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SENATE BILL NO. 425

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 6, 2002)

(Patron Prior to Substitute—Senator Wampler)

A BILL to amend and reenact §§ 2.2-3705 and 54.1-2505 of the Code of Virginia and to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 25.2, consisting of sections numbered 54.1-2519 through 54.1-2525, relating to the establishment of the Prescription Monitoring Program; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705 and 54.1-2505 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 25.2, consisting of sections numbered 54.1-2519 through 54.1-2525, as follows:

§ 2.2-3705. 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 that 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 § 2.2-3704. No such summaries or data shall include any patient-identifying information. Where the

SENATE

SUBSTITUTE

SB425S1

60 person who is the subject of medical and mental records is under the age of eighteen, his right of access
61 may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's
62 parental rights have been terminated or a court of competent jurisdiction has restricted or denied such
63 access. In instances where the person who is the subject thereof is an emancipated minor or a student in
64 a public institution of higher education, the right of access may be asserted by the subject person.

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

71 As used in this subdivision:

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

74 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet
75 Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor
76 has delegated his authority pursuant to § 2.2-104.

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

79 8. Legal memoranda and other work product compiled specifically for use in litigation or for use in
80 an active administrative investigation concerning a matter that is properly the subject of a closed
81 meeting under § 2.2-3711.

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

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

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

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

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

103 12. Applications for admission to examinations or for licensure and scoring records maintained by
104 the Department of Health Professions or any board in that department on individual licensees or
105 applicants. However, such material may be made available during normal working hours for copying, at
106 the requester's expense, by the individual who is the subject thereof, in the offices of the Department of
107 Health Professions or in the offices of any health regulatory board, whichever may possess the material.

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

110 14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to
111 § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed
112 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

113 15. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.1-55.4.

114 16. Proprietary information gathered by or for the Virginia Port Authority as provided in
115 § 62.1-132.4 or § 62.1-134.1.

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

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

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

124 20. Data, records or information of a proprietary nature produced or collected by or for faculty or
125 staff of public institutions of higher education, other than the institutions' financial or administrative
126 records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly
127 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a
128 private concern, where such data, records or information has not been publicly released, published,
129 copyrighted or patented.

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

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

141 23. Information that was filed as confidential under the Toxic Substances Information Act
142 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

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

156 29. Records and writings furnished by a member of the General Assembly to a meeting of a standing
157 committee, special committee or subcommittee of his house established solely for the purpose of
158 reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
159 formulating advisory opinions to members on standards of conduct, or both.

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

163 31. Investigative notes and other correspondence and information furnished in confidence with
164 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
165 under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in
166 accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted
167 prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human
168 relations commissions. However, nothing in this section shall prohibit the distribution of information
169 taken from inactive reports in a form that does not reveal the identity of the parties involved or other
170 persons supplying information.

171 32. Investigative notes; proprietary information not published, copyrighted or patented; information
172 obtained from employee personnel records; personally identifiable information regarding residents,
173 clients or other recipients of services; and other correspondence and information furnished in confidence
174 to the Department of Social Services in connection with an active investigation of an applicant or
175 licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1. However,
176 nothing in this section shall prohibit disclosure of information from the records of completed
177 investigations in a form that does not reveal the identity of complainants, persons supplying information,
178 or other individuals involved in the investigation.

179 33. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
180 Authority concerning individuals who have applied for or received loans or other housing assistance or
181 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
182 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the

183 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
184 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
185 waiting list for housing assistance programs funded by local governments or by any such authority; or
186 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
187 local government agency concerning persons who have applied for occupancy or who have occupied
188 affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's
189 own information shall not be denied.

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

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

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

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

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

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

223 40. Records concerning reserves established in specific claims administered by the Department of the
224 Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of
225 Chapter 18 of this title, or by any county, city, or town.

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

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

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

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

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

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

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

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

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

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

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

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

280 53. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or
281 proprietary information by any person who has submitted to a public body an application for
282 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

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

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

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

304 57. Records of law-enforcement agencies, to the extent that such records contain specific tactical
305 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 that 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 that are provided by a franchisee under § 15.2-2108 to its franchising authority pursuant to a promise of confidentiality from the franchising authority that 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 that 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 § 2.2-3801, provided to the Board of the Virginia College

368 Savings Plan or its employees by or on behalf of individuals who have requested information about,
369 applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to
370 Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit
371 disclosure or publication of information in a statistical or other form that does not identify individuals or
372 provide personal information. Individuals shall be provided access to their own personal information.

373 68. Any record copied, recorded or received by the Commissioner of Health in the course of an
374 examination, investigation or review of a managed care health insurance plan licensee pursuant to
375 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or
376 all computer or other recordings.

