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SENATE BILL NO. 318

Offered January 14, 2004

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A BILL to amend and reenact §§ 2.2-3705, 2.2-3711, 2.2-4002, 32.1-279, 63.2-1603 through 63.2-1606, 63.2-1608, 63.2-1609, and 63.2-1610 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 63.2-1606.1 and 63.2-1607.1, and to repeal § 63.2-1607 of the Code of Virginia, relating to adult protective services; penalties.

Patrons—Howell, Puller and Quayle

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705, 2.2-3711, 2.2-4002, 32.1-279, 63.2-1603 through 63.2-1606, 63.2-1608, 63.2-1609, and 63.2-1610 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 63.2-1606.1 and 63.2-1607.1 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 Department of Charitable Gaming.

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 18 years. For scholastic records of students under the age of 18 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 18 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 18 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.

Where the person who is the subject of medical and mental records is under the age of 18, his right

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SB318

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

64 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning
65 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental
66 Retardation and Substance Abuse Services shall be open to inspection and copying as provided in
67 § 2.2-3704. No such summaries or data shall include any patient-identifying information.

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

74 As used in this subdivision:

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

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

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

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

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

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

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

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

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

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

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

113 14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to
114 § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed
115 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

116 15. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

117 16. Proprietary information gathered by or for the Virginia Port Authority as provided in
118 § 62.1-132.4 or § 62.1-134.1.

119 17. Contract cost estimates prepared for the confidential use of the Department of Transportation in
120 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 that 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 that 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 or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

27. Fisheries data that 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 § 30-110 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 (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, 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 that 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 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed

182 investigations in a form that does not reveal the identity of complainants, persons supplying information,
183 or other individuals involved in the investigation.

184 33. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
185 Authority concerning individuals who have applied for or received loans or other housing assistance or
186 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
187 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
188 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
189 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
190 waiting list for housing assistance programs funded by local governments or by any such authority; or
191 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
192 local government agency concerning persons who have applied for occupancy or who have occupied
193 affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's
194 own information shall not be denied.

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

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

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

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

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

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

228 Those portions of engineering and construction drawings and plans that reveal critical structural
229 components, security equipment and systems, ventilation systems, fire protection equipment, mandatory
230 building emergency equipment or systems, elevators, electrical systems, telecommunications equipment
231 and systems, and other utility equipment and systems submitted for the purpose of complying with the
232 Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et
233 seq.), the disclosure of which would jeopardize the safety or security of any public or private
234 commercial office, multi-family residential or retail building or its occupants in the event of terrorism or
235 other threat to public safety, to the extent that the owner or lessee of such property, equipment or
236 system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or
237 other materials to be protected; and (iii) states the reasons why protection is necessary.

238 Nothing in this subdivision shall prevent the disclosure of information relating to any building in
239 connection with an inquiry into the performance of that building after it has been subjected to fire,
240 explosion, natural disaster or other catastrophic event.

241 40. Records concerning reserves established in specific claims administered by the Department of the
242 Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of
243 Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and

information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

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 that 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. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

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

305 of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the
306 Department not release such information.

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

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

311 54. All information and records acquired during a review of any ~~child death~~ death by (i) the State Child
312 Fatality Review team established pursuant to § 32.1-283.1, ~~during a review of any child death~~ by (ii) a
313 local or regional child fatality review team established pursuant to § 32.1-283.2, ~~and all information and~~
314 ~~records acquired during a review of any death~~ by (iii) a family violence fatality review team established
315 pursuant to § 32.1-283.3, ~~or (iv) the State Adult Fatality Review team established pursuant to~~
316 ~~§ 63.2-1607.1.~~

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

320 56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a
321 proposal filed with a public entity or an affected local jurisdiction under the Public-Private
322 Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and
323 Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the
324 responsible public entity or affected local jurisdiction, used by the responsible public entity or affected
325 local jurisdiction for purposes related to the development of a qualifying transportation facility or
326 qualifying project; and memoranda, working papers or other records related to proposals filed under the
327 Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure
328 Act of 2002, where, if such records were made public, the financial interest of the public or private
329 entity involved with such proposal or the process of competition or bargaining would be adversely
330 affected. In order for confidential proprietary information to be excluded from the provisions of this
331 chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials
332 for which protection from disclosure is sought, (ii) identify the data or other materials for which
333 protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this
334 subdivision, the terms "affected local jurisdiction", "public entity" and "private entity" shall be defined
335 as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education
336 Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to
337 prohibit the release of procurement records as required by § 56-573.1 or § 56-575.16. Procurement
338 records shall not be interpreted to include proprietary, commercial or financial information, balance
339 sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its
340 qualifications.

