

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 2.2-211, 2.2-3010, 2.2-3014, 2.2-3705.3, 2.2-3705.6, 2.2-3706, 2.2-3802, 2.2-4344, 30-138, 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, 2.2-1601, and 2.2-1602) of Title 2.2, Article 3 (§§ 37.2-423, 37.2-424, and 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.

[S 1477]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-211, 2.2-3010, 2.2-3014, 2.2-3705.3, 2.2-3705.6, 2.2-3706, 2.2-3802, 2.2-4344, 30-138, 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 (i) not a unit of state government or a political subdivision of the Commonwealth as established by general law or special act and (ii) wholly or principally supported by state funds. "Nonstate agency" shall not include any such entity that receives state funds (a) as a subgrantee of a state agency, (b) through a state grant-in-aid program authorized by law, (c) as a result of an award of a competitive grant or a public contract for the procurement of goods, services, or construction, or (d) pursuant to a lease of real property as described in subdivision 5 of § 2.2-1149.

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

"Officer" means any person who is elected or appointed to a public office in a state agency.

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

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

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

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

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

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

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

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

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

5. Coordinate and recommend standards for those internal audit programs in existence as of July 1, 2012, and develop and maintain other internal audit programs in state agencies and nonstate agencies as needed in order to ensure that the Commonwealth's assets are subject to appropriate internal management controls. The State Inspector General shall assess the condition of the accounting, financial, and administrative controls of state agencies and nonstate agencies;

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

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

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

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

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

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

12. Conduct performance reviews of state agencies to ascertain that sums appropriated have been or are being expended for the purposes for which the appropriation was made, and to evaluate the effectiveness of the programs in accomplishing such purpose. Prepare a report for each performance review detailing any findings or recommendations for improving the efficiency of state agencies, including recommending changes in the law to the Governor and the General Assembly that are

necessary to address such findings;

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

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

B. If the State Inspector General receives a complaint from whatever source that alleges fraud, waste, abuse, or corruption by a public institution of higher education or any of its officers or employees, the State Inspector General shall refer the complaint to the internal audit department of the public institution of higher education for investigation, unless the complaint concerns the president of the institution or its internal audit department, in which case the investigation shall be conducted by the State Inspector General.

The public institution of higher education shall provide periodic updates on the status of any investigation and make the results of any such investigation available to the State Inspector General.

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

A. Each state agency and every officer and employee shall (i) promptly report any allegations of criminal acts or acts of fraud, waste, abuse, corruption, or mistreatment and (ii) cooperate with, and provide assistance to, the State Inspector General in the performance of any investigation. Each state agency shall make its premises, equipment, personnel, books, records, and papers readily available to the State Inspector General upon request.

B. When a state agency head or officer discovers any unauthorized, illegal, irregular, or unsafe handling or expenditure of state funds, or if it comes to his attention that any unauthorized, illegal, or unsafe handling or expenditure of state funds is contemplated but not consummated, he shall promptly report the same to the State Inspector General.

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

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

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

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

§ 2.2-312. Subpoenas.

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

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

§ 2.2-313. Reports.

A. The State Inspector General shall prepare an annual report to the Governor and the General Assembly summarizing the activities of the Office. Such report shall include, but need not be limited to:

(i) a description of any significant problems, abuses, and deficiencies related to the management or operation of state agencies or nonstate agencies during the reporting period; (ii) a description of the recommendations for any corrective actions made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified; (iii) a summary of matters referred to the attorneys for the Commonwealth and law-enforcement agencies and actions taken on them during the reporting period; (iv) information concerning the numbers of complaints received and types of investigations completed by the Office during the reporting period; (v) the development and maintenance of internal audit programs in state agencies and nonstate agencies; and (vi) the results of any state agency performance reviews, including a summary of any findings or recommendations for improving the efficiency of state agencies.

B. The State Inspector General shall notify the Governor's chief of staff, the Speaker, Majority Leader, and Minority Leader of the House of Delegates, and the President pro tempore, Majority Leader, and Minority Leader of the Senate of problems, abuses, or deficiencies relating to the management or operation of a state agency or nonstate agency.