377 69. Engineering and architectural drawings, operational, procedural, tactical planning or training
378 manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance
379 techniques, personnel deployments, alarm systems or technologies, or operational and transportation
380 plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i)
381 the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse
382 controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or
383 law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision
384 of the Department of Corrections or the Department of Juvenile Justice.

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

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

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

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

409 74. Information furnished in confidence to the Department of Employment Dispute Resolution with
410 respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title,
411 and memoranda, correspondence and other records resulting from any such investigation, consultation or
412 mediation. However, nothing in this section shall prohibit the distribution of information taken from
413 inactive reports in a form that does not reveal the identity of the parties involved or other persons
414 supplying information.

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

418 76. Records of the State Lottery Department pertaining to (i) the social security number, tax
419 identification number, state sales tax number, home address and telephone number, personal and lottery
420 banking account and transit numbers of a retailer, and financial information regarding the nonlottery
421 operations of specific retail locations, and (ii) individual lottery winners, except that a winner's name,
422 hometown, and amount won shall be disclosed.

423 77. Records, information and statistical registries required to be kept confidential pursuant to
424 §§ 63.1-53 and 63.1-209.

425 78. *All data, records, and reports relating to the prescribing and dispensing of covered substances to*
426 *recipients and any abstracts from such data, records, and reports that are in the possession of the*
427 *Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any*
428 *material relating to the operation or security of the Program.*

429 B. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this
430 title shall be construed as denying public access to (i) contracts between a public official and a public
431 body, other than contracts settling public employee employment disputes held confidential as personnel
432 records under subdivision 4. of subsection A; (ii) records of the position, job classification, official
433 salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any
434 officer, official or employee of a public body; or (iii) the compensation or benefits paid by any
435 corporation organized by the Virginia Retirement System or its officers or employees. The provisions of
436 this subsection, however, shall not require public access to records of the official salaries or rates of pay
437 of public employees whose annual rate of pay is \$10,000 or less.

438 C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to
439 afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or
440 not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private
441 Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an
442 incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his
443 rights to call for evidence in his favor in a criminal prosecution.

444 § 54.1-2505. Powers and duties of Director of Department.

445 The Director of the Department shall have the following powers and duties:

- 446 1. To supervise and manage the Department;
- 447 2. To perform or consolidate such administrative services or functions as may assist the operation of
448 the boards;
- 449 3. To prepare, approve and submit to the Governor, after consultation with the boards, all requests
450 for appropriations and be responsible for all expenditures pursuant to appropriations;
- 451 4. To provide such office facilities as will allow the boards to carry out their duties;
- 452 5. To employ personnel as required for the proper performance of the responsibilities of the
453 Department subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 within the limits of appropriations
454 made by law;
- 455 6. To receive all complaints made against regulated health care professionals;
- 456 7. To develop administrative policies and procedures governing the receipt and recording of
457 complaints;
- 458 8. To monitor the status of actions taken under the auspices of the boards regarding complaints until
459 the closure of each case;
- 460 9. To provide investigative and such other services as needed by the boards to enforce their
461 respective statutes and regulations;
- 462 10. To provide staff to assist in the performance of the duties of the Board of Health Professions;
- 463 11. To collect and account for all fees to be paid into each board and account for and deposit the
464 moneys so collected into a special fund from which the expenses of the regulatory boards, the Health
465 Practitioners' Intervention Program, and the Department and Board of Health Professions shall be paid;
- 466 12. To make and enter into all contracts and agreements necessary or incidental to the performance
467 of his duties and the execution of his powers, including, but not limited to, contracts with the United
468 States, other states, agencies and governmental subdivisions of the Commonwealth;
- 469 13. To accept grants from the United States government, its agencies and instrumentalities, and any
470 other source. The Director shall have the power to comply with conditions and execute agreements as
471 may be necessary, convenient or desirable;
- 472 14. To promulgate and revise regulations necessary for the administration of the Department and
473 such regulations as are necessary for the implementation of the Health Practitioners' Intervention
474 Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title and subdivision 19 of this section;
- 475 15. To report promptly, after consultation with the presiding officer of the appropriate health
476 regulatory board or his designee, to the Attorney General or the appropriate attorney for the
477 Commonwealth any information the Department obtains which, upon appropriate investigation, indicates,
478 in the judgment of the Director, that a person licensed by any of the health regulatory boards has
479 violated any provision of criminal law relating to manufacturing, distributing, dispensing, prescribing or
480 administering drugs other than drugs classified as Schedule VI drugs. When necessary, the Attorney
481 General or the attorney for the Commonwealth shall request that the Department of Health Professions
482 or the Department of State Police conduct any subsequent investigation of such report. For the purpose
483 of this section, the terms manufacturing, distributing, dispensing, prescribing or administering drugs shall
484 not include minor administrative or clerical errors which do not affect the inventory of drugs required by
485 Chapter 34 (§ 54.1-3400 et seq.) of this title and do not indicate a pattern of criminal behavior;
- 486 16. To keep records of the names and qualifications of registered, certified or licensed persons;
- 487 17. To exercise other powers and perform other duties required of the Director by the Governor;
- 488 18. To issue subpoenas in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for
489 any informal fact finding or formal proceeding within the jurisdiction of the Department or any
490 regulatory board; and

19. To establish, and revise as necessary, a comprehensive health practitioners' intervention program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title.

