

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 2.2-3705.6 of the Code of Virginia, relating to the Freedom of Information Act; record exemption for the Tobacco Indemnification and Community Revitalization Commission.

[H 1458]

Approved

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-3705.6 of the Code of Virginia is amended and reenacted as follows:**

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

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

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. 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, *the Tobacco Indemnification and Community Revitalization Commission*, 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 such entities, 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.

4. 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.

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

6. 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.

7. 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.

8. 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.

9. 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.

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

11. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity or an affected local jurisdiction under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and

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57 Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the
 58 responsible public entity or affected local jurisdiction, used by the responsible public entity or affected
 59 local jurisdiction for purposes related to the development of a qualifying transportation facility or
 60 qualifying project; and memoranda, working papers or other records related to proposals filed under the
 61 Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure
 62 Act of 2002, where, if such records were made public, the financial interest of the public or private
 63 entity involved with such proposal or the process of competition or bargaining would be adversely
 64 affected. In order for confidential proprietary information to be excluded from the provisions of this
 65 chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials
 66 for which protection from disclosure is sought, (ii) identify the data or other materials for which
 67 protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this
 68 subdivision, the terms "affected local jurisdiction," "public entity" and "private entity" shall be defined
 69 as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education
 70 Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to
 71 prohibit the release of procurement records as required by § 56-573.1 or 56-575.16. Procurement records
 72 shall not be interpreted to include proprietary, commercial or financial information, balance sheets,
 73 financial statements, or trade secrets that may be provided by the private entity as evidence of its
 74 qualifications.

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

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

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

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

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

98 17. Records submitted as a grant application, or accompanying a grant application, to the
 99 Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the
 100 extent such records contain proprietary business or research-related information produced or collected by
 101 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
 102 technical or scholarly issues, when such information has not been publicly released, published,
 103 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
 104 position of the applicant.

105 18. Confidential proprietary records and trade secrets developed and held by a local public body (i)
 106 providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
 107 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 2 of Title 15.2, to the extent that
 108 disclosure of such records would be harmful to the competitive position of the locality. In order for
 109 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
 110 the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the
 111 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is
 112 necessary.

113 19. Confidential proprietary records and trade secrets developed by or for a local authority created in
 114 accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide
 115 qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of
 116 Title 56, where disclosure of such information would be harmful to the competitive position of the
 117 authority, except that records required to be maintained in accordance with § 15.2-2160 shall be

118 released.