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

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

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

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

Article 2.

Behavioral Health and Developmental Services.

§ 2.2-314. Behavioral Health and Developmental Services.

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

§ 2.2-315. Definitions.

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

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

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

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

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

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

made in implementing the corrective actions.

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

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

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

Article 3. Corrections.

§ 2.2-317. Definitions.

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

§ 2.2-318. Additional powers and duties.

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

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

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

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

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

Article 4. Juvenile Justice.

§ 2.2-319. Definitions.

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

§ 2.2-320. Additional powers and duties.

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

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

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

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

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

Article 5. Transportation.

§ 2.2-321. Additional powers and duties.

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

Article 6. Tobacco Indemnification and Community Revitalization.

§ 2.2-322. *Additional powers and duties.*

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

§ 2.2-3010. *Definitions.*

As used in this chapter:

"Abuse" means an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources.

"Appropriate authority" means a federal or state agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or abuse; or a member, officer, agent, representative, or supervisory employee of the agency or organization. The term also includes the Office of the Attorney General, the ~~Division of State Internal Audit of the Department of Accounts~~ *Office of the State Inspector General*, and the General Assembly and its committees having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or abuse.

"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, no more often than biweekly, in whole or in part, by a state agency.

"Employer" means a person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the state agency.

"Good faith report" means a report of conduct defined in this chapter as wrongdoing or abuse which is made without malice and which the person making the report has reasonable cause to believe is true.

"Misconduct" means conduct or behavior by an employee that is inconsistent with state or agency standards for which specific corrective or disciplinary action is warranted.

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

"Whistle blower" means an employee who witnesses or has evidence of wrongdoing or abuse and who makes or demonstrates by clear and convincing evidence that he is about to make a good faith report of, or testifies or is about to testify to, the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority.

"Wrongdoing" means a violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or employee.

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

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

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

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

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

1. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State

Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

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

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

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

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

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

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

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

9. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from

inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

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

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

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

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

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

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

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

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

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

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

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

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

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

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

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

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

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

3. Stating the reasons why protection is necessary.

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

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation

facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

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

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

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

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

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

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

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

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

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

19. Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Minority Business Enterprise as part of an application for (i) certification as a small, women-owned, or

minority-owned business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reasons why protection is necessary.

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

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

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

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

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

3. Stating the reasons why protection is necessary.

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

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

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

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

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

3. Stating the reasons why protection is necessary.

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

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

A. As used in this section:

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

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

B. Law-enforcement agencies shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the

above-referenced damage is no longer likely to occur from release of the information. Nothing in this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.

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

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

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

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

1. Criminal investigative files as defined in subsection A;

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2.2-3802. Systems to which chapter inapplicable.

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

1. Maintained by any court of the Commonwealth;

2. Which may exist in publications of general circulation;

3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or

in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 30-138. State agencies, courts, and local constitutional officers to report certain fraudulent transactions; penalty.

789 A. Upon the discovery of circumstances suggesting a reasonable possibility that a fraudulent
 790 transaction has occurred involving funds or property under the control of any state department, court,
 791 officer, board, commission, institution or other agency of the Commonwealth, including local
 792 constitutional officers and appointed officials exercising the powers of elected constitutional officers, as
 793 to which one or more officers or employees of state or local government may be party thereto, the state
 794 agency head, court clerk or local official in charge of such entity shall promptly report such information
 795 to the Auditor of Public Accounts ("Auditor"), *the State Inspector General*, and the Superintendent of
 796 State Police ("Superintendent").

797 B. The Auditor, *the State Inspector General*, or the Superintendent shall review the information
 798 reported pursuant to subsection A and individually determine the most appropriate method to investigate
 799 the information. In the event that the Auditor or the Superintendent determines to conduct an
 800 investigation, he shall notify the other of the commencement of the investigation as soon as practicable,
 801 unless the information involves the Auditor or the Superintendent.

