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HOUSE BILL NO. 2076

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws)

(Patrons Prior to Substitute—Delegates Landes and Brink [HB 1800])

House Amendments in [] - February 7, 2011

A BILL to amend and reenact §§ 2.2-211, 2.2-3014, 2.2-3705.3, 2.2-3705.6, 2.2-3706, 2.2-3802, 2.2-4344, 32.1-127.1:03, 32.1-283, and 58.1-202.2 of the Code of Virginia; to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 3.2, containing articles numbered 1 through 6, consisting of sections numbered 2.2-307 through 2.2-322; and to repeal Chapter 16 (§§ 2.2-1600 through 2.2-1602) of Title 2.2, Article 3 (§§ 37.2-423 through 37.2-425) of Chapter 4 of Title 37.2, and §§ 53.1-16 and 66-3.1 of the Code of Virginia, relating to the creation of the Office of the State Inspector General; consolidation of certain inspectors general.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-211, 2.2-3014, 2.2-3705.3, 2.2-3705.6, 2.2-3706, 2.2-3802, 2.2-4344, 32.1-127.1:03, 32.1-283, and 58.1-202.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 3.2, containing articles numbered 1 through 6, consisting of sections numbered 2.2-307 through 2.2-322, as follows:

§ 2.2-211. Position established; agencies for which responsible; additional powers.

A. The position of Secretary of Finance (the "Secretary") is created. The Secretary shall be responsible for the following agencies: Department of Accounts, Department of Planning and Budget, Department of Taxation, and Department of the Treasury and Department of the State Internal Auditor. The Governor, by executive order, may assign any other state executive agency to the Secretary of Finance, or reassign any agency listed.

B. To the greatest extent practicable, the agencies assigned to the Secretary shall pay all amounts due and owing by the Commonwealth through electronic transfers of funds from the general fund or appropriate special fund to the bank account of the payee or a party identified by law to receive funds on behalf of the payee. All wire transfer costs associated with the electronic transfer shall be paid by the payee subject to exemptions authorized by the State Treasurer affecting the investment, debt, and intergovernmental transactions of the Commonwealth and its agencies, institutions, boards, and authorities.

CHAPTER 3.2.

OFFICE OF THE STATE INSPECTOR GENERAL.

Article 1.

General Provisions.

§ 2.2-307. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Employee" means any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable by, no more often than biweekly, in whole or in part, a state agency.

"Nonstate agency" means any public or private foundation, authority, institute, museum, corporation, or similar organization that is not a unit of state government or a political subdivision of the Commonwealth as established by general law or special act. "Nonstate agency" shall not include any such entity that receives state funds as a subgrantee of a state agency or through a state grant-in-aid program authorized by law.

"Office" means the Office of the State Inspector General.

"Officer" means any person who is appointed to a public office in a state agency "Officer" shall not include any person elected by popular vote.

"State agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act.

§ 2.2-308. Office created; appointment of State Inspector General.

A. There is hereby created the Office of the State Inspector General, which shall be headed by a State Inspector General appointed by the Governor, subject to confirmation by the General Assembly. The State Inspector General shall be appointed for a four-year term. The State Inspector General shall have at least five years of demonstrated experience or expertise in accounting, public administration, or audit investigations, including a certified public accountant or a certified internal auditor. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of such term. The Governor may remove the State Inspector General from office for malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests,

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60 or failure to carry out the policies of the Commonwealth as established in the Constitution or by the
61 General Assembly. The Governor shall set forth in a written public statement his reasons for removing
62 the State Inspector General at the time the removal occurs.

63 B. The State Inspector General shall exercise the powers and perform the duties conferred or
64 imposed upon him by law. The State Inspector General shall be responsible for the overall supervision
65 of the Office.

66 C. Nothing in this chapter shall be construed to limit or prevent the General Assembly from
67 reviewing the operations of any state agency or directing such review or audit by the Joint Legislative
68 Audit and Review Commission or the Auditor of Public Accounts or to otherwise limit the statutory
69 responsibilities of either the Joint Legislative Audit and Review Commission or the Auditor of Public
70 Accounts.

71 § 2.2-309. Powers and duties of State Inspector General; limitation.

72 A. The State Inspector General shall have power and duty to:

73 1. Operate and manage the Office and employ such personnel as may be required to carry out the
74 provisions of this chapter;

75 2. Make and enter contracts and agreements as may be necessary and incidental to carry out the
76 provisions of this chapter and apply for and accept grants from the United States government and
77 agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this
78 chapter;

79 3. Receive complaints from whatever source that allege fraud, waste, abuse, or corruption by a state
80 agency or nonstate agency or by any officer or employee of the foregoing and determine whether the
81 complaints give reasonable cause to investigate;

82 4. Investigate the management and operations of state agencies and nonstate agencies to determine
83 whether acts of fraud, waste, abuse, or corruption have been committed or are being committed by state
84 officers or employees or any officers or employees of a nonstate agency, including any allegations of
85 criminal acts affecting the operations of state agencies or nonstate agencies; [however, no investigation
86 of an elected official of the Commonwealth or any political subdivision to determine whether a criminal
87 violation has occurred, is occurring or is about to occur under the provisions of this section or § 52-8.1
88 shall be initiated, undertaken or continued except upon the request of the Governor, Attorney General or
89 a grand jury;]

90 5. Develop and maintain internal audit programs in state agencies and nonstate agencies in order to
91 ensure that the Commonwealth's assets are subject to appropriate internal management controls and
92 assess the condition of the accounting, financial, and administrative controls of state agencies and
93 nonstate agencies. "Appropriate internal management controls" include safeguarding assets, ensuring
94 accurate accounting and reporting of financial transactions, and providing effective and efficient
95 management;

96 6. Prepare a detailed report of each investigation stating whether fraud, waste, abuse, or corruption
97 has been detected. If fraud, waste, abuse, or corruption is detected, the report shall (i) identify the
98 person committing the wrongful act or omission, (ii) describe the wrongful act or omission, and (iii)
99 describe any corrective measures taken by the state agency or nonstate agency in which the wrongful
100 act or omission was committed to prevent recurrences of similar actions;

101 7. Provide timely notification to the appropriate attorney for the Commonwealth whenever the State
102 Inspector General has reasonable grounds to believe there has been a violation of state criminal law;

103 8. Assist citizens in understanding their rights and the processes available to them to express
104 concerns regarding the activities of a state agency or nonstate agency or any officer or employee of the
105 foregoing;

106 9. Maintain data on inquiries received, the types of assistance requested, any actions taken, and the
107 disposition of each such matter;

108 10. Upon request, assist citizens in using the procedures and processes available to express concerns
109 regarding the activities of a state or nonstate agency or any officer or employee of the foregoing;

110 11. Ensure that citizens have access to the services provided by the State Inspector General and that
111 the citizens receive timely responses from the State Inspector General or his representatives to the
112 inquiries;

113 12. Conduct performance reviews of state agencies and prepare a detailed report for each
114 performance review detailing any findings or recommendations for improving the efficiency of state
115 agencies, including recommending changes in the law to the Governor and the General Assembly that
116 are necessary to address such findings;

117 13. Administer the Fraud and Abuse Whistle Blower Reward Fund created pursuant to § 2.2-3014;
118 and

119 14. Do all acts necessary or convenient to carry out the purposes of this chapter.

120 § 2.2-310. Cooperation of state agencies and officers.

121 A. Each state agency and every officer and employee shall (i) promptly report any allegations of

122 criminal acts or acts of fraud, waste, abuse, corruption, or mistreatment and (ii) cooperate with, and
 123 provide assistance to, the State Inspector General in the performance of any investigation. Each state
 124 agency shall make its premises, equipment, personnel, books, records, and papers readily available to
 125 the State Inspector General upon request.

126 B. The State Inspector General may enter upon the premises of any state agency at any time, without
 127 prior announcement, if necessary to the successful completion of an investigation. In the course of an
 128 investigation, the State Inspector General may question any officer or employee serving in, and any
 129 person transacting business with, the state agency and may inspect and copy any books, records, or
 130 papers in the possession of the state agency. The State Inspector General shall preserve the
 131 confidentiality of any information obtained from a state agency during the course of an investigation in
 132 accordance with applicable state and federal law.

133 § 2.2-311. Enforcement of laws by State Inspector General or investigators; authority of investigation
 134 appointed by State Inspector General.

135 A. Except as provided in §§ 2.2-318 and 2.2-320, the State Inspector General or investigators
 136 appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Office. The
 137 investigators appointed by the State Inspector General shall have the same investigative authority of the
 138 State Inspector General as described in § 2.2-309. The State Inspector General or investigators
 139 appointed by him also shall have the authority to issue summonses for violations of the statutes that the
 140 State Inspector General is required to enforce. In the event a person issued such a summons fails or
 141 refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and
 142 place specified in the summons, the investigator may appear before a magistrate or other issuing
 143 authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72.