341 57. Plans and information to prevent or respond to terrorist activity, the disclosure of which would
342 jeopardize the safety of any person, including (i) critical infrastructure sector or structural components;
343 (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training
344 manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or
345 records containing information derived from such records, to the extent such records reveal the location
346 or operation of security equipment and systems, elevators, ventilation, fire protection, emergency,
347 electrical, telecommunications or utility equipment and systems of any public building, structure or
348 information storage facility. The same categories of records of any governmental or nongovernmental
349 person or entity submitted to a public body for the purpose of antiterrorism response planning may be
350 withheld from disclosure if such person or entity in writing (a) invokes the protections of this
351 subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought,
352 and (c) states with reasonable particularity why the protection of such records from public disclosure is
353 necessary to meet the objective of antiterrorism planning or protection. Such statement shall be a public
354 record and shall be disclosed upon request. Nothing in this subdivision shall be construed to prohibit the
355 disclosure of records relating to the structural or environmental soundness of any building, nor shall it
356 prevent the disclosure of information relating to any building in connection with an inquiry into the
357 performance of that building after it has been subjected to fire, explosion, natural disaster or other
358 catastrophic event.

359 58. All records of the University of Virginia or the University of Virginia Medical Center or Eastern
360 Virginia Medical School, as the case may be, that contain proprietary, business-related information
361 pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical
362 School, as the case may be, including business development or marketing strategies and activities with
363 existing or future joint venturers, partners, or other parties with whom the University of Virginia
364 Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any
365 arrangement for the delivery of health care, if disclosure of such information would be harmful to the
366 competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

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 Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5, 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 Department of Charitable Gaming 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 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 that 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

428 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or
429 all computer or other recordings.

430 69. Engineering and architectural drawings, operational, procedural, tactical planning or training
431 manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance
432 techniques, personnel deployments, alarm or security systems or technologies, or operational and
433 transportation plans or protocols, to the extent such disclosure would jeopardize the security of any
434 governmental facility, building or structure or the safety of persons using such facility, building or
435 structure.

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

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

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

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

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

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

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

474 77. Records, information and statistical registries required to be kept confidential pursuant to
475 §§ 63.2-102 and 63.2-104.

476 78. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a
477 public body for the purpose of receiving electronic mail from the public body, provided that the
478 electronic mail recipient has requested that the public body not disclose such information. However,
479 access shall not be denied to the person who is the subject of the record.

480 79. (For effective date, see note) All data, records, and reports relating to the prescribing and
481 dispensing of covered substances to recipients and any abstracts from such data, records, and reports that
482 are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et
483 seq.) of Title 54.1 and any material relating to the operation or security of the Program.

484 80. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the
485 Virginia Administrative Dispute Resolution Act.

486 81. The names, addresses and telephone numbers of complainants furnished in confidence with
487 respect to an investigation of individual zoning enforcement complaints made to a local governing body.

488 82. Records relating to the negotiation and award of a specific contract where competition or
489 bargaining is involved and where the release of such records would adversely affect the bargaining

position or negotiating strategy of the public body. Such records shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this subdivision shall not apply, and any release of records relating to such transactions shall be governed by the Virginia Public Procurement Act.

83. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain 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.

84. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

85. Security plans and specific vulnerability assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered or been threatened with any personal injury.

86. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

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

B. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision A 4; (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 or Chapter 21 (§ 30-178 et seq.) of Title 30 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.

D. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

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

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

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to

551 be present during the taking of testimony or presentation of evidence at a closed meeting, if such
552 student, parents or guardians so request in writing and such request is submitted to the presiding officer
553 of the appropriate board.