802 C. No state department, court, officer, board, commission, institution or other agency of the
 803 Commonwealth, including local constitutional officers and appointed officials exercising the powers of
 804 elected constitutional officers, shall employ or contract with any person, firm, corporation, or other legal
 805 entity to conduct an investigation or audit of information reported pursuant to subsection A without
 806 obtaining the prior written approval from the Auditor and the Superintendent. Pending acknowledgement
 807 of the report and receipt of the written approval from the Auditor and the Superintendent, the state
 808 department, court, officer, board, commission, institution, or other agency of the Commonwealth,
 809 including local constitutional officers and appointed officials exercising the powers of elected
 810 constitutional officers, may use their employees to audit the circumstances reported in subsection A to
 811 prevent the loss of assets.

812 D. All state departments, courts, officers, boards, commissions, institutions or other agencies of the
 813 Commonwealth, including local constitutional officers and appointed officials exercising the powers of
 814 elected constitutional officers and their employees, shall cooperate to the fullest extent in any
 815 investigation or audit which may occur at the direction of the Auditor or the Superintendent or both as a
 816 result of information reported pursuant to subsection A.

817 E. The willful failure to make the report as required by this section shall constitute a Class 3
 818 misdemeanor.

819 F. Nothing herein shall affect the requirements of § 52-8.2.

820 § 32.1-127.1:03. Health records privacy.

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

825 Pursuant to this subsection:

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

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

833 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health
 834 records of an individual, beyond the purpose for which such disclosure was made, without first
 835 obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall
 836 not, however, prevent (i) any health care entity that receives health records from another health care
 837 entity from making subsequent disclosures as permitted under this section and the federal Department of
 838 Health and Human Services regulations relating to privacy of the electronic transmission of data and
 839 protected health information promulgated by the United States Department of Health and Human
 840 Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C.
 841 § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data,
 842 from which individually identifying prescription information has been removed, encoded or encrypted, to
 843 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or
 844 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health
 845 services research.

846 B. As used in this section:

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

849 "Certification" means a written representation that is delivered by hand, by first-class mail, by

overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated confirmation reflecting that all facsimile pages were successfully transmitted.

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

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

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

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

"Health plan" means an individual or group plan that provides, or pays the cost of, medical care.

"Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

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

"Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as payment or reimbursement for any such services.

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

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

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

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

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

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

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

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

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

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

2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in this subdivision shall be construed to prohibit any staff or employee of a health care entity from

911 providing information about such individual to a law-enforcement officer in connection with such
912 subpoena, search warrant, or court order;

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

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

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

920 6. As required or authorized by law relating to public health activities, health oversight activities,
921 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
922 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
923 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,
924 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,
925 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

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

927 8. In connection with the health care entity's own health care operations or the health care operations
928 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
929 accordance with accepted standards of practice within the health services setting; however, the
930 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
931 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
932 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

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

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

936 11. To the guardian ad litem and any attorney representing the respondent in the course of a
937 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10
938 (§ 37.2-1000 et seq.) of Title 37.2;

939 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who
940 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5
941 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title
942 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of
943 Title 37.2;

944 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et
945 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health
946 authority or a designee of a community services board or behavioral health authority, or a
947 law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter
948 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
949 the proceeding, and to any health care provider evaluating or providing services to the person who is the
950 subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those
951 provisions. Health records disclosed to a law-enforcement officer shall be limited to information
952 necessary to protect the officer, the person, or the public from physical injury or to address the health
953 care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any
954 other purpose, disclosed to others, or retained;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the individual is the victim of a crime or (ii) when the individual has been arrested and has received emergency medical services or has refused emergency medical services and the health records consist of the prehospital patient care report required by § 32.1-116.1;

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

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

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

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

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

34. To notify a family member or personal representative of an individual who is the subject of a proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition, when the individual has the capacity to make health care decisions and (i) the individual has agreed to the notification, (ii) the individual has been provided an opportunity to object to the notification and does not express an objection, or (iii) the health care provider can, on the basis of his professional judgment, reasonably infer from the circumstances that the individual does not object to the notification. If the opportunity to agree or object to the notification cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the health care provider may notify a family member or personal representative of the individual of information that is directly relevant to such

person's involvement with the individual's health care, which may include the individual's location and general condition if the health care provider, in the exercise of his professional judgment, determines that the notification is in the best interests of the individual. Such notification shall not be made if the provider has actual knowledge the family member or personal representative is currently prohibited by court order from contacting the individual; and

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

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

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

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

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

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

Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive

copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized to act on his behalf.