144 B. All investigators appointed by the State Inspector General are vested with the authority to
 145 administer oaths or affirmations for the purpose of receiving complaints and conducting investigations
 146 of violations of the statutes and regulations that the State Inspector General is required to enforce. Such
 147 investigators are vested with the authority to obtain, serve and execute any warrant, paper or process
 148 issued by any court or magistrate or under the authority of the State Inspector General, and request and
 149 receive criminal history information under the provisions of § 19.2-389.

150 § 2.2-312. Subpoenas.

151 A. The State Inspector General or a designated subordinate may issue a subpoena for the
 152 appearance of an individual before any hearing conducted by the Office. The subpoena shall be served
 153 by the appropriate sheriff's officer and enforced by the court of that jurisdiction.

154 B. The State Inspector General may make an ex parte application to the circuit court for the city or
 155 county wherein evidence sought is kept, for the issuance of a subpoena duces tecum in furtherance of an
 156 investigation or to request production of any relevant records, documents, and physical or other
 157 evidence of any person, partnership, association, or corporation located in the Commonwealth. The
 158 court may issue and compel compliance with such a subpoena upon a showing of reasonable cause.
 159 Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, the
 160 court may issue a subpoena duces tecum requiring the immediate production of evidence.

161 § 2.2-313. Reports.

162 A. The State Inspector General shall prepare an annual report to the Governor and the General
 163 Assembly summarizing the activities of the Office. Such report shall include, but need not be limited to:
 164 (i) a description of any significant problems, abuses, and deficiencies related to the management or
 165 operation of state agencies or nonstate agencies during the reporting period; (ii) a description of the
 166 recommendations for any corrective actions made by the Office during the reporting period with respect
 167 to significant problems, abuses, or deficiencies identified; (iii) a summary of matters referred to the
 168 attorneys for the Commonwealth and law-enforcement agencies and actions taken on them during the
 169 reporting period; (iv) information concerning the numbers of complaints received and types of
 170 investigations completed by the Office during the reporting period; (v) the development and maintenance
 171 of internal audit programs in state agencies and nonstate agencies; and (vi) the results of any state
 172 agency performance reviews, including a summary of any findings or recommendations for improving
 173 the efficiency of state agencies.

174 B. The State Inspector General shall report immediately to the Governor's chief of staff whenever the
 175 Office becomes aware of problems, abuses, or deficiencies relating to the management or operation of a
 176 state agency or nonstate agency.

177 C. The State Inspector General shall keep the appropriate Secretaries advised of the Office's
 178 activities as it relates to each respective Secretary on at least a quarterly basis, any problems, abuses,
 179 or deficiencies relating to the management or operation of a state agency within each such Secretary's
 180 area of responsibility. However, when the State Inspector General becomes aware of problems, abuses,
 181 or deficiencies relating to the management or operation of a Secretary's office, the State Inspector
 182 General shall report the same immediately to the Governor's chief of staff.

183 *D. The State Inspector General may conduct such additional investigations and make such reports*
 184 *relating to the management and operation of state agencies as are, in the judgment of the State*
 185 *Inspector General, necessary or desirable.*

186 *E. Notwithstanding any other provision of law, the reports, information, or documents required by or*
 187 *under this section shall be transmitted directly to the Governor's chief of staff and the General Assembly*
 188 *by the State Inspector General.*

189 *F. Records that are confidential under federal or state law shall be maintained as confidential by the*
 190 *State Inspector General and shall not be further disclosed, except as permitted by law.*

191 *Article 2.*

192 *Behavioral Health and Developmental Services.*

193 *§ 2.2-314. Behavioral Health and Developmental Services.*

194 *The State Inspector General shall inspect, monitor, and review the quality of services provided in*
 195 *state facilities and by providers as defined in § 37.2-403, including licensed mental health treatment*
 196 *units in state correctional facilities.*

197 *§ 2.2-315. Definitions.*

198 *The definitions found in § 37.2-100 shall apply mutatis mutandis to the terms used in this article.*

199 *§ 2.2-316. Additional powers and duties of State Inspector General.*

200 *In addition to the duties set forth in this chapter, the State Inspector General shall have the*
 201 *following powers and duties to:*

202 *1. Provide inspections of and make policy and operational recommendations for state facilities and*
 203 *for providers, including licensed mental health treatment units in state correctional facilities, in order to*
 204 *prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and*
 205 *services. The State Inspector General shall provide oversight and conduct announced and unannounced*
 206 *inspections of state facilities and of providers, including licensed mental health treatment units in state*
 207 *correctional facilities, on an ongoing basis in response to specific complaints of abuse, neglect, or*
 208 *inadequate care and as a result of monitoring serious incident reports and reports of abuse, neglect, or*
 209 *inadequate care or other information received. The State Inspector General shall conduct unannounced*
 210 *inspections at each state facility at least once annually.*

211 *2. Access any and all information, including confidential consumer information, related to the*
 212 *delivery of services to consumers in state facilities or served by providers, including licensed mental*
 213 *health treatment units in state correctional facilities. However, the State Inspector General shall not be*
 214 *given access to any proceedings, minutes, records, or reports of providers that are privileged under*
 215 *§ 8.01-581.17, except that the State Inspector General shall be given access to any privileged*
 216 *information in state facilities and licensed mental health treatment units in state correctional facilities.*
 217 *All consumer information shall be maintained by the State Inspector General as confidential in the same*
 218 *manner as is required by the agency or provider from which the information was obtained.*

219 *3. Keep the General Assembly and the Joint Commission on Health Care fully and currently*
 220 *informed by means of reports required by § 2.2-313 concerning significant problems, abuses, and*
 221 *deficiencies relating to the administration of the programs and services of state facilities and of*
 222 *providers, including licensed mental health treatment units in state correctional facilities, to recommend*
 223 *corrective actions concerning the problems, abuses, and deficiencies, and to report on the progress*
 224 *made in implementing the corrective actions.*

225 *4. Review, comment on, and make recommendations about, as appropriate, any reports prepared by*
 226 *the Department and the critical incident data collected by the Department in accordance with*
 227 *regulations adopted under § 37.2-400 to identify issues related to quality of care, seclusion and*
 228 *restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues.*

229 *5. Monitor and participate in the adoption of regulations by the Board.*

230 *6. Receive reports, information, and complaints from the Virginia Office for Protection and Advocacy*
 231 *concerning issues related to quality of care provided in state facilities and by providers, including*
 232 *licensed mental health treatment units in state correctional facilities, and to conduct independent reviews*
 233 *and investigations.*

234 *Article 3.*

235 *Corrections.*

236 *§ 2.2-317. Definitions.*

237 *The definitions found in § 53.1-1 shall apply mutatis mutandis to the terms used in this article.*

238 *§ 2.2-318. Additional powers and duties.*

239 *A. In addition to the duties set forth in this chapter, the State Inspector General, shall have the*
 240 *following powers and duties to:*

241 *1. Review, comment on, and make recommendations about, as appropriate, any reports prepared by*
 242 *the Department and any critical incident data collected by the Department in accordance with*
 243 *regulations adopted to identify issues related to quality of care, seclusion and restraint, medication*
 244 *usage, abuse and neglect, staff recruitment and training, and other systemic issues.*

245 2. Monitor and participate in the adoption of regulations by the Board.
 246 B. For the purposes of this article, the State Inspector General and such members of the
 247 investigations unit of the Office as may be designated by the State Inspector General shall be
 248 law-enforcement officers as defined in § 9.1-101. Investigators so designated shall receive the training
 249 required by the Department of Criminal Justice Services for law-enforcement personnel before exercising
 250 such powers.

251 Nothing in this section shall be construed to grant the Office any authority over the operation and
 252 security of local jails which is not specified in other provisions of law.

253 Article 4.
 254 Juvenile Justice.

255 § 2.2-319. Definitions.

256 The definitions found in § 66-12 shall apply mutatis mutandis to the terms used in this article.

257 § 2.2-320. Additional powers and duties.

258 A. In addition to the duties set forth in this chapter, the State Inspector General shall have the
 259 following powers and duties to:

260 1. Review, comment on, and make recommendations about, as appropriate, any reports prepared by
 261 the Department and any critical incident data collected by the Department in accordance with
 262 regulations adopted to identify issues related to quality of care, seclusion and restraint, medication
 263 usage, abuse and neglect, staff recruitment and training, and other systemic issues.

264 2. Monitor and participate in the adoption of regulations by the Board.

265 B. For the purposes of this article, the State Inspector General and such members of the
 266 investigations unit of the Office as may be designated by the State Inspector General shall be
 267 law-enforcement officers as defined in § 9.1-101. Investigators so designated shall receive the training
 268 required by the Department of Criminal Justice Services for law-enforcement personnel before exercising
 269 such powers.