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

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

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

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

564 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
565 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
566 negotiating or litigating posture of the public body; and consultation with legal counsel employed or
567 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
568 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
569 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
570 will be commenced by or against a known party. Nothing in this subdivision shall be construed to
571 permit the closure of a meeting merely because an attorney representing the public body is in attendance
572 or is consulted on a matter.

573 8. In the case of boards of visitors of public institutions of higher education, discussion or
574 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
575 for services or work to be performed by such institution. However, the terms and conditions of any such
576 gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign
577 person and accepted by a public institution of higher education in Virginia shall be subject to public
578 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
579 (i) "foreign government" means any government other than the United States government or the
580 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
581 created under the laws of the United States or of any state thereof if a majority of the ownership of the
582 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
583 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
584 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
585 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

586 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
587 of Natural History, and The Science Museum of Virginia, discussion or consideration of matters relating
588 to specific gifts, bequests, and grants.

589 10. Discussion or consideration of honorary degrees or special awards.

590 11. Discussion or consideration of tests, examinations or other records excluded from this chapter
591 pursuant to subdivision A 11 of § 2.2-3705.

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

596 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to
597 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
598 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating
599 position of the governing body or the establishment of the terms, conditions and provisions of the siting
600 agreement, or both. All discussions with the applicant or its representatives may be conducted in a
601 closed meeting.

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

604 15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to
605 subdivision A 5 of § 2.2-3705.

606 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
607 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
608 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
609 game information and studies or investigations exempted from disclosure under subdivisions A 37 and A
610 38 of § 2.2-3705.

611 17. Those portions of meetings by local government crime commissions where the identity of, or
612 information tending to identify, individuals providing information about crimes or criminal activities

under a promise of anonymity is discussed or disclosed.

18. Discussion, consideration, review and deliberations by local community corrections resources boards regarding the placement in community diversion programs of individuals previously sentenced to state correctional facilities.

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

20. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety.

21. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

22. Those portions of meetings in which individual ~~child~~ death cases are discussed by (i) the State Child Fatality Review team established pursuant to § 32.1-283.1, ~~and those portions of meetings in which individual child death cases are discussed by~~ (ii) a regional or local child fatality review team established pursuant to § 32.1-283.2, ~~and those portions of meetings in which individual death cases are discussed by~~ (iii) a family violence fatality review ~~teams~~ team established pursuant to § 32.1-283.3, or (iv) the State Adult Fatality Review team established pursuant to § 63.2-1607.1.

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

24. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

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

26. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

27. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of 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, related to the provision of

674 wireless E-911 service.

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

681 29. Discussion or consideration by a responsible public entity or an affected local jurisdiction, as
682 those terms are defined in § 56-557, of confidential proprietary records excluded from this chapter
683 pursuant to subdivision A 56 of § 2.2-3705.

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

688 31. Discussion or consideration by the Commonwealth Health Research Board of grant application
689 records excluded from this chapter pursuant to subdivision A 83 of § 2.2-3705.

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

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

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

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

708 § 2.2-4002. Exemptions from chapter generally.

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

712 1. The General Assembly.

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

715 3. The Department of Game and Inland Fisheries in promulgating regulations regarding the
716 management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2
717 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7
718 (§ 29.1-700 et seq.) of Title 29.1.

719 4. The Virginia Housing Development Authority.

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

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

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

730 8. The Virginia Resources Authority.

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

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

734 11. The State Council of Higher Education for Virginia, in developing, issuing, and revising
735 guidelines pursuant to § 23-9.6:2.

12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of §§ 3.1-126.12:1, 3.1-271.1, 3.1-530.1, and 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

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

15. The Virginia War Memorial Foundation.

16. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

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

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

19. The Virginia Small Business Financing Authority.

20. The Virginia Economic Development Partnership Authority.

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

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

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

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

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

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

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

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, naval or police functions.

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

8. The conduct of elections or eligibility to vote.

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

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

11. Traffic signs, markers or control devices.

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

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

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

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

16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

17. Any operating procedures for review of ~~child~~ deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1, *or the State Adult Fatality Review Team pursuant to § 63.2-1607.1.*

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

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5.

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

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

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

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

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) of this title, made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of this chapter.