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

AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

Individual's Name

Health Care Entity's Name

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

Information or Health Records to be disclosed

Purpose of Disclosure or at the Request of the Individual

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

This authorization expires on (date) or (event)

Signature of Individual or Individual's Legal Representative if

Individual is Unable to Sign

Relationship or Authority of Legal Representative

Date of Signature

H. Pursuant to this subsection:

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

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

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

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

NOTICE TO INDIVIDUAL

The attached document means that (insert name of party requesting or causing issuance of the

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

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

NOTICE TO HEALTH CARE ENTITIES

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

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

NO MOTION TO QUASH WAS FILED; OR

ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH SUCH RESOLUTION.

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

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

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

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

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

records returned to the health care entity shall be in a securely sealed envelope.

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

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

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

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

a. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the health records previously delivered in a sealed envelope to the clerk of the court or administrative agency will not be returned to the health care entity;

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

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

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

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

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

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

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

1275 adults.

1276 Nothing in this subsection shall have any effect on the existing authority of a court or administrative
1277 agency to issue a protective order regarding health records, including, but not limited to, ordering the
1278 return of health records to a health care entity, after the period for filing a motion to quash has passed.

1279 A subpoena for substance abuse records must conform to the requirements of federal law found in 42
1280 C.F.R. Part 2, Subpart E.

1281 I. Health care entities may testify about the health records of an individual in compliance with
1282 §§ 8.01-399 and 8.01-400.2.

1283 J. If an individual requests a copy of his health record from a health care entity, the health care
1284 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and
1285 labor of copying the requested information, postage when the individual requests that such information
1286 be mailed, and preparation of an explanation or summary of such information as agreed to by the
1287 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on
1288 behalf of the individual who is the subject of the health record in making decisions related to his health
1289 care.

1290 § 32.1-283. Investigation of deaths; obtaining consent to removal of organs, etc.; fees.

1291 A. Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or
1292 homicide, or suddenly when in apparent good health, or when unattended by a physician, or in jail,
1293 prison, other correctional institution or in police custody, or who is a patient or resident of a state
1294 mental health or mental retardation facility, or suddenly as an apparent result of fire, or in any
1295 suspicious, unusual or unnatural manner, or the sudden death of any infant less than eighteen months of
1296 age whose death is suspected to be attributable to Sudden Infant Death Syndrome (SIDS), the medical
1297 examiner of the county or city in which death occurs shall be notified by the physician in attendance,
1298 hospital, law-enforcement officer, funeral director or any other person having knowledge of such death.
1299 Good faith efforts shall be made by such person or institution having custody of the dead body to
1300 identify and to notify the next of kin of the decedent. Notification shall include informing the person
1301 presumed to be the next of kin that he has a right to have identification of the decedent confirmed
1302 without due delay and without being held financially responsible for any procedures performed for the
1303 purpose of the identification. Identity of the next of kin, if determined, shall be provided to the Chief
1304 Medical Examiner upon transfer of the dead body.

