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SENATE BILL NO. 39

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 19, 2006)

(Patron Prior to Substitute—Senator Reynolds)

A BILL to amend and reenact §§ 2.2-3705.3, 22.1-19.1, and 22.1-253.13:3 of the Code of Virginia, relating to violations of test security procedures.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.3, 22.1-19.1, and 22.1-253.13:3 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

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 of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Charitable Gaming, or the Private Security Services Unit of the Department of Criminal Justice Services.

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

3. 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.

4. 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.

5. 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.

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

7. 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; (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (v) auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. 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. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence

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received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, 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.

9. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. 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.

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

11. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.) and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

12. *Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.*

§ 22.1-19.1. Action for violations of test security procedures.

A. The Office of the Attorney General, on behalf of the Board of Education, may bring a cause of action in the circuit court having jurisdiction where the person resides or where the act occurred for injunctive relief, civil penalty, or both, against any person who knowingly and willfully commits any of the following acts related to secure mandatory tests required by the Board to be administered to students:

1. Permitting unauthorized access to secure test questions prior to testing;
2. Copying or reproducing all or any portion of any secure test booklet;
3. Divulging the contents of any portion of a secure test;
4. Altering test materials or examinees' responses in any way;
5. Creating or making available answer keys to secure tests;
6. Making a false certification on the test security form established by the Department of Education;

or

7. Participating in, directing, aiding or abetting, or assisting in any of the acts prohibited in this section.

For the purpose of this subsection, "secure" means an item, question, or test that has not been made publicly available by the Department of Education.

B. Nothing in this section may be construed to prohibit or restrict the reasonable and necessary actions of the Board of Education, Superintendent of Public Instruction or the Department of Education or their agents or employees engaged in test development or selection, test form construction, standard setting, test scoring, reporting test scores, or any other related activities which, in the judgment of the Superintendent of Public Instruction or Board of Education, are necessary and appropriate.

C. Any person who violates any provisions of this section may be assessed a civil penalty not to exceed \$1,000 for each violation; ~~however,~~ *Furthermore,* any person whose administrative or teaching license has been suspended or revoked pursuant to § 22.1-292.1 ~~shall not~~ *may* be assessed a civil penalty for the same violation under this section *and the reasonable costs of any review or investigation of a violation of test security.*

All civil penalties paid to the Commonwealth pursuant to this section shall be deposited into the Literary Fund.

§ 22.1-253.13:3. Standard 3. Accreditation, other standards and evaluation.

A. The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include, but not be limited to, student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional

staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, course and credit requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.

The Board shall review annually the accreditation status of all schools in the Commonwealth.

Each local school board shall maintain schools that are fully accredited pursuant to the standards of accreditation as prescribed by the Board of Education. Each local school board shall review the accreditation status of all schools in the local school division annually in public session. Within the time specified by the Board of Education, each school board shall submit corrective action plans for any schools within its school division that have been designated as not meeting the standards as approved by the Board.

When the Board of Education has obtained evidence through the school academic review process that the failure of schools within a division to achieve full accreditation status is related to division level failure to implement the Standards of Quality, the Board may require a division level academic review. After the conduct of such review and within the time specified by the Board of Education, each school board shall submit for approval by the Board a corrective action plan, consistent with criteria established by the Board and setting forth specific actions and a schedule designed to ensure that schools within its school division achieve full accreditation status. Such corrective action plans shall be part of the relevant school division's comprehensive plan pursuant to § 22.1-253.13:6.

With such funds as are appropriated or otherwise received for this purpose, the Board shall adopt and implement an academic review process, to be conducted by the Department of Education, to assist schools that are accredited with warning. The Department shall forward a report of each academic review to the relevant local school board, and such school board shall report the results of such academic review and the required annual progress reports in public session. The local school board shall implement any actions identified through the academic review and utilize them for improvement planning.

B. The Superintendent of Public Instruction shall develop and the Board of Education shall approve criteria for determining and recognizing educational performance in the Commonwealth's public school divisions and schools. Such criteria, when approved, shall become an integral part of the accreditation process and shall include student outcome measurements. The Superintendent of Public Instruction shall annually identify to the Board those school divisions and schools that exceed or do not meet the approved criteria. Such identification shall include an analysis of the strengths and weaknesses of public education programs in the various school divisions in Virginia and recommendations to the General Assembly for further enhancing student learning uniformly across the Commonwealth. In recognizing educational performance in the school divisions, the Board shall include consideration of special school division accomplishments, such as numbers of dual enrollments and students in Advanced Placement and International Baccalaureate courses, and participation in academic year Governor's Schools.

The Superintendent of Public Instruction shall assist local school boards in the implementation of action plans for increasing educational performance in those school divisions and schools that are identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor the implementation of and report to the Board of Education on the effectiveness of the corrective actions taken to improve the educational performance in such school divisions and schools.

C. With such funds as are available for this purpose, the Board of Education shall prescribe assessment methods to determine the level of achievement of the Standards of Learning objectives by all students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and skills related to the Standards of Learning being assessed. The Board shall (i) in consultation with the chairpersons of the eight regional superintendents' study groups, establish a timetable for administering the Standards of Learning assessments to ensure genuine end-of-course and end-of-grade testing and (ii) with the assistance of independent testing experts, conduct a regular analysis and validation process for these assessments.

