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SENATE BILL NO. 1478

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 4, 2009)

(Patrons Prior to Substitute—Senators Locke and Edwards [SB 1014])

A *BILL to amend and reenact § 2.2-3705.3 of the Code of Virginia, relating to the Freedom of Information Act; building and fire code complaints.*

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.3 of the Code of Virginia is 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 Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, 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.

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

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

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

77 11. Records of active investigations being conducted by the Department of Criminal Justice Services
78 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.),
79 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

80 12. Records furnished to or prepared by the Board of Education pursuant to subsection D of
81 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
82 unauthorized alteration, or improper administration of tests by local school board employees responsible
83 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
84 of records to (i) a local school board or division superintendent for the purpose of permitting such board
85 or superintendent to consider or to take personnel action with regard to an employee or (ii) any
86 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity
87 of any person making a complaint or supplying information to the Board on a confidential basis and (b)
88 does not compromise the security of any test mandated by the Board.

89 13. Investigator notes, and other correspondence and information, furnished in confidence with
90 respect to an active investigation conducted by or for the Board of Education related to the denial,
91 suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure
92 of records to a local school board or division superintendent for the purpose of permitting such board or
93 superintendent to consider or to take personnel action with regard to an employee. Records of completed
94 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person
95 supplying information to investigators. The records disclosed shall include information regarding the
96 school or facility involved, the identity of the person who was the subject of the complaint, the nature
97 of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a
98 complaint or does not lead to corrective action, the identity of the person who was the subject of the
99 complaint may be released only with the consent of the subject person. No personally identifiable
100 information in the records regarding a current or former student shall be released except as permitted by
101 state or federal law.

102 14. Records, notes and information provided in confidence and related to an investigation by the
103 Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of
104 Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2,
105 or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that
106 has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is
107 not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,
108 persons supplying information, witnesses or other individuals involved in the investigation.

109 15. *The names, addresses, and telephone numbers of complainants furnished in confidence with*
110 *respect to an investigation of individual complaints regarding the Uniform Statewide Building Code*
111 *(§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing*
112 *body or the State Fire Marshal. Nothing in this subdivision shall prevent the disclosure of information*
113 *relating to any building in connection with an inquiry into the performance of that building after it has*
114 *been subjected to fire, explosion, natural disaster, or other catastrophic event.*