270 Nothing in this section shall be construed to grant the Office any authority over the operation and
 271 security of detention homes which is not specified in other provisions of law.

272 Article 5.
 273 Transportation.

274 § 2.2-321. Additional powers and duties.

275 The State Inspector General shall (i) assess the condition of agency accounting, financial, and
 276 administrative controls; (ii) conduct investigations to resolve allegations of fraudulent, illegal, or
 277 inappropriate activities; (iii) prevent and detect fraud, waste, and abuse; and (iv) coordinate with
 278 federal and state law-enforcement and prosecutorial agencies. The State Inspector General shall also
 279 promote integrity, accountability, and process improvements in the Department of Transportation. The
 280 State Inspector General shall manage special projects and provide advisory services and technical
 281 assistance to management; as well as conduct business performance reviews, and coordinate and
 282 monitor Department of Transportation action plans in response to external audits and reviews.

283 Article 6.
 284 Tobacco Indemnification and Community Revitalization.

285 § 2.2-322. Additional powers and duties.

286 The State Inspector General shall (i) review the condition of the Tobacco Indemnification and
 287 Community Revitalization Commission's accounting, financial, and administrative controls to ensure that
 288 the purposes set forth in Chapter 31 (§ 3.2-3100 et seq.) of Title 3.2 are lawfully achieved; (ii)
 289 investigate to resolve allegations of fraudulent, illegal, or inappropriate activities concerning (a)
 290 disbursements from the Tobacco Indemnification and Community Revitalization Endowment created
 291 pursuant to § 3.2-3104 and (ii) distributions from the Tobacco Indemnification and Community
 292 Revitalization Fund created pursuant to § 3.2-3106; and (iii) detect fraud, waste, and abuse, and take
 293 actions to prevent the same.

294 § 2.2-3014. Fraud and Abuse Whistle Blower Reward Fund.

295 A. From such funds as may be appropriated by the General Assembly, there is hereby created in the
 296 state treasury a special nonreverting fund to be known as the Fraud and Abuse Whistle Blower Reward
 297 Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the
 298 Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any
 299 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert
 300 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to provide
 301 monetary rewards to persons who have disclosed information of wrongdoing or abuse under the Fraud
 302 and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.) and the disclosure results in a savings of
 303 at least \$10,000. The amount of the reward shall be equal to one percent (1%) of the total amount of
 304 savings realized by the Commonwealth as a result of the disclosure of the wrongdoing or abuse, not to
 305 exceed \$5,000. Expenditures and disbursements from the Fund shall be made by the State Treasurer on

306 warrants issued by the Comptroller upon written request signed by the ~~Division of State Internal Audit~~
307 ~~of the Department of Accounts~~ *State Inspector General*.

308 B. The ~~Division of State Internal Audit of the Department of Accounts~~ *Office of the State Inspector*
309 *General* shall promulgate regulations for the proper administration of the Fund including eligibility
310 requirements and procedures for filing a claim.

311 § 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

312 The following records are excluded from the provisions of this chapter but may be disclosed by the
313 custodian in his discretion, except where such disclosure is prohibited by law:

314 1. Confidential records of all investigations of applications for licenses and permits, and of all
315 licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State
316 Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer
317 Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of
318 Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice
319 Services.

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

322 3. Investigator notes, and other correspondence and information, furnished in confidence with respect
323 to an active investigation of individual employment discrimination complaints made to the Department
324 of Human Resource Management or to such personnel of any local public body, including local school
325 boards as are responsible for conducting such investigations in confidence. However, nothing in this
326 section shall prohibit the disclosure of information taken from inactive reports in a form that does not
327 reveal the identity of charging parties, persons supplying the information or other individuals involved in
328 the investigation.

329 4. Records of active investigations being conducted by the Department of Medical Assistance
330 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

331 5. Investigative notes and other correspondence and information furnished in confidence with respect
332 to an investigation or conciliation process involving an alleged unlawful discriminatory practice under
333 the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance
334 with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1,
335 1987, in accordance with applicable law, relating to local human rights or human relations commissions.
336 However, nothing in this section shall prohibit the distribution of information taken from inactive reports
337 in a form that does not reveal the identity of the parties involved or other persons supplying
338 information.

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

346 7. Investigative notes, correspondence and information furnished in confidence, and records otherwise
347 exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the ~~(†)~~ Auditor of
348 Public Accounts; (ii) *the* Joint Legislative Audit and Review Commission; (iii) an appropriate authority
349 as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and
350 Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) ~~Department of the State Internal Auditor~~
351 *the Office of the State Inspector General* with respect to an investigation initiated through the State
352 Employee Fraud, Waste and Abuse Hotline *or an investigation initiated pursuant to Chapter 3.2*
353 *(§ 2.2-307 et seq.)*; (v) *the* committee or the auditor with respect to an investigation or audit conducted
354 pursuant to § 15.2-825; or (vi) *the* auditors, appointed by the local governing body of any county, city
355 or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an
356 investigation of any officer, department or program of such body. Records of completed investigations
357 shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying
358 information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall
359 include, but not be limited to, the agency involved, the identity of the person who is the subject of the
360 complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation
361 does not lead to corrective action, the identity of the person who is the subject of the complaint may be
362 released only with the consent of the subject person. Local governing bodies shall adopt guidelines to
363 govern the disclosure required by this subdivision.

364 8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence
365 received or maintained by the Office or its agents in connection with specific complaints or
366 investigations, and records of communications between employees and agents of the Office and its
367 clients or prospective clients concerning specific complaints, investigations or cases. Upon the

368 conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may
 369 not at any time release the identity of any complainant or person with mental illness, mental retardation,
 370 developmental disabilities or other disability, unless (i) such complainant or person or his legal
 371 representative consents in writing to such identification or (ii) such identification is required by court
 372 order.

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

379 10. The names, addresses and telephone numbers of complainants furnished in confidence with
 380 respect to an investigation of individual zoning enforcement complaints or complaints relating to the
 381 Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et
 382 seq.) made to a local governing body.

383 11. Records of active investigations being conducted by the Department of Criminal Justice Services
 384 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.),
 385 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

386 12. Records furnished to or prepared by the Board of Education pursuant to subsection D of
 387 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
 388 unauthorized alteration, or improper administration of tests by local school board employees responsible
 389 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
 390 of records to (i) a local school board or division superintendent for the purpose of permitting such board
 391 or superintendent to consider or to take personnel action with regard to an employee or (ii) any
 392 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity
 393 of any person making a complaint or supplying information to the Board on a confidential basis and (b)
 394 does not compromise the security of any test mandated by the Board.

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

408 14. Records, notes and information provided in confidence and related to an investigation by the
 409 Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of
 410 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,
 411 or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that
 412 has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is
 413 not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,
 414 persons supplying information, witnesses or other individuals involved in the investigation.

415 § 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

416 The following records are excluded from the provisions of this chapter but may be disclosed by the
 417 custodian in his discretion, except where such disclosure is prohibited by law:

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

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

422 3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of
 423 confidentiality from a public body, used by the public body for business, trade and tourism development
 424 or retention; and memoranda, working papers or other records related to businesses that are considering
 425 locating or expanding in Virginia, prepared by a public body, where competition or bargaining is
 426 involved and where, if such records are made public, the financial interest of the public body would be
 427 adversely affected.

428 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239

429 et seq.), as such Act existed prior to July 1, 1992.

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

432 6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections
433 provided to the Department of Rail and Public Transportation, provided such information is exempt
434 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws
435 administered by the Surface Transportation Board or the Federal Railroad Administration with respect to
436 data provided in confidence to the Surface Transportation Board and the Federal Railroad
437 Administration.

438 7. Confidential proprietary records related to inventory and sales, voluntarily provided by private
439 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
440 contingency planning purposes or for developing consolidated statistical information on energy supplies.

441 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the
442 Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
443 Chapter 10 of Title 32.1.

444 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and
445 cost projections provided by a private transportation business to the Virginia Department of
446 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
447 transportation studies needed to obtain grants or other financial assistance under the Transportation
448 Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is
449 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
450 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
451 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
452 Administration. However, the exemption provided by this subdivision shall not apply to any wholly
453 owned subsidiary of a public body.

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

457 11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its
458 staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed
459 under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education
460 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public
461 prior to or after the execution of an interim or a comprehensive agreement, § 56-573.1:1 or 56-575.17
462 notwithstanding, the financial interest or bargaining position of the public entity would be adversely
463 affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the
464 responsible public entity; and

465 b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or
466 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or
467 the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records
468 contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
469 seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that
470 are not generally available to the public through regulatory disclosure or otherwise; or (iii) other
471 information submitted by the private entity, where, if the records were made public prior to the
472 execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining
473 position of the public or private entity would be adversely affected. In order for the records specified in
474 clauses (i), (ii) and (iii) to be excluded from the provisions of this chapter, the private entity shall make
475 a written request to the responsible public entity:

476 1. Invoking such exclusion upon submission of the data or other materials for which protection from
477 disclosure is sought;

478 2. Identifying with specificity the data or other materials for which protection is sought; and

479 3. Stating the reasons why protection is necessary.