In prescribing such Standards of Learning assessments, the Board shall provide local school boards the option of administering tests for United States History to 1877, United States History: 1877 to the Present, and Civics and Economics. The Board of Education shall make publicly available such assessments in a timely manner and as soon as practicable following the administration of such tests, so long as the release of such assessments does not compromise test security or deplete the bank of assessment questions necessary to construct subsequent tests.

The Board shall include in the student outcome measures that are required by the Standards of Accreditation end-of-course or end-of-grade tests for various grade levels and classes, as determined by the Board, in accordance with the Standards of Learning. These Standards of Learning assessments shall include, but need not be limited to, end-of-course or end-of-grade tests for English, mathematics, science, and history and social science.

183 In addition, to assess the educational progress of students, the Board of Education shall (i) develop
184 appropriate assessments, which may include criterion-referenced tests and alternative assessment
185 instruments that may be used by classroom teachers and (ii) prescribe and provide measures, which may
186 include nationally normed tests to be used to identify students who score in the bottom quartile at
187 selected grade levels.

188 The Standard of Learning requirements, including all related assessments, shall be waived for any
189 student awarded a scholarship under the Brown v. Board of Education Scholarship Program, pursuant to
190 § 30-231.2, who is enrolled in a preparation program for the General Education Development (GED)
191 certificate or in an adult basic education program to obtain the high school diploma.

192 D. The Board of Education is ~~authorized to~~ may pursue all available civil remedies pursuant to §
193 22.1-19.1 or administrative action pursuant to § 22.1-292.1 for breaches in test security and
194 unauthorized alteration of test materials or test results.

195 *The Board may initiate or cause to be initiated a review or investigation of any alleged breach in*
196 *security, unauthorized alteration, or improper administration of tests by local school board employees*
197 *responsible for the distribution or administration of the tests.*

198 *Records and other information furnished to or prepared by the Board during the conduct of a review*
199 *or investigation may be withheld pursuant to subdivision 12 of § 2.2-3705.3. However, this section shall*
200 *not prohibit the disclosure of records to (i) a local school board or division superintendent for the*
201 *purpose of permitting such board or superintendent to consider or to take personnel action with regard*
202 *to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a)*
203 *does not reveal the identity of any person making a complaint or supplying information to the Board on*
204 *a confidential basis and (b) does not compromise the security of any test mandated by the Board. Any*
205 *local school board or division superintendent receiving such records or other information shall, upon*
206 *taking personnel action against a relevant employee, place copies of such records or information*
207 *relating to the specific employee in such person's personnel file.*

208 Notwithstanding any other provision of state law, no test or examination authorized by this section,
209 including the Standards of Learning assessments, shall be released or required to be released as
210 minimum competency tests, if, in the judgment of the Board, such release would breach the security of
211 such test or examination or deplete the bank of questions necessary to construct future secure tests.

212 E. With such funds as may be appropriated, the Board of Education may provide, through an
213 agreement with vendors having the technical capacity and expertise to provide computerized tests and
214 assessments, and test construction, analysis, and security, for (i) web-based computerized tests and
215 assessments for the evaluation of student progress during and after remediation and (ii) the development
216 of a remediation item bank directly related to the Standards of Learning.

217 F. To assess the educational progress of students as individuals and as groups, each local school
218 board shall require the use of Standards of Learning assessments and other relevant data to evaluate
219 student progress and to determine educational performance. Each local school shall require the
220 administration of appropriate assessments to all students for grade levels and courses identified by the
221 Board of Education, which may include criterion-referenced tests, teacher-made tests and alternative
222 assessment instruments and shall include the Standards of Learning Assessments and the National
223 Assessment of Educational Progress state-by-state assessment. Each school board shall analyze and
224 report annually, in compliance with any criteria that may be established by the Board of Education, the
225 results from the Stanford Achievement Test Series, Ninth Edition (Stanford Nine) assessment, if
226 administered, industry certification examinations, and the Standards of Learning Assessments to the
227 public.

228 The Board of Education shall not require administration of the Stanford Achievement Test Series,
229 Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance with the
230 requirements for home instruction pursuant to § 22.1-254.1.

231 The Board shall include requirements for the reporting of the Standards of Learning assessment
232 scores and averages for each year as part of the Board's requirements relating to the School Performance
233 Report Card. Such scores shall be disaggregated for each school by gender and by race or ethnicity, and
234 shall be reported to the public within three months of their receipt. These reports (i) shall be posted on
235 the portion of the Department of Education's website relating to the School Performance Report Card, in
236 a format and in a manner that allows year-to-year comparisons, and (ii) may include the National
237 Assessment of Educational Progress state-by-state assessment.

238 G. Each local school division superintendent shall regularly review the division's submission of data
239 and reports required by state and federal law and regulations to ensure that all information is accurate
240 and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list of the
241 required reports and data to division superintendents annually. The status of compliance with this
242 requirement shall be included in the Board of Education's annual report to the Governor and the General
243 Assembly as required by § 22.1-18.