20. To establish, and revise as necessary, the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of this title, including the establishment of procedures for assessing the costs of the Prescription Monitoring Program to the relevant health regulatory boards.

CHAPTER 25.2.

PRESCRIPTION MONITORING PROGRAM.

§ 54.1-2519. As used in this article, unless the context requires a different meaning:

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by (i) a practitioner or, under the practitioner's direction, his authorized agent or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Bureau" means the Virginia Department of State Police, Bureau of Criminal Investigation, Drug Diversion Unit.

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of this title.

"Covered substance" means a controlled substance that is required to be reported to the Prescription Monitoring Program, pursuant to this chapter.

"Department" means the Virginia Department of Health Professions.

"Director" means the Director of the Virginia Department of Health Professions.

"Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

"Dispenser" means a person or entity that (i) is authorized by law to dispense a covered substance or to maintain a stock of covered substances for the purpose of dispensing, and (ii) dispenses the covered substance to a citizen of the Commonwealth regardless of the location of the dispenser, or who dispenses such covered substance from a location in Virginia regardless of the location of the recipient.

"Prescriber" means a practitioner licensed in the Commonwealth who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue a prescription for a covered substance.

"Recipient" means a person who receives a covered substance from a dispenser.

"Relevant health regulatory board" means any such board that licenses persons or entities with the authority to prescribe or dispense covered substances, including, but not limited to, the Board of Dentistry, the Board of Medicine, and the Board of Pharmacy.

§ 54.1-2520. Program establishment; Director's regulatory authority.

A. The Director shall establish, maintain, and administer an electronic system to monitor the dispensing of covered substances to be known as the Prescription Monitoring Program. Covered substances shall include:

1. All Schedule II through IV controlled substances as defined in the Drug Control Act (§ 54.1-3400 et seq.).

2. Any Schedule V or VI controlled substance as defined in the Drug Control Act (§ 54.1-3400 et seq.) required to be monitored pursuant to regulation.

B. The Director, after consultation with relevant health regulatory boards, shall promulgate, in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), such regulations as are necessary to implement the prescription monitoring program as provided in this chapter, including, but not limited to, (i) the establishment of procedures for assessing the costs of the prescription monitoring program to the relevant health regulatory boards; (ii) the designation of the Schedule V or VI controlled substances to be monitored as covered substances; and (iii) the establishment of criteria for granting waivers of the reporting requirements set forth in § 54.1-2521.

C. The Director may enter into contracts as may be necessary for the implementation and maintenance of the Prescription Monitoring Program.

D. In accordance with the procedures established by the Director for assessing the costs of the Prescription Monitoring Program to the relevant health regulatory boards, the costs of the prescription monitoring program, including contractual obligations for implementation and maintenance, shall be funded by special dedicated revenues collected from those licensees of the relevant health regulatory boards who are authorized by law to be prescribers or dispensers.

§ 54.1-2521. Reporting requirements.

A. The failure by any person subject to the reporting requirements set forth in this section and the Department's regulations to report the dispensing of covered substances shall constitute grounds for disciplinary action by the relevant health regulatory board.