480 The responsible public entity shall determine whether the requested exclusion from disclosure is
481 necessary to protect the trade secrets or financial records of the private entity. To protect other records
482 submitted by the private entity from disclosure, the responsible public entity shall determine whether
483 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would
484 adversely affect the financial interest or bargaining position of the public or private entity. The
485 responsible public entity shall make a written determination of the nature and scope of the protection to
486 be afforded by the responsible public entity under this subdivision. Once a written determination is made
487 by the responsible public entity, the records afforded protection under this subdivision shall continue to
488 be protected from disclosure when in the possession of any affected jurisdiction or affected local
489 jurisdiction.

490 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to

491 authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b)
 492 information concerning the terms and conditions of any interim or comprehensive agreement, service
 493 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity
 494 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
 495 that involves the use of any public funds; or (d) information concerning the performance of any private
 496 entity developing or operating a qualifying transportation facility or a qualifying project.

497 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"
 498 "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation
 499 facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined
 500 in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and
 501 Infrastructure Act of 2002.

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

508 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential
 509 proprietary records that are not generally available to the public through regulatory disclosure or
 510 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21
 511 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of
 512 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,
 513 or franchisee's financial capacity or provision of new services, adoption of new technologies or
 514 implementation of improvements, where such new services, technologies or improvements have not been
 515 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
 516 records were made public, the competitive advantage or financial interests of the franchisee would be
 517 adversely affected.

518 In order for trade secrets or confidential proprietary information to be excluded from the provisions
 519 of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of
 520 the data or other materials for which protection from disclosure is sought, (ii) identify the data or other
 521 materials for which protection is sought, and (iii) state the reason why protection is necessary.

522 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
 523 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
 524 applicable franchising authority serves on the management board or as an officer of the bidder,
 525 applicant, or franchisee.

526 14. Documents and other information of a proprietary nature furnished by a supplier of charitable
 527 gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of
 528 § 18.2-340.34.

529 15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple
 530 Board pursuant to § 3.2-1215.

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

534 17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to
 535 the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of
 536 Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22
 537 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related
 538 information produced or collected by the applicant in the conduct of or as a result of study or research
 539 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
 540 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
 541 would be harmful to the competitive position of the applicant.

542 18. Confidential proprietary records and trade secrets developed and held by a local public body (i)
 543 providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
 544 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that
 545 disclosure of such records would be harmful to the competitive position of the locality. In order for
 546 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
 547 the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the
 548 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is
 549 necessary.

550 19. Confidential proprietary records and trade secrets developed by or for a local authority created in
 551 accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide

552 qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of
 553 Title 56, where disclosure of such information would be harmful to the competitive position of the
 554 authority, except that records required to be maintained in accordance with § 15.2-2160 shall be
 555 released.

556 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
 557 records of a business, including balance sheets and financial statements, that are not generally available
 558 to the public through regulatory disclosure or otherwise, provided to the Department of Minority
 559 Business Enterprise as part of an application for (i) certification as a small, women-owned, or
 560 minority-owned business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim
 561 made by a disadvantaged business or an economically disadvantaged individual against the Capital
 562 Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade
 563 secrets or financial records to be excluded from the provisions of this chapter, the business shall (a)
 564 invoke such exclusion upon submission of the data or other materials for which protection from
 565 disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state
 566 the reasons why protection is necessary.

567 21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to
 568 the State Health Commissioner pursuant to § 32.1-276.5:1.

569 22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but
 570 not limited to, financial records, including balance sheets and financial statements, that are not generally
 571 available to the public through regulatory disclosure or otherwise, and revenue and cost projections
 572 supplied by a private or nongovernmental entity to the *Office of the State Inspector General* of the
 573 ~~Virginia Department~~, *State Inspector General* of Transportation for the purpose of an audit, special
 574 investigation, or any study requested by the *State Inspector General's Office* in accordance with law.

575 In order for the records specified in this subdivision to be excluded from the provisions of this
 576 chapter, the private or nongovernmental entity shall make a written request to the ~~Department~~ *State*
 577 *Inspector General*:

578 1. Invoking such exclusion upon submission of the data or other materials for which protection from
 579 disclosure is sought;

580 2. Identifying with specificity the data or other materials for which protection is sought; and

581 3. Stating the reasons why protection is necessary.

582 The *State Inspector General* of the ~~Virginia Department of Transportation~~ shall determine whether the
 583 requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the
 584 private entity. The ~~Virginia Department of Transportation~~ *State Inspector General* shall make a written
 585 determination of the nature and scope of the protection to be afforded by it under this subdivision.

586 23. Records submitted as a grant application, or accompanying a grant application, to the Virginia
 587 Tobacco Indemnification and Community Revitalization Commission to the extent such records contain
 588 (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records
 589 of a grant applicant that is not a public body, including balance sheets and financial statements, that are
 590 not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related
 591 information produced or collected by the applicant in the conduct of or as a result of study or research
 592 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
 593 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
 594 would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or
 595 other records prepared by the Commission or its staff exclusively for the evaluation of grant
 596 applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the
 597 powers of and in furtherance of the performance of the duties of the Commission pursuant to
 598 § 3.2-3103.

599 In order for the records specified in this subdivision to be excluded from the provisions of this
 600 chapter, the applicant shall make a written request to the Commission:

601 1. Invoking such exclusion upon submission of the data or other materials for which protection from
 602 disclosure is sought;

603 2. Identifying with specificity the data, records or other materials for which protection is sought; and

604 3. Stating the reasons why protection is necessary.

605 The Commission shall determine whether the requested exclusion from disclosure is necessary to
 606 protect the trade secrets, financial records or research-related information of the applicant. The
 607 Commission shall make a written determination of the nature and scope of the protection to be afforded
 608 by it under this subdivision.

609 § 2.2-3706. Disclosure of criminal records; limitations.

610 A. As used in this section:

611 "Criminal incident information" means a general description of the criminal activity reported, the date
 612 and general location the alleged crime was committed, the identity of the investigating officer, and a
 613 general description of any injuries suffered or property damaged or stolen.

614 "Criminal investigative file" means any documents and information including complaints, court
615 orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and
616 evidence relating to a criminal investigation or prosecution, other than criminal incident information.

617 B. Law-enforcement agencies shall make available upon request criminal incident information relating
618 to felony offenses. However, where the release of criminal incident information is likely to jeopardize an
619 ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade
620 detection; or result in the destruction of evidence, such information may be withheld until the
621 above-referenced damage is no longer likely to occur from release of the information. Nothing in this
622 subsection shall be construed to prohibit the release of those portions of such information that are not
623 likely to cause the above-referenced damage.

624 C. Information in the custody of law-enforcement agencies relative to the identity of any individual,
625 other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall be
626 released.

627 D. The identity of any victim, witness or undercover officer, or investigative techniques or
628 procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.

629 E. The identity of any individual providing information about a crime or criminal activity under a
630 promise of anonymity shall not be disclosed.

631 F. The following records are excluded from the provisions of this chapter, but may be disclosed by
632 the custodian, in his discretion, except where such disclosure is prohibited by law:

633 1. Criminal investigative files as defined in subsection A;

634 2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases
635 until such time as the release of the photograph will no longer jeopardize the investigation;

636 3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators
637 authorized pursuant to ~~§ 53.1-16~~ or ~~§ 66-3.1~~ Chapter 3.2 (§ 2.2-307 et seq.) of this title, and (iii) campus
638 police departments of public institutions of higher education established pursuant to Chapter 17
639 (§ 23-232 et seq.) of Title 23;

640 4. Portions of records of local government crime commissions that would identify individuals
641 providing information about crimes or criminal activities under a promise of anonymity;

642 5. Records of local law-enforcement agencies relating to neighborhood watch programs that include
643 the names, addresses, and operating schedules of individual participants in the program that are provided
644 to such agencies under a promise of anonymity;

645 6. All records of persons imprisoned in penal institutions in the Commonwealth provided such
646 records relate to the imprisonment;

647 7. Records of law-enforcement agencies, to the extent that such records contain specific tactical
648 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
649 the general public;

650 8. All records of adult persons under (i) investigation or supervision by a local pretrial services
651 agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation,
652 probation supervision or monitoring by a local community-based probation services agency in
653 accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or
654 supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of
655 Chapter 4 of Title 53.1;

656 9. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for
657 cellular telephones, pagers, or comparable portable communication devices provided to its personnel for
658 use in the performance of their official duties;

659 10. Those portions of any records containing information related to undercover operations or
660 protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations
661 or protective details. Nothing in this subdivision shall operate to allow the withholding of information
662 concerning the overall costs or expenses associated with undercover operations or protective details; and

663 11. Records of (i) background investigations of applicants for law-enforcement agency employment,
664 (ii) administrative investigations relating to allegations of wrongdoing by employees of a
665 law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement
666 agencies that are made confidential by law.

