local boards relating to the appropriation, expenditure and distribution of funds for, and other matters concerning, *public assistance and services* under this title. *For purposes of this section, public assistance means Temporary Assistance for Needy Families; auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; child support enforcement; food stamps; employment services; child day care; refugee assistance; and general relief as defined in § 63.1-87.*

Except as to the Commissioner, the Commissioner of the Virginia Department for the Visually Handicapped, and duly authorized agents and employees of each, records and credit information shall be made available as aforesaid only on an individual basis and the person, firm or corporation shall name the individual whose record is requested. *Except as provided by state and federal law and regulation, no record, information or statistical registries concerning applicants for and recipients of public assistance shall be made available except for purposes directly connected with the administration of the public welfare assistance program. No record shall be made available to any person filing a list or lists of employment opportunities with a local board or superintendent pursuant to the provisions of Chapter 6.2 (§ 63.1-133.7 et seq.) of this title. Such purposes include establishing eligibility, determining the amount of the public assistance, and providing social services for applicants and recipients. It shall be unlawful for any person, firm, corporation, or association to use any name or list of names obtained directly or indirectly through access to such records for commercial or political purposes, or to publish the name of any child receiving assistance under the provisions of § 63.1-56 to disclose, directly or indirectly, any such confidential information, and any person violating these provisions shall be guilty of a Class 1 misdemeanor and punished accordingly.*

B. If a request for a record or information concerning applicants for and recipients of public assistance is made to the Department or a local department of social services for a purpose not directly connected to the administration of a public assistance program, the Commissioner or local director of social services shall not provide the record or information unless permitted by state or federal law or regulation.

§ 63.1-209. Confidential records and information concerning social services; penalty.

A. The records, information and statistical registries of the Department of Social Services and of all child-welfare agencies and persons received or placed out by them and the facts learned by them concerning such persons and their parents or relatives, concerning social services to or on behalf of individuals shall be confidential information, provided that the Commissioner, the State Board and their agents shall have access to such records, information and statistical registries, that it shall be disclosed upon the proper order of any court, and that it such records, information and statistical registries may be disclosed to any person having a legitimate interest in the placement of any such person accordance with state and federal law and regulation. For purposes of this section, social services means foster care; adoption assistance; adult services; adult protective services; child protective services; domestic violence services; or any other service program implemented in accordance with regulations promulgated by the State Board of Social Services.

The local department of social services may disclose the contents of records and information learned during the course of a child protective services investigation or during the provision of child protective services to a family, without a court order and without the consent of the family, to a person having a legitimate interest when in the judgment of the local department of social services such disclosure is in the best interest of the child who is the subject of the records. Persons having a legitimate interest in child protective services records of local departments of social services include, but are not limited to, (i) any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family which is the subject of a report, including multi-disciplinary teams and family assessment and planning teams referenced in subsection K of § 63.1-248.6, law-enforcement agencies and Commonwealth's attorneys; (ii) child welfare or human services agencies of the Commonwealth or its political subdivisions when those agencies request information to determine the compliance of any person with a child protective services plan or an order of any court; (iii) personnel of the school or child day program as defined in § 63.1-195 attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian; and (iv) a parent, grandparent, or any other person when such parent, grandparent or other person would be considered by the local department as a potential caretaker of the child in the event the department has to remove the child from his custodian.

Whenever a local department of social services exercises its discretion to release otherwise confidential information to any person who meets one or more of these descriptions, the local department shall be presumed to have exercised its discretion in a reasonable and lawful manner.

It shall be unlawful for any officer, agent or employee of any child-welfare agency; for the Commissioner, the State Board or their agents or employees; and for any person who has held any such position; and for any other person to whom any such *record or* information is disclosed as ~~hereinabove provided~~, to disclose, directly or indirectly, any such confidential *record or* information, except as herein provided or pursuant to § 63.1-209.1. Every violation of this section shall constitute a Class 1

misdemeanor and be punishable as such.

