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SENATE BILL NO. 1477  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on General laws and Technology  
on February 2, 2011)

(Patron Prior to Substitute—Senator Stosch)

A BILL to amend and reenact §§ 2.2-211, 2.2-3014, 2.2-3705.3, 2.2-3705.6, 2.2-3706, 2.2-3802, 2.2-4344, 32.1-127.1:03, 32.1-283, and 58.1-202.2 of the Code of Virginia; to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 3.2, containing articles numbered 1 through 5, consisting of sections numbered 2.2-307 through 2.2-320; and to repeal Chapter 16 (§§ 2.2-1600 through 2.2-1602) of Title 2.2, Article 3 (§§ 37.2-423 through 37.2-425) of Chapter 4 of Title 37.2, and §§ 53.1-16 and 66-3.1 of the Code of Virginia, relating to the creation of the Office of the State Inspector General; consolidation of certain inspectors general.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-211, 2.2-3014, 2.2-3705.3, 2.2-3705.6, 2.2-3706, 2.2-3802, 2.2-4344, 32.1-127.1:03, 32.1-283, and 58.1-202.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 3.2, containing articles numbered 1 through 5, consisting of sections numbered 2.2-307 through 2.2-320, as follows:

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

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

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

CHAPTER 3.2.

OFFICE OF THE STATE INSPECTOR GENERAL.

Article 1.

General Provisions.

§ 2.2-307. Definitions.

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

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

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

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

"Officer" means any person who is 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, including a certified public accountant or a certified internal auditor. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of such term. The Governor may remove the State Inspector General from office for malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, or failure to carry out the policies of the Commonwealth as established in the Constitution or by the

SENATE SUBSTITUTE

SB1477S1

60 *General Assembly. The Governor shall set forth in a written public statement his reasons for removing*  
61 *the State Inspector General at the time the removal occurs.*

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

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

70 *§ 2.2-309. Powers and duties of State Inspector General.*

71 *The State Inspector General shall have power and duty to:*

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

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

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

81 *4. Investigate the management and operations of state agencies and nonstate agencies to determine*  
82 *whether acts of fraud, waste, abuse, or corruption have been committed or are being committed by state*  
83 *officers or employees or any officers or employees of a nonstate agency, including any allegations of*  
84 *criminal acts affecting the operations of state agencies or nonstate agencies;*

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

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

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

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

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

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

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

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

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

113 *§ 2.2-310. Cooperation of state agencies and officers.*

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

119 *B. The State Inspector General may enter upon the premises of any state agency at any time, without*  
120 *prior announcement, if necessary to the successful completion of an investigation. In the course of an*  
121 *investigation, the State Inspector General may question any officer or employee serving in, and any*

122 person transacting business with, the state agency and may inspect and copy any books, records, or  
 123 papers in the possession of the state agency. The State Inspector General shall preserve the  
 124 confidentiality of any information obtained from a state agency during the course of an investigation in  
 125 accordance with applicable state and federal law.

126 § 2.2-311. Subpoenas.

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

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

137 § 2.2-312. Reports.

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

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

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

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

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

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

167 Article 2.

168 Behavioral Health and Developmental Services.

169 § 2.2-313. Behavioral Health and Developmental Services.

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

173 § 2.2-314. Definitions.

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

175 § 2.2-315. Additional powers and duties of State Inspector General.

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

178 1. Provide inspections of and make policy and operational recommendations for state facilities and  
 179 for providers, including licensed mental health treatment units in state correctional facilities, in order to  
 180 prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and  
 181 services. The State Inspector General shall provide oversight and conduct announced and unannounced  
 182 inspections of state facilities and of providers, including licensed mental health treatment units in state

183 correctional facilities, on an ongoing basis in response to specific complaints of abuse, neglect, or  
184 inadequate care and as a result of monitoring serious incident reports and reports of abuse, neglect, or  
185 inadequate care or other information received. The State Inspector General shall conduct unannounced  
186 inspections at each state facility at least once annually.

187 2. Access any and all information, including confidential consumer information, related to the  
188 delivery of services to consumers in state facilities or served by providers, including licensed mental  
189 health treatment units in state correctional facilities. However, the State Inspector General shall not be  
190 given access to any proceedings, minutes, records, or reports of providers that are privileged under  
191 § 8.01-581.17, except that the State Inspector General shall be given access to any privileged  
192 information in state facilities and licensed mental health treatment units in state correctional facilities.  
193 All consumer information shall be maintained by the State Inspector General as confidential in the same  
194 manner as is required by the agency or provider from which the information was obtained.