1305 B. Upon being notified of a death as provided in subsection A, the medical examiner shall take
1306 charge of the dead body, make an investigation into the cause and manner of death, reduce his findings
1307 to writing, and promptly make a full report to the Chief Medical Examiner. In order to facilitate his
1308 investigation, the medical examiner is authorized to inspect and copy the pertinent medical records of
1309 the decedent whose death he is investigating. Full directions as to the nature, character and extent of the
1310 investigation to be made in such cases shall be furnished each medical examiner by the Chief Medical
1311 Examiner, together with appropriate forms for the required reports and instructions for their use. The
1312 facilities and personnel under the Chief Medical Examiner shall be made available to medical examiners
1313 in such investigations. Reports and findings of the Medical Examiner shall be confidential and shall not
1314 under any circumstance be disclosed or made available for discovery pursuant to a court subpoena or
1315 otherwise, except as provided in this chapter. Nothing in this subsection shall prohibit the Chief Medical
1316 Examiner from releasing the cause or manner of death, or prohibit disclosure of reports or findings to
1317 the parties in a criminal case.

1318 C. A copy of each report pursuant to this section shall be delivered to the appropriate attorney for
1319 the Commonwealth and to the appropriate law-enforcement agency investigating the death. A copy of
1320 any such report regarding the death of a victim of a traffic accident shall be furnished upon request to
1321 the State Police and the Highway Safety Commission. In addition, a copy of any autopsy report
1322 concerning a patient or resident of a state mental health or mental retardation facility shall be delivered
1323 to the Commissioner of Behavioral Health and Developmental Services and to the *State* Inspector
1324 General for Behavioral Health and Developmental Services. A copy of any autopsy report concerning a
1325 prisoner committed to the custody of the Director of the Department of Corrections shall, upon request
1326 of the Director of the Department of Corrections, be delivered to the Director of the Department of
1327 Corrections. A copy of any autopsy report concerning a prisoner committed to any local correctional
1328 facility shall be delivered to the local sheriff or superintendent. Upon request, the Chief Medical
1329 Examiner shall release such autopsy report to the decedent's attending physician and to the personal
1330 representative or executor of the decedent or, if no personal representative or executor is appointed, then
1331 at the discretion of the Chief Medical Examiner, to the following persons in the following order of
1332 priority: (i) the spouse of the decedent, (ii) an adult son or daughter of the decedent, (iii) either parent
1333 of the decedent, (iv) an adult sibling of the decedent, (v) any other adult relative of the decedent in
1334 order of blood relationship, or (vi) any appropriate health facility quality assurance program.

1335 D. For each investigation under this article, including the making of the required reports, the medical

examiner shall receive a fee established by the Board within the limitations of appropriations for the purpose. Such fee shall be paid by the Commonwealth, if the deceased is not a legal resident of the county or city in which his death occurred. In the event the deceased is a legal resident of the county or city in which his death occurred, such county or city shall be responsible for the fee up to \$20. If the deceased is a patient or resident of a state mental health or mental retardation facility, the fee shall be paid by the Department of Behavioral Health and Developmental Services.

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

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

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

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

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

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

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

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

2. That Chapter 16 (§§ 2.2-1600, 2.2-1601, and 2.2-1602) of Title 2.2, Article 3 (§§ 37.2-423, 37.2-424, and 37.2-425) of Chapter 4 of Title 37.2, and §§ 53.1-16 and 66-3.1 of the Code of Virginia are repealed.

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

- 1397 4. That the Governor may transfer an appropriation or any portion thereof within a state agency
1398 established, abolished, or otherwise affected by the provisions of this act, or from one such agency
1399 to another, to support the changes in organization or responsibility resulting from or required by
1400 the provisions of this act.
- 1401 5. That the Governor, on or before December 31, 2011, shall, in consultation with impacted
1402 stakeholders, complete a plan for the coordination and oversight of the internal audit programs to
1403 the Office of the State Inspector General. This plan shall consider where transfer of the internal
1404 audit program to the Office is necessary or when a dual reporting structure is most practicable.
- 1405 6. That any regulations adopted by the State Internal Auditor that are in effect as of the effective
1406 date of this act and that pertain to the subject of this act shall remain in full force and effect until
1407 altered, amended, or rescinded by the State Inspector General.
- 1408 7. That the provisions of this act shall become effective on July 1, 2012, except that the provisions
1409 of the fifth enactment of this act shall become effective on July 1, 2011.