667 G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the
668 provisions of this chapter except that those portions of noncriminal incident or other investigative reports
669 or materials that contain identifying information of a personal, medical or financial nature may be
670 withheld where the release of such information would jeopardize the safety or privacy of any person.

671 H. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department
672 of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 are excluded from the provisions of
673 this chapter, including information obtained from state, local and regional officials, except to the extent
674 that information is required to be posted on the Internet pursuant to § 9.1-913.

675 I. In the event of conflict between this section as it relates to requests made under this section and
 676 other provisions of law, this section shall control.

677 § 2.2-3802. Systems to which chapter inapplicable.

678 The provisions of this chapter shall not apply to personal information systems:

679 1. Maintained by any court of the Commonwealth;

680 2. Which may exist in publications of general circulation;

681 3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or
 682 in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police
 683 pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to
 684 be posted on the Internet pursuant to § 9.1-913;

685 4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through
 686 16.1-225;

687 5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth
 688 to engage in the practice of any profession, in which case the names and addresses of persons applying
 689 for or possessing the license may be disseminated upon written request to a person engaged in the
 690 profession or business of offering professional educational materials or courses for the sole purpose of
 691 providing the licensees or applicants for licenses with informational materials relating solely to available
 692 professional educational materials or courses, provided the disseminating agency is reasonably assured
 693 that the use of the information will be so limited;

694 6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review
 695 Commission, the Virginia Racing Commission, and the Department of Alcoholic Beverage Control;

696 7. Maintained by the Department of State Police; the police department of the Chesapeake Bay
 697 Bridge and Tunnel Commission; police departments of cities, counties, and towns; and the campus
 698 police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et
 699 seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity;
 700 and maintained by local departments of social services regarding alleged cases of child abuse or neglect
 701 while such cases are also subject to an ongoing criminal prosecution;

702 8. Maintained by the Virginia Port Authority as provided in § 62.1-134.1 or 62.1-132.4;

703 9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion
 704 of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting
 705 information on those subjects may be disseminated upon written request to a person engaged in the
 706 business of providing travel services or distributing travel information, provided the Virginia Tourism
 707 Authority is reasonably assured that the use of the information will be so limited;

708 10. Maintained by the Division of Consolidated Laboratory Services of the Department of General
 709 Services and the Department of Forensic Science, which deal with scientific investigations relating to
 710 criminal activity or suspected criminal activity, except to the extent that § 9.1-1104 may apply;

711 11. Maintained by the Department of Corrections *or the Office of the State Inspector General* that
 712 deal with investigations and intelligence gathering by persons acting under the provisions of ~~§ 53.1-16~~
 713 *Chapter 3.2 (§ 2.2-307 et seq.) of this title;*

714 12. Maintained by the ~~Department of the State Internal Auditor~~ *Office of the State Inspector General*
 715 or internal audit departments of state agencies or institutions that deal with communications and
 716 investigations relating to the State Employee Fraud, Waste and Abuse Hotline; and

717 13. Maintained by the Department of Social Services or any local department of social services
 718 relating to public assistance fraud investigations.

719 § 2.2-4344. Exemptions from competition for certain transactions.

720 A. Any public body may enter into contracts without competition for:

721 1. The purchase of goods or services that are produced or performed by:

722 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the
 723 Blind and Vision Impaired; or

724 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported
 725 employment services serving the handicapped.

726 2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 (§ 2.2-500 et
 727 seq.) ~~of this title~~ remain applicable, or expert witnesses or other services associated with litigation or
 728 regulatory proceedings.

729 B. An industrial development authority or regional industrial facility authority may enter into
 730 contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as
 731 defined in § 15.2-4902 or "facility" as defined in § 15.2-6400.

732 C. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter
 733 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without
 734 competition with respect to the exercise of any of its powers permitted by § 15.2-5158. However, this
 735 exception shall not apply in cases where any public funds other than special assessments and
 736 incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

737 D. The *State Inspector General for Behavioral Health and Developmental Services* may enter into
 738 contracts without competition to obtain the services of licensed health care professionals or other experts
 739 to assist in carrying out the duties of the Office of the ~~Inspector General~~ *State Inspector General for*
 740 ~~Behavioral Health and Developmental Services~~.

741 § 32.1-127.1:03. Health records privacy.

742 A. There is hereby recognized an individual's right of privacy in the content of his health records.
 743 Health records are the property of the health care entity maintaining them, and, except when permitted
 744 or required by this section or by other provisions of state law, no health care entity, or other person
 745 working in a health care setting, may disclose an individual's health records.

746 Pursuant to this subsection:

747 1. Health care entities shall disclose health records to the individual who is the subject of the health
 748 record, except as provided in subsections E and F of this section and subsection B of § 8.01-413.

749 2. Health records shall not be removed from the premises where they are maintained without the
 750 approval of the health care entity that maintains such health records, except in accordance with a court
 751 order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with
 752 the regulations relating to change of ownership of health records promulgated by a health regulatory
 753 board established in Title 54.1.

754 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health
 755 records of an individual, beyond the purpose for which such disclosure was made, without first
 756 obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall
 757 not, however, prevent (i) any health care entity that receives health records from another health care
 758 entity from making subsequent disclosures as permitted under this section and the federal Department of
 759 Health and Human Services regulations relating to privacy of the electronic transmission of data and
 760 protected health information promulgated by the United States Department of Health and Human
 761 Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C.
 762 § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data,
 763 from which individually identifying prescription information has been removed, encoded or encrypted, to
 764 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or
 765 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health
 766 services research.

767 B. As used in this section:

768 "Agent" means a person who has been appointed as an individual's agent under a power of attorney
 769 for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

770 "Certification" means a written representation that is delivered by hand, by first-class mail, by
 771 overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated
 772 confirmation reflecting that all facsimile pages were successfully transmitted.

773 "Guardian" means a court-appointed guardian of the person.

774 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a
 775 public or private entity, such as a billing service, repricing company, community health management
 776 information system or community health information system, and "value-added" networks and switches,
 777 that performs either of the following functions: (i) processes or facilitates the processing of health
 778 information received from another entity in a nonstandard format or containing nonstandard data content
 779 into standard data elements or a standard transaction; or (ii) receives a standard transaction from another
 780 entity and processes or facilitates the processing of health information into nonstandard format or
 781 nonstandard data content for the receiving entity.

782 "Health care entity" means any health care provider, health plan or health care clearinghouse.

783 "Health care provider" means those entities listed in the definition of "health care provider" in
 784 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
 785 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
 786 registered or permitted or who hold a multistate licensure privilege issued by any of the health
 787 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
 788 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

789 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.
 790 "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

791 "Health record" means any written, printed or electronically recorded material maintained by a health
 792 care entity in the course of providing health services to an individual concerning the individual and the
 793 services provided. "Health record" also includes the substance of any communication made by an
 794 individual to a health care entity in confidence during or in connection with the provision of health
 795 services or information otherwise acquired by the health care entity about an individual in confidence
 796 and in connection with the provision of health services to the individual.

797 "Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,

798 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as
799 payment or reimbursement for any such services.

800 "Individual" means a patient who is receiving or has received health services from a health care
801 entity.

802 "Individually identifying prescription information" means all prescriptions, drug orders or any other
803 prescription information that specifically identifies an individual.

804 "Parent" means a biological, adoptive or foster parent.

805 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a
806 mental health professional, documenting or analyzing the contents of conversation during a private
807 counseling session with an individual or a group, joint, or family counseling session that are separated
808 from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations
809 relating to medication and prescription monitoring, counseling session start and stop times, treatment
810 modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis,
811 functional status, treatment plan, or the individual's progress to date.

812 C. The provisions of this section shall not apply to any of the following:

813 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia
814 Workers' Compensation Act;

815 2. Except where specifically provided herein, the health records of minors; or

816 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
817 § 16.1-248.3.