195 3. Keep the General Assembly and the Joint Commission on Health Care fully and currently  
196 informed by means of reports required by § 2.2-312 concerning significant problems, abuses, and  
197 deficiencies relating to the administration of the programs and services of state facilities and of  
198 providers, including licensed mental health treatment units in state correctional facilities, to recommend  
199 corrective actions concerning the problems, abuses, and deficiencies, and to report on the progress  
200 made in implementing the corrective actions.

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

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

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

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

214 Article 3.  
215 Corrections.

216 § 2.2-316. Definitions.

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

218 § 2.2-317. Additional powers and duties.

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

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

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

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

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

232 Article 4.  
233 Juvenile Justice.

234 § 2.2-318. Definitions.

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

236 § 2.2-319. Additional powers and duties.

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

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

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

244 B. The State Inspector General and such members of the investigations unit of the Office as may be

245 *designated by the State Inspector General shall be law-enforcement officers as defined in § 9.1-101.*  
 246 *Investigators so designated shall receive the training required by the Department of Criminal Justice*  
 247 *Services for law-enforcement personnel before exercising such powers.*

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

250 *Article 5.*  
 251 *Transportation.*

252 *§ 2.2-320. Additional powers and duties.*

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

261 *B. The State Inspector General and such members of the investigations unit of the Office as may be*  
 262 *designated by the State Inspector General shall be law-enforcement officers as defined in § 9.1-101.*  
 263 *Investigators so designated shall receive the training required by the Department of Criminal Justice*  
 264 *Services for law-enforcement personnel before exercising such powers.*

265 *§ 2.2-3014. Fraud and Abuse Whistle Blower Reward Fund.*

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

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

282 *§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.*

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

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

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

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

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

302 *5. Investigative notes and other correspondence and information furnished in confidence with respect*  
 303 *to an investigation or conciliation process involving an alleged unlawful discriminatory practice under*  
 304 *the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance*  
 305 *with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1,*

306 1987, in accordance with applicable law, relating to local human rights or human relations commissions.  
307 However, nothing in this section shall prohibit the distribution of information taken from inactive reports  
308 in a form that does not reveal the identity of the parties involved or other persons supplying  
309 information.

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

317 7. Investigative notes, correspondence and information furnished in confidence, and records otherwise  
318 exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the ~~(i)~~ Auditor of  
319 Public Accounts; (ii) *the* Joint Legislative Audit and Review Commission; (iii) an appropriate authority  
320 as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and  
321 Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) ~~Department of the State Internal Auditor~~  
322 *the Office of the State Inspector General* with respect to an investigation initiated through the State  
323 Employee Fraud, Waste and Abuse Hotline *or an investigation initiated pursuant to Chapter 3.2*  
324 *(§ 2.2-307 et seq.)*; (v) *the* committee or the auditor with respect to an investigation or audit conducted  
325 pursuant to § 15.2-825; or (vi) *the* auditors, appointed by the local governing body of any county, city  
326 or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an  
327 investigation of any officer, department or program of such body. Records of completed investigations  
328 shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying  
329 information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall  
330 include, but not be limited to, the agency involved, the identity of the person who is the subject of the  
331 complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation  
332 does not lead to corrective action, the identity of the person who is the subject of the complaint may be  
333 released only with the consent of the subject person. Local governing bodies shall adopt guidelines to  
334 govern the disclosure required by this subdivision.

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

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

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

354 11. Records of active investigations being conducted by the Department of Criminal Justice Services  
355 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.),  
356 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

357 12. Records furnished to or prepared by the Board of Education pursuant to subsection D of  
358 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,  
359 unauthorized alteration, or improper administration of tests by local school board employees responsible  
360 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure  
361 of records to (i) a local school board or division superintendent for the purpose of permitting such board  
362 or superintendent to consider or to take personnel action with regard to an employee or (ii) any  
363 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity  
364 of any person making a complaint or supplying information to the Board on a confidential basis and (b)  
365 does not compromise the security of any test mandated by the Board.

366 13. Investigator notes, and other correspondence and information, furnished in confidence with  
367 respect to an active investigation conducted by or for the Board of Education related to the denial,

368 suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure  
 369 of records to a local school board or division superintendent for the purpose of permitting such board or  
 370 superintendent to consider or to take personnel action with regard to an employee. Records of completed  
 371 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person  
 372 supplying information to investigators. The records disclosed shall include information regarding the  
 373 school or facility involved, the identity of the person who was the subject of the complaint, the nature  
 374 of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a  
 375 complaint or does not lead to corrective action, the identity of the person who was the subject of the  
 376 complaint may be released only with the consent of the subject person. No personally identifiable  
 377 information in the records regarding a current or former student shall be released except as permitted by  
 378 state or federal law.

