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HOUSE BILL NO. 407

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on January 23, 2006)

(Patron Prior to Substitute—Delegate Callahan)

A BILL to amend and reenact §§ 2.2-3803, 58.1-3, and 58.1-202 of the Code of Virginia, relating to the Department of Taxation; earned income tax credit information.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3803, 58.1-3, and 58.1-202 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3803. Administration of systems including personal information; Internet privacy policy; exceptions.

A. Any agency maintaining an information system that includes personal information shall:

1. Collect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency;

2. Collect information to the greatest extent feasible from the data subject directly;

3. Establish categories for maintaining personal information to operate in conjunction with confidentiality requirements and access controls;

4. Maintain information in the system with accuracy, completeness, timeliness, and pertinence as necessary to ensure fairness in determinations relating to a data subject;

5. Make no dissemination to another system without (i) specifying requirements for security and usage including limitations on access thereto, and (ii) receiving reasonable assurances that those requirements and limitations will be observed. This subdivision shall not apply, however, to a dissemination made by an agency to an agency in another state, district or territory of the United States where the personal information is requested by the agency of such other state, district or territory in connection with the application of the data subject therein for a service, privilege or right under the laws thereof, nor shall this apply to information transmitted to family advocacy representatives of the United States Armed Forces in accordance with subsection N of § 63.2-1503;

6. Maintain a list of all persons or organizations having regular access to personal information in the information system;

7. Maintain for a period of three years or until such time as the personal information is purged, whichever is shorter, a complete and accurate record, including identity and purpose, of every access to any personal information in a system, including the identity of any persons or organizations not having regular access authority but excluding access by the personnel of the agency wherein data is put to service for the purpose for which it is obtained;

8. Take affirmative action to establish rules of conduct and inform each person involved in the design, development, operation, or maintenance of the system, or the collection or use of any personal information contained therein, about all the requirements of this chapter, the rules and procedures, including penalties for noncompliance, of the agency designed to assure compliance with such requirements;

9. Establish appropriate safeguards to secure the system from any reasonably foreseeable threat to its security; and

10. Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects that is maintained, used or disseminated in or by any information system operated by any agency unless authorized explicitly by statute or ordinance.

B. Every public body, as defined in § 2.2-3701, that has an Internet website associated with that public body shall develop an Internet privacy policy and an Internet privacy policy statement that explains the policy to the public. The policy shall be consistent with the requirements of this chapter. The statement shall be made available on the public body's website in a conspicuous manner. The Secretary of Technology or his designee shall provide guidelines for developing the policy and the statement, and each public body shall tailor the policy and the statement to reflect the information practices of the individual public body. At minimum, the policy and the statement shall address (i) what information, including personally identifiable information, will be collected, if any; (ii) whether any information will be automatically collected simply by accessing the website and, if so, what information; (iii) whether the website automatically places a computer file, commonly referred to as a "cookie," on the Internet user's computer and, if so, for what purpose; and (iv) how the collected information is being used or will be used.

C. Notwithstanding the provisions of subsection A, the Virginia Retirement System may disseminate

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60 information as to the retirement status or benefit eligibility of any employee covered by the Virginia
61 Retirement System, the Judicial Retirement System, the State Police Officers' Retirement System, or the
62 Virginia Law Officers' Retirement System, to the chief executive officer or personnel officers of the
63 state or local agency by which he is employed.

64 *D. Notwithstanding the provisions of subsection A, the Department of Social Services may*
65 *disseminate client information to the Department of Taxation for the purposes of providing specified tax*
66 *information as set forth in clause (ii) of subsection C of § 58.1-3.*

67 § 58.1-3. Secrecy of information; penalties.

68 A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax
69 Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or
70 revenue officer or employee, or any person to whom tax information is divulged pursuant to
71 § 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge
72 any information acquired by him in the performance of his duties with respect to the transactions,
73 property, including personal property, income or business of any person, firm or corporation. Such
74 prohibition specifically includes any copy of a federal return or federal return information required by
75 Virginia law to be attached to or included in the Virginia return. Any person violating the provisions of
76 this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection shall not be
77 applicable, however, to:

78 1. Matters required by law to be entered on any public assessment roll or book;

79 2. Acts performed or words spoken or published in the line of duty under the law;

80 3. Inquiries and investigations to obtain information as to the process of real estate assessments by a
81 duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to
82 its study, provided that any such information obtained shall be privileged;

83 4. The sales price, date of construction, physical dimensions or characteristics of real property, or any
84 information required for building permits;

85 5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court
86 pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;

87 6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when
88 requested by the General Assembly or any duly constituted committee of the General Assembly.

89 B. Nothing contained in this section shall be construed to prohibit the publication of statistics so
90 classified as to prevent the identification of particular reports or returns and the items thereof or the
91 publication of delinquent lists showing the names of taxpayers who are currently delinquent, together
92 with any relevant information which in the opinion of the Department may assist in the collection of
93 such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing
94 whether a person, firm or corporation is licensed to do business in that locality and divulging, upon
95 written request, the name and address of any person, firm or corporation transacting business under a
96 fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue
97 is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner
98 with information obtained from local tax returns and other information pertaining to the income, sales
99 and property of any person, firm or corporation licensed to do business in that locality.