B. *If a request for a record or information concerning applicants for and recipients of social services is made to the Department or a local department of social services by a person who does not have a legitimate interest, the Commissioner or local director of social services shall not provide the record or information unless permitted by state or federal law or regulation.*

Any person who has attained his majority, who has not been legally adopted in accordance with the provisions of Chapter 10.2 (§ 63.1-219.7 et seq.) of this title, who was not a child for whom all parental rights and responsibilities have been terminated, and who believes that he has been placed out by a child-placing agency, shall have the right to demand and receive from the Commissioner, the State Board, or any such agency, such information as any of them may have concerning his own parents or relatives.

C. Any person who has not been legally adopted in accordance with the provisions of Chapter 10.2 (§ 63.1-219.7 et seq.) of this title and who was a child for whom all parental rights and responsibilities have been terminated, shall not have access to any information from a child-placing agency with respect to the identity of the biological family, except (i) upon application of the child who is eighteen or more years of age, (ii) upon order of a circuit court entered upon good cause shown, and (iii) after notice to and opportunity for hearing by the applicant for such order and the child-placing agency or local board of public welfare or social services which had custody of the child.

An eligible person who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the person resides or (ii) the circuit court of the county or city where the principal office of the child-placing agency or local board of public welfare or social services which controls the information sought by the person is located. An eligible person who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the principal office of the child-placing agency or local board of public welfare or social services which controls the information sought by the person is located.

If the identity and whereabouts of the biological family are known to the agency or local board, the court may require the agency or local board to advise the biological parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the applicant for such order and the biological parents.

D. C. This section shall not apply to the disposition of adoption records, reports and information which that is governed by the provisions of § 63.1-219.53.

§ 63.1-209.1. *Confidential records and information concerning social services; child-protective services and child-placing agencies.*

A. *The local department of social services may disclose the contents of records and information learned during the course of a child-protective services investigation or during the provision of child-protective services to a family, without a court order and without the consent of the family, to a person having a legitimate interest when in the judgment of the local department of social services such disclosure is in the best interest of the child who is the subject of the records. Persons having a legitimate interest in child-protective services records of local departments of social services include, but are not limited to, (i) any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family that is the subject of a report, including multi-disciplinary teams and family assessment and planning teams referenced in subsection K of § 63.1-248.6, law-enforcement agencies and attorneys for the Commonwealth; (ii) child welfare or human services agencies of the Commonwealth or its political subdivisions when those agencies request information to determine the compliance of any person with a child-protective services plan or an order of any court; (iii) personnel of the school or child day program as defined in § 63.1-195 attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian; and (iv) a parent, grandparent, or any other person when such parent, grandparent or other person would be considered by the local department as a potential caretaker of the child in the event the department has to remove the child from his custodian.*

Whenever a local department of social services exercises its discretion to release otherwise confidential information to any person who meets one or more of these descriptions, the local department shall be presumed to have exercised its discretion in a reasonable and lawful manner.

B. Any person who has not been legally adopted in accordance with the provisions of Chapter 10.2 (§ 63.1-219.7 et seq.) of this title and who was a child for whom all parental rights and responsibilities have been terminated, shall not have access to any information from a child-placing agency with respect to the identity of the biological family, except (i) upon application of the child who is eighteen or more years of age, (ii) upon order of a circuit court entered upon good cause shown, and (iii) after notice to and opportunity for hearing by the applicant for such order and the child-placing agency or local board of social services that had custody of the child.

An eligible person who is a resident of Virginia may apply for the court order provided for herein to (a) the circuit court of the county or city where the person resides or (b) the circuit court of the county

or city where the principal office of the child-placing agency or local board of social services which controls the information sought by the person is located. An eligible person who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the principal office of the child-placing agency or local board of social services that controls the information sought by the person is located.

If the identity and whereabouts of the biological family are known to the agency or local board, the court may require the agency or local board to advise the biological parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the applicant for such order and upon the biological parents.

2. That the State Board of Social Services shall promulgate regulations to implement the provisions of this act within 280 days of its enactment.