§ 32.1-279. Duties of Chief Medical Examiner; teaching legal medicine.

A. The Chief Medical Examiner shall carry out the provisions of this article under the direction of the Commissioner. The central and district offices and facilities established as provided in § 32.1-277 shall be under the supervision of the Chief Medical Examiner.

B. The Chief Medical Examiner and his assistants shall be available to Virginia Commonwealth University, the University of Virginia, the Eastern Virginia Medical School, and other institutions of higher education providing instruction in health science or law for teaching legal medicine and other subjects related to their duties.

C. *The Chief Medical Examiner shall serve as chair of the Adult Fatality Review Team established pursuant to § 63.2-1607.1.*

§ 63.2-1603. Protection of adults; definitions.

As used in this article:

"Adult" means any person ~~eighteen~~ *60 years of age or older, and any person 18 years of age and older* who is incapacitated and ~~any qualifying person sixty years of age and older, who, in either case, both of whom reside~~ *resides* in the Commonwealth; provided, however, "adult" may include ~~incapacitated or~~ qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

"Emergency" means that an adult is living in conditions that present a clear and substantial risk of death or immediate and serious physical harm to himself or others.

"Incapacitated person" means any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

§ 63.2-1604. Establishment of Adult Protective Services Unit; powers and duties.

There is hereby created the Adult Protective Services Unit within the Adult Services Program in the Department, which, *in coordination with adult protective services in the local departments*, shall have the following powers and duties:

1. To support, strengthen, and evaluate adult protective services programs at local departments;

2. To assist in developing and implementing programs ~~aimed at responding to respond to and preventing prevent~~ adult abuse, neglect or exploitation;

3. To prepare, disseminate, and present educational programs and materials on adult abuse, neglect and exploitation *to mandated reporters and the public*;

4. ~~To develop and provide educational programs and materials to persons who are required by law to make reports of adult abuse, neglect, and exploitation under this chapter;~~

5. To establish minimum standards of training and provide educational opportunities to qualify social workers in the field of adult protective services to determine whether reports of adult abuse, neglect, or exploitation are substantiated. The Department shall establish, and the Board shall approve, a uniform training program for adult protective services workers in the Commonwealth. All adult protective services workers shall complete such training within one year from the date of implementation of the training program or within the first year of their employment;

6. To develop policies and procedures to guide the work of persons in the field of adult protective services;

7. To prepare and disseminate statistical information on adult protective services in Virginia;

8. ~~To operate the adult protective services 24-hour toll-free hotline and provide training and technical assistance to the adult protective services twenty-four-hour toll-free hotline staff; and~~

9. ~~To provide coordination among the adult protective services program and other state social services, medical and legal agencies; and~~

10. *To work collaboratively with other agencies in the Commonwealth to facilitate the reporting and investigation of suspected adult abuse, neglect, or exploitation.*

§ 63.2-1605. Protective services for adults by local departments.

A. Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, subject to supervision of the Commissioner and in accordance with regulations adopted by the Board, adult protective services for ~~persons~~ *adults* who are found to be abused, neglected or exploited and who meet one of the following criteria: (i) the ~~person~~ *adult* is ~~sixty~~ *60* years of age or older or (ii) the ~~person~~ *adult* is *18 years of age or older and is incapacitated and has no relative or other person able, available and willing to provide guidance, supervision or other needed care.* The requirement to provide such services shall not limit the right of any individual to refuse to accept any of the services so offered, except as provided in § 63.2-1608.

B. Upon receipt of the report pursuant to § 63.2-1606, the local department shall determine the validity of such report and shall conduct an investigation that shall be initiated within 24 hours of the time the report is received in the local department if the situation is an emergency. Investigation of all other valid reports shall be initiated not later than five calendar days from the time the report is received in the local department. Local departments shall consider valid any report meeting all of the following criteria: (i) the subject of the report is an adult as defined in this chapter, (ii) the report concerns a specific adult and there is enough information to locate the adult, and (iii) the report describes the circumstances of the alleged abuse, neglect, or exploitation.

C. The local department is authorized to institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter.

D. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation. The local department shall refer to the Adult Fatality Review Team established under § 63.2-1607.1 all cases where it determines that physical abuse or neglect likely contributed to the death of an adult.

