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## SENATE BILL NO. 208

Offered January 11, 2006

Prefiled January 10, 2006

*A BILL to amend and reenact § 2.2-3705.5 of the Code of Virginia and to amend the Code of Virginia by adding in Title 30 a chapter numbered 40, consisting of sections numbered 30-266 through 30-270, relating to the creation of the Office of Children's Services Ombudsman.*

Patron—Edwards

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.2-3705.5 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Title 30 a chapter numbered 40, consisting of sections numbered 30-266 through 30-270, as follows:**

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

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. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

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

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

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

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

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

5. 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.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.1-67.3.

7. 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

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59 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

60 8. Information required to be provided to the Department of Health Professions by certain licensees  
61 pursuant to § 54.1-2506.1.

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

67 10. Patient level data collected by the Board of Health and not yet processed, verified, and released,  
68 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of  
69 Health has contracted pursuant to § 32.1-276.4.

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

73 12. Records submitted as a grant application, or accompanying a grant application, to the  
74 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of  
75 Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying  
76 individual patients or (ii) proprietary business or research-related information produced or collected by  
77 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,  
78 technical or scholarly issues, when such information has not been publicly released, published,  
79 copyrighted or patented, if the disclosure of such information would be harmful to the competitive  
80 position of the applicant.

81 13. Any record copied, recorded or received by the Commissioner of Health in the course of an  
82 examination, investigation or review of a managed care health insurance plan licensee pursuant to  
83 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or  
84 all computer or other recordings.

85 14. Records, information and statistical registries required to be kept confidential pursuant to  
86 §§ 63.2-102 and 63.2-104.

87 15. (For effective date - See note) All data, records, and reports relating to the prescribing and  
88 dispensing of covered substances to recipients and any abstracts from such data, records, and reports that  
89 are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et  
90 seq.) of Title 54.1 and any material relating to the operation or security of the Program.

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

93 17. Records of the State Health Commissioner relating to the health of any person or persons subject  
94 to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of  
95 Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of  
96 statistical summaries, abstracts or other information in aggregate form.

97 18. Records containing the names and addresses or other contact information of persons receiving  
98 transportation services from a state or local public body or its designee under Title II of the Americans  
99 with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy  
100 Families (TANF) created under § 63.2-600.

101 19. *Records of the Office of Children's Services Ombudsman required to be kept confidential*  
102 *pursuant to § 30-267.*

#### 103 CHAPTER 40.

#### 104 OFFICE OF CHILDREN'S SERVICES OMBUDSMAN.

105 § 30-266. *Ombudsman services for children; appointment of Director.*

106 A. *There is hereby created in the legislative branch of state government the Office of Children's*  
107 *Services Ombudsman. The mission of the Office is to protect children and parents from harmful agency*  
108 *action or inaction; investigate the acts of state and local administrative agencies adversely affecting*  
109 *children; recommend appropriate changes toward the goals of safeguarding the rights of children and*  
110 *parents; and promote higher standards of competency, efficiency, and justice in the administration of*  
111 *child protection and child welfare laws, juvenile justice services, and education of children. The Office*  
112 *shall be headed by a Director appointed by the Joint Rules Committee which shall fix his compensation.*  
113 *The Director may employ such other persons as he deems necessary to assist him in carrying out his*  
114 *duties and shall fix their salaries or compensation within the amounts appropriated therefor.*

115 B. *The Director shall establish procedures for receiving complaints and conducting investigations for*  
116 *the purposes of resolving and mediating complaints regarding any activity, practice, policy, or*  
117 *procedure of any facility or program operated, funded, or licensed by any state or local agency, that is*  
118 *adversely affecting the health, safety, welfare, or rights of any child. After initial investigation, the*  
119 *Office may decline to accept any complaint it determines is frivolous or not made in good faith. The*  
120 *Office shall attempt to resolve the complaint at the lowest appropriate level, unless otherwise provided*

by law. The procedures shall require the Office to:

1. Acknowledge the receipt of a complaint by sending written notice to the complainant within seven days after receiving the complaint;

2. When appropriate, provide written notice of a complaint to the appropriate agency within seven days after receiving the complaint. The appropriate state agency shall report its findings and actions no later than 14 days after receiving the complaint;

3. Immediately refer a complaint made under this section to the Department of Social Services or any other appropriate governmental agency whenever the complaint involves an immediate and substantial threat to the health or safety of a child. The Department of Social Services or agency receiving the complaint shall report its findings and actions no later than 48 hours following its receipt of the complaint;

4. Within seven days after identifying a deficiency in the treatment of or provision of services to a child that is in violation of state or federal law or regulation, refer the matter in writing to the appropriate state agency. The state agency shall report on its findings and actions within seven days of receiving notice of the matter;

5. Advise the complainant and any person affected by the complaint, no more than 30 days after it receives the complaint, of any action it has taken and of any opinions and recommendations it has with respect to the complaint. The Office may request any party affected by the opinions or recommendations to notify the Office, within a time period specified by the Office, of any action the party has taken on its recommendation; and

6. Refer any complaint not resolved through negotiation, mediation, or conciliation to the Director or the Director's designee to determine whether further protection and advocacy services shall be provided by the Office.

C. The Office may make public any of its opinions or recommendations concerning a complaint, the responses of persons and governmental agencies to its opinions or recommendations, and any act, practice, policy, or procedure that adversely affects or may adversely affect the health, safety, welfare, or rights of a child.

D. The Office shall publicize its existence, functions, and activities, and the procedures for filing a complaint under this section, and send this information in written form to each provider of services to children, with instructions that the information is to be posted in a conspicuous place accessible to consumers, clients, visitors, and employees. The Office shall establish, maintain, and publicize a toll-free number for receiving complaints.

§ 30-267. Confidentiality of information.

A. All documentary and other evidence received or maintained by the Office or its agents in connection with specific complaints or investigations shall be confidential and not subject to the provisions concerning disclosure of public records under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, access to one's own records shall not be denied unless otherwise prohibited by state or federal law. Records concerning closed cases shall be subject to the disclosure requirements of the Virginia Freedom of Information Act, but in a manner that does not identify any complainant or any person unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

B. Communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations, or cases shall be confidential.

C. Notwithstanding the provisions of this section, the Office shall be permitted to:

1. Issue a public report of the results of an investigation of a founded complaint that does not release the identity of any complainant or any person unless (a) such complainant or person or his legal representative consents in writing to such disclosure or (b) such disclosure is required by court order; and

2. Report the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning any facility or other entity, or its staff or employees, warranting possible sanctions or corrective action. This information may be reported to agencies responsible for employee discipline, employee licensing or certification, or criminal prosecution.

§ 30-268. Cooperative agreements with state agencies regarding advocacy services for their clients.

Notwithstanding the foregoing, state agencies providing services to children may develop and maintain advocacy, client assistance, or ombudsman services for their clients, which services may be within the agency and independent of the Office. The Office may enter into cooperative agreements with any state agency providing advocacy, client assistance, or ombudsman services for the agency's clients, in order to ensure the protection of and advocacy for children, provided that such agreements do not restrict such authority as the Office may otherwise have to pursue any legal or administrative remedy on behalf of children.

§ 30-269. Immunity.

182     Any person who in good faith complains to the Office on behalf of a child, or who provides  
183     information or participates in the investigation of any such complaint, shall have immunity from any  
184     civil liability and shall not be subject to any penalties, sanctions, restrictions, or retaliation as a  
185     consequence of making such complaint, providing such information, or participating in such  
186     investigation.

187     § 30-270. Cooperation of other state agencies.

188     The Office may request and shall receive from every department, division, board, bureau,  
189     commission, authority, or other agency created by the Commonwealth, or to which the Commonwealth is  
190     a party, or from any political subdivision of the Commonwealth, cooperation and assistance in the  
191     performance of its duties.