100 C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax
101 Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director
102 of finance or other similar collector of county, city or town taxes who, for the performance of his
103 official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the
104 Commissioner of the Department of Social Services, upon written request, information on the amount of
105 income, *filing status, number and type of dependents, and whether a federal earned income tax credit*
106 *has been claimed as reported by persons on their state income tax returns who have applied for public*
107 *assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer*
108 *of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the*
109 *names and home addresses of those persons identified by the designated guarantor as having delinquent*
110 *loans guaranteed by the designated guarantor; (iv) provide current address information upon request to*
111 *state agencies and institutions for their confidential use in facilitating the collection of accounts*
112 *receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the*
113 *collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the*
114 *Commissioner of the Virginia Employment Commission, after entering into a written agreement, such*
115 *tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid*
116 *benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement,*
117 *such tax information as may be necessary to facilitate the collection of state and local taxes and the*
118 *administration of the alcoholic beverage control laws; (vii) provide to the Director of the State Lottery*
119 *Department such tax information as may be necessary to identify those lottery ticket retailers who owe*
120 *delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax*
121 *information as may be necessary to facilitate the location of owners and holders of unclaimed property,*

122 as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written
 123 agreement, such tax information as may be necessary to facilitate the collection of taxes and fees
 124 administered by the Commission; (x) provide to the Executive Director of the Potomac and
 125 Rappahannock Transportation Commission for its confidential use such tax information as may be
 126 necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Director of
 127 the Department of Charitable Gaming such tax information as may be necessary to identify those
 128 applicants for registration as a supplier of charitable gaming supplies who have not filed required returns
 129 or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development
 130 for its confidential use such tax information as may be necessary to facilitate the administration of the
 131 remaining effective provisions of the Enterprise Zone Act (§ 59.1-270 et seq.), and the Enterprise Zone
 132 Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and address information to private
 133 collectors entering into a written agreement with the Tax Commissioner, for their confidential use when
 134 acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax
 135 Commissioner is not authorized to provide such information to a private collector who has used or
 136 disseminated in an unauthorized or prohibited manner any such information previously provided to such
 137 collector; (xiv) provide current name and address information as to the identity of the wholesale or retail
 138 dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at
 139 retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for
 140 violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to
 141 the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information
 142 as may be necessary to facilitate the collection of unpaid wages under § 40.1-29; and (xvi) provide to
 143 the Director of the Department of Human Resource Management, upon entering into a written
 144 agreement, such tax information as may be necessary to identify persons receiving workers'
 145 compensation indemnity benefits who have failed to report earnings as required by § 65.2-712. The Tax
 146 Commissioner is further authorized to enter into written agreements with duly constituted tax officials of
 147 other states and of the United States for the inspection of tax returns, the making of audits, and the
 148 exchange of information relating to any tax administered by the Department of Taxation. Any person to
 149 whom tax information is divulged pursuant to this section shall be subject to the prohibitions and
 150 penalties prescribed herein as though he were a tax official.

151 D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the
 152 commissioner of revenue or other assessing official is authorized to (i) provide, upon written request
 153 stating the reason for such request, the chief executive officer of any county or city with information
 154 furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of
 155 any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the
 156 local sales and use tax revenues payable to the county or city; (ii) provide to the Department of
 157 Professional and Occupational Regulation for its confidential use the name, address, and amount of gross
 158 receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a
 159 profession or occupation administered by the Department of Professional and Occupational Regulation,
 160 only after the Department of Professional and Occupational Regulation exhausts all other means of
 161 obtaining such information; and (iii) provide to any representative of a condominium unit owners'
 162 association, property owners' association or real estate cooperative association, or to the owner of
 163 property governed by any such association, the names and addresses of parties having a security interest
 164 in real property governed by any such association; however, such information shall be released only
 165 upon written request stating the reason for such request, which reason shall be limited to proposing or
 166 opposing changes to the governing documents of the association, and any information received by any
 167 person under this subsection shall be used only for the reason stated in the written request. The treasurer
 168 or other local assessing official may require any person requesting information pursuant to clause (iii) of
 169 this subsection to pay the reasonable cost of providing such information. Any person to whom tax
 170 information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties
 171 prescribed herein as though he were a tax official.

172 Notwithstanding the provisions of subsection A or B or any other provisions of this title, the
 173 treasurer or other collector of taxes for a county, city or town is authorized to provide information
 174 relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course
 175 of performing his duties to the commissioner of the revenue or other assessing official for such
 176 jurisdiction for use by such commissioner or other official in performing assessments.

177 This section shall not be construed to prohibit a local tax official from imprinting or displaying on a
 178 motor vehicle local license decal the year, make, and model and any other legal identification
 179 information about the particular motor vehicle for which that local license decal is assigned.