B. Upon dispensing a covered substance, a dispenser of such covered substance shall report the following information:

1. The recipient's name and address.
 2. The recipient's date of birth.
 3. The covered substance that was dispensed to the recipient.
 4. The quantity of the covered substance that was dispensed.
 5. The date of the dispensing.
 6. The prescriber's identifier number.
 7. The dispenser's identifier number.
 8. Any other information required by the Department's regulations.
- B. The reports required herein shall be made and transmitted in such manner and format and according to the standards and schedule established in the Department's regulations.
- § 54.1-2422. Reporting exemptions.
- The dispensing of covered substances under the following circumstances shall be exempt from the reporting requirements set forth in § 54.1-2521:
1. Dispensing of manufacturers' samples of such covered substances.
 2. Dispensing of covered substances by a practitioner of the healing arts to his patient in a bona fide medical emergency or when pharmaceutical services are not available.
 3. Administering of covered substances.
 4. Dispensing of covered substances within an appropriately licensed narcotic maintenance treatment program.
 5. As otherwise provided in the Department's regulations.
- § 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of Director.
- A. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring program pursuant to this chapter and any material relating to the operation or security of the program shall be confidential and shall be exempt from the Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subsection A. 78. of § 2.2-3705. Further, the Director shall only have discretion to disclose any such information as provided in subsection B.
- B. Upon receiving a request for information in accordance with the Department's regulations and in compliance with applicable federal law and regulations, the Director may, in his discretion, disclose the following:
1. Information on a specific recipient to a prescriber licensed by the appropriate regulatory board in the Commonwealth for the purpose of establishing the treatment history of the specific recipient when such recipient is either under care and treatment by the prescriber or the prescriber is initiating treatment of such recipient.
 2. Information on a specific recipient to a pharmacist licensed by the Board of Pharmacy to practice in the Commonwealth for the purpose of establishing a prescription history for such recipient who is seeking to receive or who has received a covered substance from the requesting pharmacist.
 3. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or prescriber to an agent designated by the superintendent of the Department of State Police to conduct drug diversion investigations pursuant to § 54.1-3405.
 4. Information relevant to an investigation of a specific prescriber or dispenser to the United States Drug Enforcement Administration Diversion Group Supervisor having responsibilities for investigation of drug diversion in the Commonwealth.
 5. Information relevant to an investigation or inspection of or allegation of misconduct by a specific dispenser or prescriber or information relevant to a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or board order to designated employees of the Department of Health Professions.
 6. Information relevant to an investigation or regulatory proceeding of a specific dispenser or prescriber to other regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession when such regulatory authority licenses such dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory authority.
 7. Information relevant to an investigation relating to a specific dispenser or prescriber who is a participating provider in the Virginia Medicaid program or information relevant to an investigation relating to a specific recipient who is currently eligible for and receiving or who has been eligible for and has received medical assistance services to the Medicaid Fraud Control Unit of the office of the Attorney General.
 8. Information relevant to the proceedings of any investigatory grand jury or special grand jury that has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of Title 19.2.
 9. Information relevant to the investigation or prosecution of a specific recipient, dispenser, or prescriber to an attorney for the Commonwealth or attorney for the United States.

10. Information in the possession of the program relating to a specific dispenser, prescriber or recipient pursuant to the order of a court of competent jurisdiction when such court shall order such disclosure for good cause shown.

11. Information from which the data elements that could reasonably allow identification of any specific dispenser, prescriber or recipient have been deleted prior to disclosure to qualified personnel for the purpose of bona fide research or education pursuant to a written agreement ensuring compliance with this chapter, the Department's regulations, and any applicable federal law and regulations.

12. Personal information in the possession of the program concerning a recipient who is over the age of eighteen or, if the recipient is under the age of eighteen or incompetent, to the recipient's parent, guardian or other legally responsible person.

B. Under no circumstances shall confidential information that has been received, maintained or developed by any board or disclosed by the board pursuant to subsection A be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide services. However, this subsection shall not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

C. The Director may, in his discretion:

1. Disclose, after consultation with the applicable health regulatory board president or his designee, to the Attorney General or the appropriate attorney for the Commonwealth, information that indicates a possible violation of any provision of law relating to the distribution, dispensing or prescribing of covered substances.

2. Disclose information concerning a specific recipient to the relevant prescribers and dispensers treating that recipient, if analysis of such prescribing and dispensing indicates a potential detriment to the recipient.

3. Use and report information in the aggregate from which any data elements that could reasonably allow identification of any specific dispenser, prescriber or recipient have been deleted for research, policy or educational purposes.

D. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the divulging of confidential records relating to investigative information.

§ 54.1-2524. Immunity from liability.

The Director and any employee of the Department of Health Professions shall be immune from civil liability arising out of the accuracy or inaccuracy of any information reported to the Department pursuant to this chapter; further, neither the Director nor any employee of the Department of Health Professions shall be liable for the disclosure of or failure to disclose any information pursuant to subsection B of § 54.1-2523.

§ 54.1-2525. Unlawful disclosure of information; disciplinary action authorized; penalties.

A. It shall be unlawful for any person having access to the confidential information in the possession of the Program or any data or reports produced by the program to disclose such confidential information except as provided in this chapter. Any person having access to the confidential information in the possession of the program or any data or reports produced by the program who discloses such confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.

B. It shall be unlawful for any person who lawfully receives confidential information from the Prescription Monitoring Program to redisclose or use such confidential information in any way other than the authorized purpose for which the request was made. Any person who lawfully receives information from the Prescription Monitoring Program and discloses such confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.

C. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program shall also be grounds for disciplinary action by the relevant health regulatory board.

2. That the Director of the Department of Health Professions shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

3. That, notwithstanding the effective date of this act, the reporting requirements set forth in § 54.1-2521 shall be implemented and dispensers and prescribers shall commence to report the required data on and after the date specified in the regulations of the Department. All dispensers and prescribers subject to such reporting requirements shall be notified by the Director of the Department of Health Professions of the implementation date for such reporting requirements as set forth in the Department's regulations.

4. That the provisions of this act shall be implemented with such federal funds or other federal grants that may become available for this purpose.