818 D. Health care entities may, and, when required by other provisions of state law, shall, disclose
819 health records:

820 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the
821 case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of
822 minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment
823 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an
824 individual's written authorization, pursuant to the individual's oral authorization for a health care
825 provider or health plan to discuss the individual's health records with a third party specified by the
826 individual;

827 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant
828 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a
829 subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health
830 records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in
831 this subdivision shall be construed to prohibit any staff or employee of a health care entity from
832 providing information about such individual to a law-enforcement officer in connection with such
833 subpoena, search warrant, or court order;

834 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure
835 is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care
836 entity's employees or staff against any accusation of wrongful conduct; also as required in the course of
837 an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly
838 authorized law-enforcement, licensure, accreditation, or professional review entity;

839 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

840 5. In compliance with the provisions of § 8.01-413;

841 6. As required or authorized by law relating to public health activities, health oversight activities,
842 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
843 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
844 those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283,
845 32.1-283.1, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506,
846 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

847 7. Where necessary in connection with the care of the individual;

848 8. In connection with the health care entity's own health care operations or the health care operations
849 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
850 accordance with accepted standards of practice within the health services setting; however, the
851 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
852 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
853 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

854 9. When the individual has waived his right to the privacy of the health records;

855 10. When examination and evaluation of an individual are undertaken pursuant to judicial or
856 administrative law order, but only to the extent as required by such order;

857 11. To the guardian ad litem and any attorney representing the respondent in the course of a
858 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10
859 (§ 37.2-1000 et seq.) of Title 37.2;

860 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who
 861 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5
 862 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title
 863 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of
 864 Title 37.2;

865 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et
 866 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health
 867 authority or a designee of a community services board or behavioral health authority, or a
 868 law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter
 869 11 of Title 16.1, § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of
 870 the proceeding, and to any health care provider evaluating or providing services to the person who is the
 871 subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those
 872 provisions. Health records disclosed to a law-enforcement officer shall be limited to information
 873 necessary to protect the officer, the person, or the public from physical injury or to address the health
 874 care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any
 875 other purpose, disclosed to others, or retained;

876 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or
 877 administrative proceeding, if the court or administrative hearing officer has entered an order granting the
 878 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the
 879 health care entity of such order;

880 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records
 881 in accord with § 9.1-156;

882 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker
 883 designated in an individual's advance directive for health care or for decisions on anatomical gifts and
 884 organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care
 885 Decisions Act (§ 54.1-2981 et seq.);

886 17. To third-party payors and their agents for purposes of reimbursement;

887 18. As is necessary to support an application for receipt of health care benefits from a governmental
 888 agency or as required by an authorized governmental agency reviewing such application or reviewing
 889 benefits already provided or as necessary to the coordination of prevention and control of disease,
 890 injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

891 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership
 892 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

893 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and
 894 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

895 21. Where necessary in connection with the implementation of a hospital's routine contact process for
 896 organ donation pursuant to subdivision B 4 of § 32.1-127;

897 22. In the case of substance abuse records, when permitted by and in conformity with requirements
 898 of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

899 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the
 900 adequacy or quality of professional services or the competency and qualifications for professional staff
 901 privileges;

902 24. If the health records are those of a deceased or mentally incapacitated individual to the personal
 903 representative or executor of the deceased individual or the legal guardian or committee of the
 904 incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian
 905 or committee appointed, to the following persons in the following order of priority: a spouse, an adult
 906 son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual
 907 in order of blood relationship;

908 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote
 909 identification of all potential organ, eye, and tissue donors in conformance with the requirements of
 910 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's
 911 designated organ procurement organization certified by the United States Health Care Financing
 912 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association
 913 of America or the American Association of Tissue Banks;

914 26. To the Office of the *State Inspector General for Behavioral Health and Developmental Services*
 915 ~~pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2 pursuant to Chapter 3.2 (§ 2.2-307~~
 916 ~~et seq.) of Title 2.2;~~

917 27. To an entity participating in the activities of a local health partnership authority established
 918 pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4, pursuant to subdivision 1;

919 28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the
 920 individual is the victim of a crime or (ii) when the individual has been arrested and has received

921 emergency medical services or has refused emergency medical services and the health records consist of
922 the prehospital patient care report required by § 32.1-116.1;

923 29. To law-enforcement officials, in response to their request, for the purpose of identifying or
924 locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and
925 Crimes Against Minors Registry Act, material witness, or missing person, provided that only the
926 following information may be disclosed: (i) name and address of the person, (ii) date and place of birth
927 of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time
928 of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii)
929 description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by
930 the person;

931 30. To law-enforcement officials regarding the death of an individual for the purpose of alerting law
932 enforcement of the death if the health care entity has a suspicion that such death may have resulted
933 from criminal conduct;

934 31. To law-enforcement officials if the health care entity believes in good faith that the information
935 disclosed constitutes evidence of a crime that occurred on its premises;

936 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
937 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
938 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

939 33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed
940 emergency medical services agency when the records consist of the prehospital patient care report
941 required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing
942 duties or tasks that are within the scope of his employment;

943 34. To notify a family member or personal representative of an individual who is the subject of a
944 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8
945 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement
946 with the individual's health care, which may include the individual's location and general condition,
947 when the individual has the capacity to make health care decisions and (i) the individual has agreed to
948 the notification, (ii) the individual has been provided an opportunity to object to the notification and
949 does not express an objection, or (iii) the health care provider can, on the basis of his professional
950 judgment, reasonably infer from the circumstances that the individual does not object to the notification.
951 If the opportunity to agree or object to the notification cannot practicably be provided because of the
952 individual's incapacity or an emergency circumstance, the health care provider may notify a family
953 member or personal representative of the individual of information that is directly relevant to such
954 person's involvement with the individual's health care, which may include the individual's location and
955 general condition if the health care provider, in the exercise of his professional judgment, determines
956 that the notification is in the best interests of the individual. Such notification shall not be made if the
957 provider has actual knowledge the family member or personal representative is currently prohibited by
958 court order from contacting the individual; and

959 35. To a threat assessment team established by a public institution of higher education pursuant to
960 § 23-9.2:10 when such records concern a student at the public institution of higher education, including
961 a student who is a minor.

962 Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an
963 individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by
964 the health care entity is (i) for its own training programs in which students, trainees, or practitioners in
965 mental health are being taught under supervision to practice or to improve their skills in group, joint,
966 family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of
967 wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1,
968 to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in
969 the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a
970 duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise
971 required by law.

972 E. Requests for copies of health records shall (i) be in writing, dated and signed by the requester; (ii)
973 identify the nature of the information requested; and (iii) include evidence of the authority of the
974 requester to receive such copies and identification of the person to whom the information is to be
975 disclosed. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed
976 by the requestor as if it were an original. Within 15 days of receipt of a request for copies of health
977 records, the health care entity shall do one of the following: (i) furnish such copies to any requester
978 authorized to receive them; (ii) inform the requester if the information does not exist or cannot be
979 found; (iii) if the health care entity does not maintain a record of the information, so inform the
980 requester and provide the name and address, if known, of the health care entity who maintains the
981 record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not
982 established his authority to receive such health records or proof of his identity, or (c) as otherwise

983 provided by law. Procedures set forth in this section shall apply only to requests for health records not
984 specifically governed by other provisions of state law.

985 F. Except as provided in subsection B of § 8.01-413, copies of an individual's health records shall
986 not be furnished to such individual or anyone authorized to act on the individual's behalf when the
987 individual's treating physician or the individual's treating clinical psychologist has made a part of the
988 individual's record a written statement that, in the exercise of his professional judgment, the furnishing
989 to or review by the individual of such health records would be reasonably likely to endanger the life or
990 physical safety of the individual or another person, or that such health record makes reference to a
991 person other than a health care provider and the access requested would be reasonably likely to cause
992 substantial harm to such referenced person. If any health care entity denies a request for copies of health
993 records based on such statement, the health care entity shall inform the individual of the individual's
994 right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist,
995 whose licensure, training and experience relative to the individual's condition are at least equivalent to
996 that of the physician or clinical psychologist upon whose opinion the denial is based. The designated
997 reviewing physician or clinical psychologist shall make a judgment as to whether to make the health
998 record available to the individual.

999 The health care entity denying the request shall also inform the individual of the individual's right to
1000 request in writing that such health care entity designate, at its own expense, a physician or clinical
1001 psychologist, whose licensure, training, and experience relative to the individual's condition are at least
1002 equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial
1003 is based and who did not participate in the original decision to deny the health records, who shall make
1004 a judgment as to whether to make the health record available to the individual. The health care entity
1005 shall comply with the judgment of the reviewing physician or clinical psychologist. The health care
1006 entity shall permit copying and examination of the health record by such other physician or clinical
1007 psychologist designated by either the individual at his own expense or by the health care entity at its
1008 expense.

1009 Any health record copied for review by any such designated physician or clinical psychologist shall
1010 be accompanied by a statement from the custodian of the health record that the individual's treating
1011 physician or clinical psychologist determined that the individual's review of his health record would be
1012 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely
1013 to cause substantial harm to a person referenced in the health record who is not a health care provider.

1014 Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive
1015 copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized
1016 to act on his behalf.