E. If a local department is denied access to an adult believed to be in need of adult protective services, then the local department may petition the circuit court for an order allowing access or entry or both. Upon a showing of good cause supported by an affidavit or sworn testimony in person, the court may enter an order that establishes that the department has received a report that the adult is in need of protective services and access to the adult has been denied by a third party.

F. In any case of suspected adult abuse, neglect, or exploitation, local departments, with the informed consent of the adult or his legal representative, may take or cause to be taken photographs, video recordings, or X-rays of the adult and his environment as long as such measures are relevant to the investigation and do not conflict with § 18.2-386.1.

G. Local departments shall foster the development, implementation, and coordination of adult protective services to prevent adult abuse, neglect, and exploitation.

H. Local departments shall not investigate allegations of abuse, neglect, or exploitation of adults incarcerated in state correctional facilities.

I. Local departments shall notify the local law enforcement agency where the adult resides, or where the alleged abuse, neglect, or exploitation took place, or if these places are unknown, then where the alleged abuse, neglect, or exploitation was discovered, when in receipt of a report describing any of the following:

1. Sexual abuse as defined in § 18.2-67.10;
2. Death, serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse or neglect; or
3. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.

J. The report and evidence received by adult protective services and any written findings, evaluations, records, and recommended actions shall be confidential and shall be exempt from disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be disclosed to persons having a legitimate interest in the matter in accordance with §§ 63.2-102 and 63.2-104 and pursuant to official interagency agreements or memoranda of understanding between state agencies.

§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported ~~any~~ immediately if the adult is in imminent danger of death or serious bodily harm. All other matters giving rise to suspicion of the abuse, neglect, or exploitation of an adult that do not require immediate intervention shall be reported within 48 hours. Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;

2. Any mental health services provider as defined in § 54.1-2400.1;

3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5;

4. Any guardian or conservator of an adult;

to practice medicine or any of the healing arts, any hospital resident or intern, any person employed in the nursing profession, any 5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

any 6. Any person providing full-time or part-time full, intermittent or occasional care to adults an adult for pay on a regularly scheduled basis; any person employed as a social worker, any mental health professional and any compensation, including but not limited to, companion, chore, homemaker,

920 *and personal care workers; and*

921 7. Any law-enforcement officer, in his professional or official capacity, who has reason to suspect
922 that an adult is an abused, neglected or exploited adult.

923 B. The report shall be made immediately in accordance with subsection A to the local department of
924 the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is
925 believed to have occurred or to the adult protective services hotline. Nothing in this section shall be
926 construed to eliminate or supersede any other obligation to report as required by law. If neither locality
927 is known, then the report shall be made to the local department of the county or city where the adult
928 abuse, neglect, or exploitation was discovered. If the information is received by a staff member, resident,
929 intern or nurse in the course of professional services in a hospital or similar institution, such person
930 may, in place of the report, immediately notify the person in charge of the institution or department, or
931 his designee, who shall make such report forthwith. Any person required to make the report or
932 notification required by this subsection shall do so either orally or in writing and shall disclose all
933 information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any
934 person required to make the report shall make available to the adult protective services worker and the
935 local department investigating the reported case of adult abuse, neglect or exploitation any information,
936 records or reports which document the basis for the report. All persons required to report suspected adult
937 abuse, neglect or exploitation who maintain a record of a person who is the subject of such a report
938 shall cooperate with the investigating adult protective services worker of a local department and shall
939 make information, records and reports which are relevant to the investigation available to such worker to
940 the extent permitted by state and federal law.

941 B. The report required by subsection A shall be reduced to writing within seventy-two hours by the
942 director of the local department on a form prescribed by the Board.

943 C. Any person required to make a report pursuant to subsection A who has reason to suspect that an
944 adult has been sexually abused as that term is defined in § 18.2-67.10, and any person in charge of a
945 hospital or similar institution, or a department thereof, who receives such information from a staff
946 member, resident, intern or nurse, also shall immediately report the matter, either orally or in writing, to
947 the local law-enforcement agency where the adult resides or the sexual abuse is believed to have
948 occurred, or if neither locality is known, then where the abuse was discovered. The person making the
949 report shall disclose and, upon request, make available to the law-enforcement agency all information
950 forming the basis of the report.