180 E. Notwithstanding any other provisions of law, state agencies and any other administrative or
 181 regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon
 182 written request, the name, address, and social security number of a taxpayer, necessary for the

183 performance of the Commissioner's official duties regarding the administration and enforcement of laws
184 within the jurisdiction of the Department of Taxation. The receipt of information by the Tax
185 Commissioner or his agent which may be deemed taxpayer information shall not relieve the
186 Commissioner of the obligations under this section.

187 F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published
188 any confidential tax document which he knows or has reason to know is a confidential tax document. A
189 confidential tax document is any correspondence, document, or tax return that is prohibited from being
190 divulged by subsection A, B, C, or D of this section. This prohibition shall not apply if such
191 confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing
192 disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2
193 misdemeanor.

194 § 58.1-202. General powers and duties of Tax Commissioner.

195 In addition to the powers conferred and the duties imposed elsewhere by law upon the Tax
196 Commissioner, he shall:

197 1. Supervise the administration of the tax laws of the Commonwealth, insofar as they relate to
198 taxable state subjects and assessments thereon, with a view to ascertaining the best methods of reaching
199 all such property, of effecting equitable assessments and of avoiding conflicts and duplication of taxation
200 of the same property.

201 2. Recommend to the Governor and the General Assembly measures to promote uniform assessments,
202 just rates and harmony and cooperation among all officials connected with the revenue system of the
203 Commonwealth.

204 3. Exercise general supervision over all commissioners of the revenue so far as the duties of such
205 officers pertain to state revenues, and confer with, instruct and advise all such officers in the
206 performance of their duties to the extent stated.

207 4. Investigate at any time the assessment and collection of state taxes in any county or city and when
208 the assessment is found unreasonable and unjust take steps to correct the same in the manner provided
209 by law.

210 5. Institute proceedings by motion in writing in the proper court for the removal or suspension of
211 commissioners of the revenue for incompetency, neglect or other official misconduct and order the
212 Comptroller to withhold compensation from any commissioner of the revenue who fails to comply with
213 any law governing the duties or any lawful instruction of the Tax Commissioner, until such
214 commissioner of the revenue complies with such law or instruction.

215 6. Provide commissioners of the revenue with information and assistance in the assessment of
216 personal property, including the maintenance of a reference library and the conduct of instructional
217 programs.

218 7. Prescribe the forms of books, schedules and blanks to be used in the assessment and collection of
219 state taxes and call for and prescribe the forms of such statistical reports, notices and other papers as he
220 may deem necessary to the proper administration of the law, and prescribe and install uniform systems
221 to be used by assessing officials.

222 8. Direct such proceedings, actions and prosecutions to be instituted as may be needful to enforce the
223 revenue laws of the Commonwealth and call on the Attorney General or other proper officer to
224 prosecute such actions and proceedings.

225 9. Intervene, by petition or otherwise, whenever deemed advisable in any action or proceeding
226 pending in any court wherein the constitutionality or construction of any state tax or revenue statute or
227 the validity of any state tax is in question. The court wherein such action or proceeding is pending may,
228 by order entered therein, make the Tax Commissioner a party thereto whenever deemed necessary.

229 10. Upon request by any local governing body, local board of equalization or any ten citizens and
230 taxpayers of the locality, render advisory aid and assistance to such board in the matter of equalizing the
231 assessments of real estate and tangible personal property as among property owners of the locality.

232 11. Annually make available to every county and city and, where appropriate, towns, a general
233 reassessment procedures manual which provides the legal requirements for conducting general
234 reassessments, and guidelines suggesting the broad range of factors in addition to market data that are
235 appropriate for consideration in the determination of fair market value of both rural and urban land and
236 structures.

237 12. Issue an annual report to the members of the House Appropriations Committee, the House
238 Finance Committee, and the Senate Finance Committee detailing procedures used in the collections
239 process and how the Virginia Taxpayer Bill of Rights (§ 58.1-1845) is implemented to assist with such
240 collections.

241 13. Ensure that employees of the Department are not paid, evaluated, or promoted on the basis of the
242 amount of assessments or collections from taxpayers.

243 14. Issue an annual report to the members of the House Appropriations Committee, the House
244 Finance Committee, and the Senate Finance Committee detailing the total amount of corporate income

245 tax relief provided in the Commonwealth during the preceding tax year. The report shall (i) include the
246 total dollar amount of income tax subtractions, deductions, exclusions, and exemptions claimed
247 cumulatively by corporations; (ii) identify all tax credits claimed; and (iii) provide an analysis of the
248 fiscal impact of the corporate tax relief. A preliminary report shall be submitted by December 1, 2006,
249 and each year thereafter. A final report, with any data additions or revisions, shall be submitted by April
250 15 of the subsequent year.

251 *15. Obtain information from each income tax taxpayer as to whether the taxpayer claimed a federal*
252 *earned income tax credit and the amount claimed, unless such information can be calculated based on*
253 *other information in the taxpayer's return.*

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