1017 G. A written authorization to allow release of an individual's health records shall substantially include
1018 the following information:

1019 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

1020 Individual's Name

1021 Health Care Entity's Name

1022 Person, Agency, or Health Care Entity to whom disclosure is to
1023 be made

1024 Information or Health Records to be disclosed

1025 Purpose of Disclosure or at the Request of the Individual

1026 As the person signing this authorization, I understand that I am giving
1027 my permission to the above-named health care entity for disclosure of
1028 confidential health records. I understand that the health care entity
1029 may not condition treatment or payment on my willingness to sign this
1030 authorization unless the specific circumstances under which such
1031 conditioning is permitted by law are applicable and are set forth in
1032 this authorization. I also understand that I have the right to revoke
1033 This authorization at any time, but that my revocation is not effective
1034 until delivered in writing to the person who is in possession of my
1035 health records and is not effective as to health records already
1036 disclosed under this authorization. A copy of this authorization and a
1037 notation concerning the persons or agencies to whom disclosure was made
1038 shall be included with my original health records. I understand that
1039 health information disclosed under this authorization might be
1040 redisclosed by a recipient and may, as a result of such disclosure, no
1041 longer be protected to the same extent as such health information was

1042 protected by law while solely in the possession of the health care
1043 entity.

1044 This authorization expires on (date) or (event)

1045 Signature of Individual or Individual's Legal Representative if

1046 Individual is Unable to Sign

1047 Relationship or Authority of Legal Representative

1048 Date of Signature

1049 H. Pursuant to this subsection:

1050 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or
1051 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another
1052 party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the
1053 request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's
1054 counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
1055 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
1056 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a
1057 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the
1058 request or issuance of the attorney-issued subpoena.

1059 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date
1060 of the subpoena except by order of a court or administrative agency for good cause shown. When a
1061 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces
1062 tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the
1063 subpoena.

1064 Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena
1065 duces tecum is being issued shall have the duty to determine whether the individual whose health
1066 records are being sought is pro se or a nonparty.

1067 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,
1068 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness
1069 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an
1070 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall
1071 include the following language and the heading shall be in boldface capital letters:

1072 **NOTICE TO INDIVIDUAL**

1073 The attached document means that (insert name of party requesting or causing issuance of the
1074 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has
1075 been issued by the other party's attorney to your doctor, other health care providers (names of health
1076 care providers inserted here) or other health care entity (name of health care entity to be inserted here)
1077 requiring them to produce your health records. Your doctor, other health care provider or other health
1078 care entity is required to respond by providing a copy of your health records. If you believe your health
1079 records should not be disclosed and object to their disclosure, you have the right to file a motion with
1080 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion
1081 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued
1082 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements
1083 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to
1084 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health
1085 care provider(s), or other health care entity, that you are filing the motion so that the health care
1086 provider or health care entity knows to send the health records to the clerk of court or administrative
1087 agency in a sealed envelope or package for safekeeping while your motion is decided.

1088 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued
1089 for an individual's health records shall include a Notice in the same part of the request in which the
1090 recipient of the subpoena duces tecum is directed where and when to return the health records. Such
1091 notice shall be in boldface capital letters and shall include the following language:

1092 **NOTICE TO HEALTH CARE ENTITIES**

1093 **A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL
1094 WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT
1095 INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED
1096 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION
1097 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.**

1098 **YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN
1099 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED
1100 THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:**

1101 **NO MOTION TO QUASH WAS FILED; OR**

1102 **ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE**

1103 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH
1104 SUCH RESOLUTION.

1105 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE
1106 BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A
1107 MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO
1108 THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA
1109 OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE
1110 FOLLOWING PROCEDURE:

1111 PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED
1112 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY
1113 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE
1114 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA.
1115 THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER
1116 ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE
1117 AGENCY.

1118 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the
1119 duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

1120 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a
1121 sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such
1122 health records until they have received a certification as set forth in subdivision 5 or 8 from the party on
1123 whose behalf the subpoena duces tecum was issued.

1124 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been
1125 filed or if the health care entity files a motion to quash the subpoena for health records, then the health
1126 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or
1127 administrative agency issuing the subpoena or in whose court or administrative agency the action is
1128 pending. The court or administrative agency shall place the health records under seal until a
1129 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened
1130 on order of the judge or administrative agency. In the event the court or administrative agency grants
1131 the motion to quash, the health records shall be returned to the health care entity in the same sealed
1132 envelope in which they were delivered to the court or administrative agency. In the event that a judge or
1133 administrative agency orders the sealed envelope to be opened to review the health records in camera, a
1134 copy of the order shall accompany any health records returned to the health care entity. The health
1135 records returned to the health care entity shall be in a securely sealed envelope.

1136 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
1137 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the
1138 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion
1139 to quash was filed. Any health care entity receiving such certification shall have the duty to comply
1140 with the subpoena duces tecum by returning the specified health records by either the return date on the
1141 subpoena or five days after receipt of the certification, whichever is later.

1142 6. In the event that the individual whose health records are being sought files a motion to quash the
1143 subpoena, the court or administrative agency shall decide whether good cause has been shown by the
1144 discovering party to compel disclosure of the individual's health records over the individual's objections.
1145 In determining whether good cause has been shown, the court or administrative agency shall consider (i)
1146 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of
1147 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the
1148 disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or
1149 proceeding; and (v) any other relevant factor.

1150 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
1151 subpoenaed health records have been submitted by a health care entity to the court or administrative
1152 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no
1153 submitted health records should be disclosed, return all submitted health records to the health care entity
1154 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide
1155 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon
1156 determining that only a portion of the submitted health records should be disclosed, provide such portion
1157 to the party on whose behalf the subpoena was issued and return the remaining health records to the
1158 health care entity in a sealed envelope.

1159 8. Following the court or administrative agency's resolution of a motion to quash, the party on whose
1160 behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed
1161 health care entity a statement of one of the following:

1162 a. All filed motions to quash have been resolved by the court or administrative agency and the
1163 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the

1164 health records previously delivered in a sealed envelope to the clerk of the court or administrative
1165 agency will not be returned to the health care entity;

1166 b. All filed motions to quash have been resolved by the court or administrative agency and the
1167 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no
1168 health records have previously been delivered to the court or administrative agency by the health care
1169 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records
1170 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,
1171 whichever is later;

1172 c. All filed motions to quash have been resolved by the court or administrative agency and the
1173 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no
1174 health records shall be disclosed and all health records previously delivered in a sealed envelope to the
1175 clerk of the court or administrative agency will be returned to the health care entity;

1176 d. All filed motions to quash have been resolved by the court or administrative agency and the
1177 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only
1178 limited disclosure has been authorized. The certification shall state that only the portion of the health
1179 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall
1180 be disclosed. The certification shall also state that health records that were previously delivered to the
1181 court or administrative agency for which disclosure has been authorized will not be returned to the
1182 health care entity; however, all health records for which disclosure has not been authorized will be
1183 returned to the health care entity; or

1184 e. All filed motions to quash have been resolved by the court or administrative agency and the
1185 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no
1186 health records have previously been delivered to the court or administrative agency by the health care
1187 entity, the health care entity shall return only those health records specified in the certification,
1188 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five
1189 days after receipt of the certification, whichever is later.

1190 A copy of the court or administrative agency's ruling shall accompany any certification made
1191 pursuant to this subdivision.

1192 9. The provisions of this subsection have no application to subpoenas for health records requested
1193 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,
1194 audit, review or proceedings regarding a health care entity's conduct.

1195 The provisions of this subsection shall apply to subpoenas for the health records of both minors and
1196 adults.

1197 Nothing in this subsection shall have any effect on the existing authority of a court or administrative
1198 agency to issue a protective order regarding health records, including, but not limited to, ordering the
1199 return of health records to a health care entity, after the period for filing a motion to quash has passed.

1200 A subpoena for substance abuse records must conform to the requirements of federal law found in 42
1201 C.F.R. Part 2, Subpart E.

1202 I. Health care entities may testify about the health records of an individual in compliance with
1203 §§ 8.01-399 and 8.01-400.2.

1204 J. If an individual requests a copy of his health record from a health care entity, the health care
1205 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and
1206 labor of copying the requested information, postage when the individual requests that such information
1207 be mailed, and preparation of an explanation or summary of such information as agreed to by the
1208 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on
1209 behalf of the individual who is the subject of the health record in making decisions related to his health
1210 care.

1211 § 32.1-283. Investigation of deaths; obtaining consent to removal of organs, etc.; fees.

1212 A. Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or
1213 homicide, or suddenly when in apparent good health, or when unattended by a physician, or in jail,
1214 prison, other correctional institution or in police custody, or who is a patient or resident of a state
1215 mental health or mental retardation facility, or suddenly as an apparent result of fire, or in any
1216 suspicious, unusual or unnatural manner, or the sudden death of any infant less than eighteen months of
1217 age whose death is suspected to be attributable to Sudden Infant Death Syndrome (SIDS), the medical
1218 examiner of the county or city in which death occurs shall be notified by the physician in attendance,
1219 hospital, law-enforcement officer, funeral director or any other person having knowledge of such death.
1220 Good faith efforts shall be made by such person or institution having custody of the dead body to
1221 identify and to notify the next of kin of the decedent. Notification shall include informing the person
1222 presumed to be the next of kin that he has a right to have identification of the decedent confirmed
1223 without due delay and without being held financially responsible for any procedures performed for the
1224 purpose of the identification. Identity of the next of kin, if determined, shall be provided to the Chief
1225 Medical Examiner upon transfer of the dead body.