951 DC. Any financial institution that staff who suspects that an adult customer has been exploited
952 financially may report such suspected exploitation to the local department of the county or city wherein
953 the adult resides or wherein the exploitation is believed to have occurred or to the adult protective
954 services hotline. Such a complaint may be oral or in writing. For purposes of this section, a financial
955 institution staff means any employee of a bank, savings institution, credit union, securities firm,
956 accounting firm, or insurance company.

957 ED. Any person other than those specified in subsection A who suspects that an adult is an abused,
958 neglected or exploited adult may report the matter to the local department of the county or city wherein
959 the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the
960 adult protective services hotline. Such a complaint may be oral or in writing.

961 EE. Any person who makes a report or provides records or information pursuant to subsection A, C
962 or D or E, or who testifies in any judicial proceeding arising from such report, records or information,
963 or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent
964 photographs, video recordings, or X-rays of the adult who is subject of a report shall be immune from
965 any civil or criminal liability on account of such report, records, information, photographs, video
966 recordings, X-rays or testimony, unless such person acted in bad faith or with a malicious purpose.

967 F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting
968 directly to adult protective services. Employers whose employees are mandated reporters must notify
969 employees upon hiring of the requirement to report.

970 G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse,
971 neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any
972 subsequent conviction of this provision shall be a Class 2 misdemeanor.

973 G. All law-enforcement departments and other state and local departments, agencies, authorities and
974 institutions shall cooperate with each adult protective services worker of a local department in the
975 detection and prevention of adult abuse, neglect or exploitation.

976 H. Any person who is found guilty of failing fails to make a required report or notification pursuant
977 to subsection A or C, within twenty-four hours of having the reason to suspect abuse, shall be fined
978 subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more
979 than \$1,000 for any subsequent failures, as determined by the Commissioner or his designee. All civil
980 penalties collected under this subsection shall be deposited into the Adult Protective Services Trust Fund
981 established under § 63.2-1606.1. The Department shall establish by regulation a process for imposing

and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.

I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse or neglect shall forthwith report such suspicion to the appropriate medical examiner and to the appropriate law enforcement agency, notwithstanding the existence of a death certificate signed by a licensed physician. The medical examiner at the law-enforcement agency shall receive the report and determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to adult protective services.

J. No person or entity shall be obligated to report any matter if the person or entity has actual knowledge that the same matter has already been reported to adult protective services.

§ 63.2-1606.1. Adult Protective Services Trust Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Adult Protective Services Trust Fund, hereinafter referred to as "the Fund". The Fund shall be established on the books of the Comptroller. All civil penalties that are collected pursuant to subsection H of § 63.2-1606, and any other funds as may be appropriated to the Fund, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund, but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in §§ 63.2-1604 and 63.2-1605, including adult guardianship. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request by the Commissioner or his designee.

§ 63.2-1607.1. Adult Fatality Review Team established.

A. There is hereby created the State Adult Fatality Review Team, hereinafter referred to as the "Team," which shall develop and implement procedures to ensure that suspicious deaths of adults are analyzed in a systematic way, and provide ongoing surveillance of suspicious adult fatalities in order to develop a body of knowledge and information to facilitate the prevention of such fatalities in the future. The Team shall have the authority to review the facts and circumstances of deaths of adults in Virginia in cases where a local department determines that physical abuse or neglect likely contributed to such death and shall (i) develop and revise as necessary operating procedures for the review of adult deaths, including identification of cases to be reviewed and procedures for coordination among the agencies and professionals involved, (ii) make recommendations to improve the identification, data collection, and recordkeeping of the causes of adult death, (iii) recommend components for prevention and education programs, (iv) recommend training to improve the investigation of adult deaths, and (v) provide technical assistance, upon request, to any local adult fatality teams that may be established. The operating procedures for the review of adult deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 17 of § 2.2-4002.

B. The 12-member Team shall be chaired by the Chief Medical Examiner and shall be composed of the following persons or their designees: the Commissioner; the Program Manager of Adult Protective Services within the Department; and the Director of the Department of Criminal Justice Services. In addition, one representative from each of the following entities shall be appointed by the Governor: local law-enforcement agencies, local fire departments, local departments, the Medical Society of Virginia, the Virginia College of Emergency Physicians, local emergency medical services personnel, attorneys for the Commonwealth, and community services boards. Of these eight entity representatives, the Governor shall appoint four for initial terms of two years and four for initial terms of three years. Thereafter all entity representatives shall be appointed for three-year terms.

C. Upon the request of the Chief Medical Examiner in his capacity as chair of the Team, made after the conclusion of any law-enforcement investigation or prosecution, information and records regarding an adult whose death is being reviewed by the Team may be inspected and copied by the Chief Medical Examiner or his designee, including, but not limited to, any report of the circumstances of the event maintained by any state or local law-enforcement agency or medical examiner, and information or records maintained on such adult by any assisted living facility, nursing home, social services agency or court. Information, records or reports maintained by any attorney for the Commonwealth shall be made available for inspection and copying by the Chief Medical Examiner pursuant to procedures that shall be developed by the Chief Medical Examiner and the Commonwealth Attorneys Services Council established by § 2.2-2617. In addition, the Chief Medical Examiner may inspect and copy from any Virginia health care provider, on behalf of the Team, (i) the health and mental health records of the adult without obtaining consent, and (ii) the health and mental health records of any of the adult's family members upon obtaining the family member's consent regarding his personal records or upon obtaining the consent of the family member's guardian or conservator. All such information and records shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et

seq.). Upon the conclusion of the adult death review, all information and records concerning the adult and the adult's family shall be shredded or otherwise destroyed by the Chief Medical Examiner in order to ensure confidentiality. Such information or records shall not be subject to subpoena or discovery or be admissible in any criminal or civil proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, discovery or introduction into evidence when obtained through such other sources solely because the information and records were presented to the Team during an adult death review. Further, the findings of the Team may be disclosed or published in statistical or other form, which shall not identify individuals. The portions of meetings in which individual adult death cases are discussed by the Team shall be closed and not subject to the open meeting requirements of the Virginia Freedom of Information Act. In addition to the closed meetings procedures required by § 2.2-3712, all team members, persons attending closed team meetings, and persons presenting information and records on specific adult deaths to the Team during closed meetings shall execute a sworn statement to honor the confidentiality of the information, records, discussions, and opinions disclosed during any closed meeting to review a specific adult death. Violations of this subsection shall be punishable as a Class 3 misdemeanor.

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

E. The Team shall compile and post annual data on the official website for the Department, and shall make such data available to the Governor and the General Assembly as requested. These statistical data compilations shall not contain any personally identifying information and shall be public records.

§ 63.2-1608. Involuntary adult protective services.

A. If an adult lacks the capacity to consent to receive adult protective services, these services may be ordered by a court on an involuntary basis through an emergency order pursuant to § 63.2-1609 or through the appointment of by a guardian or conservator appointed pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1.

B. In ordering involuntary adult protective services, the court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights, while consistent with his welfare and safety. The basis for such finding shall be stated in the record by the court.

C. The adult shall not be required to pay for involuntary adult protective services, unless such payment is authorized by the court upon a showing that the person is financially able to pay. In such event the court shall provide for reimbursement of the actual costs incurred by the local department in providing adult protective services, excluding administrative costs.

§ 63.2-1609. Emergency order for adult protective services.

A. Upon petition by the local department to the circuit court, the court may issue an order authorizing the provision of adult protective services on an emergency basis to an adult after finding on the record, based on a greater weight preponderance of the evidence, that:

1. The adult is incapacitated;
2. An emergency exists;
3. The adult lacks the capacity to consent to receive adult protective services; and
4. The proposed order is substantially supported by the findings of the local department which that has investigated the case, or if not so supported, there are compelling reasons for ordering services.

B. In issuing an emergency order, the court shall adhere to the following limitations:

1. Only such adult protective services as are necessary to improve or correct the conditions creating the emergency shall be ordered, and the court shall designate the approved services in its order. In ordering adult protective services the court shall consider the right of a person to rely on nonmedical remedial treatment in accordance with a recognized religious method of healing in lieu of medical care.