1226 B. Upon being notified of a death as provided in subsection A, the medical examiner shall take
 1227 charge of the dead body, make an investigation into the cause and manner of death, reduce his findings
 1228 to writing, and promptly make a full report to the Chief Medical Examiner. In order to facilitate his
 1229 investigation, the medical examiner is authorized to inspect and copy the pertinent medical records of
 1230 the decedent whose death he is investigating. Full directions as to the nature, character and extent of the
 1231 investigation to be made in such cases shall be furnished each medical examiner by the Chief Medical
 1232 Examiner, together with appropriate forms for the required reports and instructions for their use. The
 1233 facilities and personnel under the Chief Medical Examiner shall be made available to medical examiners
 1234 in such investigations. Reports and findings of the Medical Examiner shall be confidential and shall not
 1235 under any circumstance be disclosed or made available for discovery pursuant to a court subpoena or
 1236 otherwise, except as provided in this chapter. Nothing in this subsection shall prohibit the Chief Medical
 1237 Examiner from releasing the cause or manner of death, or prohibit disclosure of reports or findings to
 1238 the parties in a criminal case.

1239 C. A copy of each report pursuant to this section shall be delivered to the appropriate attorney for
 1240 the Commonwealth and to the appropriate law-enforcement agency investigating the death. A copy of
 1241 any such report regarding the death of a victim of a traffic accident shall be furnished upon request to
 1242 the State Police and the Highway Safety Commission. In addition, a copy of any autopsy report
 1243 concerning a patient or resident of a state mental health or mental retardation facility shall be delivered
 1244 to the Commissioner of Behavioral Health and Developmental Services and to the *State Inspector*
 1245 ~~General for Behavioral Health and Developmental Services~~. A copy of any autopsy report concerning a
 1246 prisoner committed to the custody of the Director of the Department of Corrections shall, upon request
 1247 of the Director of the Department of Corrections, be delivered to the Director of the Department of
 1248 Corrections. A copy of any autopsy report concerning a prisoner committed to any local correctional
 1249 facility shall be delivered to the local sheriff or superintendent. Upon request, the Chief Medical
 1250 Examiner shall release such autopsy report to the decedent's attending physician and to the personal
 1251 representative or executor of the decedent or, if no personal representative or executor is appointed, then
 1252 at the discretion of the Chief Medical Examiner, to the following persons in the following order of
 1253 priority: (i) the spouse of the decedent, (ii) an adult son or daughter of the decedent, (iii) either parent
 1254 of the decedent, (iv) an adult sibling of the decedent, (v) any other adult relative of the decedent in
 1255 order of blood relationship, or (vi) any appropriate health facility quality assurance program.

1256 D. For each investigation under this article, including the making of the required reports, the medical
 1257 examiner shall receive a fee established by the Board within the limitations of appropriations for the
 1258 purpose. Such fee shall be paid by the Commonwealth, if the deceased is not a legal resident of the
 1259 county or city in which his death occurred. In the event the deceased is a legal resident of the county or
 1260 city in which his death occurred, such county or city shall be responsible for the fee up to \$20. If the
 1261 deceased is a patient or resident of a state mental health or mental retardation facility, the fee shall be
 1262 paid by the Department of Behavioral Health and Developmental Services.

1263 E. Nothing herein shall be construed to interfere with the autopsy procedure or with the routine
 1264 obtaining of consent for removal of organs as conducted by surgical teams or others.

1265 § 58.1-202.2. Public-private partnerships; Public Private Partnership Oversight Committee.

1266 A. The Tax Commissioner is hereby authorized through the Department of General Services in
 1267 accordance with the Virginia Public Procurement Act to enter into public-private partnership contracts to
 1268 finance agency technology needs. The Tax Commissioner may issue a request for information to seek
 1269 out potential private partners interested in providing programs pursuant to an agreement under this
 1270 section. The compensation for such services shall be computed with reference to and paid from the
 1271 increased revenue attributable to the successful implementation of the technology program for the period
 1272 specified in the contract.

1273 B. The Public Private Partnership Oversight Committee, hereinafter referred to as the "Committee" is
 1274 established as an advisory committee in the executive branch of state government to review and approve
 1275 the terms of contracts under this section relating to the measurement of the revenue attributable to the
 1276 technology program. The Committee shall consist of five members as follows: one legislative employee
 1277 appointed by the Senate Committee on Rules after the consideration of the recommendation of the
 1278 President pro tempore of the Senate, if any; one legislative employee appointed by the Speaker of the
 1279 House of Delegates; and the State Comptroller, the Director of the Department of Planning and Budget,
 1280 and the State ~~Internal Auditor~~ *Inspector General*, as ex officio voting members. All members shall be
 1281 citizens of the Commonwealth.

1282 Ex officio members shall serve terms coincident with their terms of office. Legislative employee
 1283 members shall be appointed for a term of two years and may be reappointed for successive terms.
 1284 Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms.
 1285 Vacancies shall be filled in the same manner as the original appointments.

1286 The Tax Commissioner shall preside over the meetings of the Committee. The Committee may select

1287 an alternative to preside in the absence of the Tax Commissioner. A majority of the members shall
1288 constitute a quorum. The meetings of the Committee shall be held at the call of the Tax Commissioner
1289 or whenever the majority of the members so request.

1290 The Tax Commissioner shall submit an annual executive summary and report no later than
1291 November 30 to the Governor and General Assembly on all agreements under this section, describing
1292 each technology program, its progress, revenue impact, and such other information as may be relevant.
1293 The executive summary and report shall be submitted as provided in the procedures of the Division of
1294 Legislative Automated Systems for the processing of legislative documents and reports and shall be
1295 posted on the General Assembly's website.

1296 C. The Tax Commissioner shall determine annually the total amount of increased revenue attributable
1297 to the successful implementation of a technology program under this section and such amount shall be
1298 deposited in a special fund known as the Technology Partnership Fund (the Fund). The Tax
1299 Commissioner is authorized to use moneys deposited in the Fund to pay private partners pursuant to the
1300 terms of contracts under this section. All moneys in excess of that required to be paid to private
1301 partners, as determined by the Department, shall be reported to the Comptroller and transferred to the
1302 appropriate general or nongeneral fund.

1303 **2. That Chapter 16 (§§ 2.2-1600 through 2.2-1602) of Title 2.2, Article 3 (§§ 37.2-423 through**
1304 **37.2-425) of Chapter 4 of Title 37.2, and §§ 53.1-16 and 66-3.1 of the Code of Virginia are**
1305 **repealed.**

1306 **3. That, effective July 1, 2012, the Office of the State Inspector General created by this act shall**
1307 **be deemed the successor in interest to the (i) Office of the Inspector General for Behavioral Health**
1308 **and Developmental Services, (ii) Inspector General for the Department of Corrections, (iii)**
1309 **Inspector General of the Department of Juvenile Justice, (iv) Inspector General of the Department**
1310 **of Transportation, and (v) the Department of the State Internal Auditor to the extent that this act**
1311 **transfers powers and duties. All rights, title, and interest in and to any real or tangible personal**
1312 **property vested in the Inspector General for Behavioral Health and Developmental Services, the**
1313 **Inspector General for the Department of Corrections, the Inspector General of the Department of**
1314 **Juvenile Justice, the Inspector General of the Department of Transportation, and the Department**
1315 **of the State Internal Auditor to the extent that this act transfers powers and duties as of July 1,**
1316 **2012, shall be transferred to and taken as standing in the name of the Office of the State Inspector**
1317 **General created by this act.**

1318 **4. That the Governor may transfer an appropriation or any portion thereof within a state agency**
1319 **established, abolished, or otherwise affected by the provisions of this act, or from one such agency**
1320 **to another, to support the changes in organization or responsibility resulting from or required by**
1321 **the provisions of this act.**

1322 **5. That the Office of the State Inspector General created by this act shall complete an**
1323 **implementation plan for the transfer of internal audit programs from the State Internal Auditor.**

1324 **6. That any regulations adopted by the State Internal Auditor that are in effect as of the effective**
1325 **date of this act and which pertain to the subject of this act shall remain in full force and effect**
1326 **until altered, amended, or rescinded by the State Inspector General.**

1327 **7. That the provisions of this act shall become effective on July 1, 2012, except that the provisions**
1328 **of Article 5 (§ 2.2-321) of Chapter 3.2 of Title 2.2 of this act relating to transportation shall**
1329 **become effective on July 1, 2014.**