2. The court shall specifically find in the emergency order whether hospitalization or a change of residence is necessary. Approval of the hospitalization or change of residence shall be stated in the order. No person adult may be committed to a mental health facility under this section.

3. Adult protective services may be provided through an appropriate court order only for a period of five 15 days. The original order may be renewed once for a five-day period upon a showing to the court that continuation of the original order is necessary to remove the emergency.

4. In its order the court shall appoint the petitioner or another interested person, as temporary guardian of the adult with responsibility for the person's adult's welfare and authority to give consent for the person adult for the approved adult protective services until the expiration of the order.

5. The issuance of an emergency order and the appointment of a temporary guardian shall not deprive the adult of any rights except to the extent provided for in the order or appointment.

C. The petition for an emergency order shall set forth the name, address, and interest of the petitioner; the name, age and address of the adult in need of adult protective services; the nature of the emergency; the nature of the person's adult's disability incapacity, if determinable; the proposed adult

protective services; the petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the facts stated in subdivisions A 1 through A 4; and facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of such attempts.

D. Written notice of the time, date and place for the hearing shall be given to the ~~person~~ *adult*, to his spouse, or if none, to his nearest known next of kin, and a copy of the petition shall be attached. Such notice shall be given at least ~~twenty-four~~ 24 hours prior to the hearing for emergency intervention. The court may waive the ~~twenty-four - hour~~ 24-hour notice requirement upon showing that (i) immediate and reasonably foreseeable physical harm to the ~~person~~ *adult* or others will result from the ~~twenty-four - hour~~ 24-hour delay, and (ii) reasonable attempts have been made to notify the adult, his spouse, or if none, his nearest known next of kin.

E. Upon receipt of a petition for an emergency order for adult protective services, the court shall hold a hearing. The adult who is the subject of the petition shall have the right to be present and be represented by counsel at the hearing. If it is determined that the ~~person~~ *adult* is indigent, or, in the determination of the judge, lacks capacity to waive the right to counsel, the court shall locate and appoint a guardian ad litem. If the ~~person~~ *adult* is indigent, the cost of the proceeding shall be borne by the Commonwealth. If the ~~person~~ *adult* is not indigent, the *court may order that the* cost of the proceeding shall be borne by such ~~person~~ *adult*. This hearing shall be held no earlier than ~~twenty-four~~ 24 hours after the notice required in subsection D has been given, unless such notice has been waived by the court.

F. The adult, the temporary guardian or any interested person may petition the court to have the emergency order set aside or modified at any time there is evidence that a substantial change in the circumstances of the ~~person~~ *adult* for whom the emergency services were ordered has occurred.

G. Where adult protective services are rendered on the basis of an emergency order, the temporary guardian shall submit to the court a report describing the circumstances thereof including the name, place, date and nature of the services provided. This report shall become part of the court record. Such report shall be confidential and open only to such persons as may be directed by the court.

H. If the person continues to need adult protective services after the renewal order provided in subdivision B 3 has expired, the temporary guardian or the local department shall immediately petition the court to appoint a guardian pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1.

§ 63.2-1610. Voluntary adult protective services.

A. ~~Any adult may receive adult~~ *The local department shall provide or arrange for* protective services; ~~provided or arranged for by the director~~ if the adult requests or affirmatively consents to receive these services. If the ~~person~~ *adult* withdraws or refuses consent, the services shall not be provided.

B. No person shall interfere with the provision of adult protective services to an (i) adult who requests or consents to receive such services, (ii) *for whom consent has been lawfully given*, or (iii) *for whom a court orders services to be provided*. In the event that interference occurs on a continuing basis, the director may petition the court *of competent jurisdiction* to enjoin such interference.

C. The actual costs incurred by the local department in providing adult protective services shall be borne by the local department, unless the adult *or his representative* agrees to pay for them or a court ~~authorizes orders~~ the local department to receive reasonable reimbursement for the adult protective services, excluding administrative costs, from the ~~person's~~ *adult's* assets after a finding that the adult is financially able to make such payment.

2. That § 63.2-1607 of the Code of Virginia is repealed.