379 14. Records, notes and information provided in confidence and related to an investigation by the  
 380 Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of  
 381 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,  
 382 or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that  
 383 has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is  
 384 not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,  
 385 persons supplying information, witnesses or other individuals involved in the investigation.

386 § 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

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

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

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

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

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

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

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

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

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

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

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

428 11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its

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

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

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

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

450 3. Stating the reasons why protection is necessary.

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

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

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

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

479 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential  
480 proprietary records that are not generally available to the public through regulatory disclosure or  
481 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21  
482 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of  
483 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,  
484 or franchisee's financial capacity or provision of new services, adoption of new technologies or  
485 implementation of improvements, where such new services, technologies or improvements have not been  
486 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such  
487 records were made public, the competitive advantage or financial interests of the franchisee would be  
488 adversely affected.

489 In order for trade secrets or confidential proprietary information to be excluded from the provisions  
490 of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of



491 the data or other materials for which protection from disclosure is sought, (ii) identify the data or other  
492 materials for which protection is sought, and (iii) state the reason why protection is necessary.

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

497 14. Documents and other information of a proprietary nature furnished by a supplier of charitable  
498 gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of  
499 § 18.2-340.34.

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

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

505 17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to  
506 the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of  
507 Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22  
508 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related  
509 information produced or collected by the applicant in the conduct of or as a result of study or research  
510 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information  
511 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information  
512 would be harmful to the competitive position of the applicant.

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

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

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

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

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

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

- 549 1. Invoking such exclusion upon submission of the data or other materials for which protection from  
550 disclosure is sought;
- 551 2. Identifying with specificity the data or other materials for which protection is sought; and

552 3. Stating the reasons why protection is necessary.

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

557 23. Records submitted as a grant application, or accompanying a grant application, to the Virginia  
 558 Tobacco Indemnification and Community Revitalization Commission to the extent such records contain  
 559 (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records  
 560 of a grant applicant that is not a public body, including balance sheets and financial statements, that are  
 561 not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related  
 562 information produced or collected by the applicant in the conduct of or as a result of study or research  
 563 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information  
 564 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information  
 565 would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or  
 566 other records prepared by the Commission or its staff exclusively for the evaluation of grant  
 567 applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the  
 568 powers of and in furtherance of the performance of the duties of the Commission pursuant to  
 569 § 3.2-3103.

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

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

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

575 3. Stating the reasons why protection is necessary.

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

580 § 2.2-3706. Disclosure of criminal records; limitations.

581 A. As used in this section:

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

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

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

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

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

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

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

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

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

607 3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators  
 608 authorized pursuant to ~~§ 53.1-16~~ or ~~§ 66-3.1~~ Chapter 3.2 (§ 2.2-307 et seq.) of this title, and (iii) campus  
 609 police departments of public institutions of higher education established pursuant to Chapter 17  
 610 (§ 23-232 et seq.) of Title 23;

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

613 5. Records of local law-enforcement agencies relating to neighborhood watch programs that include

614 the names, addresses, and operating schedules of individual participants in the program that are provided  
615 to such agencies under a promise of anonymity;

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

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

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

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

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

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

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

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

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

648 § 2.2-3802. Systems to which chapter inapplicable.

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

- 650 1. Maintained by any court of the Commonwealth;
- 651 2. Which may exist in publications of general circulation;
- 652 3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or  
653 in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police  
654 pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to  
655 be posted on the Internet pursuant to § 9.1-913;
- 656 4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through  
657 16.1-225;

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

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

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

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

674 9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion

675 of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting  
676 information on those subjects may be disseminated upon written request to a person engaged in the  
677 business of providing travel services or distributing travel information, provided the Virginia Tourism  
678 Authority is reasonably assured that the use of the information will be so limited;

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

682 11. Maintained by the Department of Corrections *or the Office of the State Inspector General* that  
683 deal with investigations and intelligence gathering by persons acting under the provisions of  
684 § ~~53.1-16~~Chapter 3.2 (§ 2.2-307 *et seq.*) of this title;

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

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

690 § 2.2-4344. Exemptions from competition for certain transactions.

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

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

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

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

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

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

703 C. A community development authority formed pursuant to Article 6 (§ 15.2-5152 *et seq.*) of Chapter  
704 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without  
705 competition with respect to the exercise of any of its powers permitted by § 15.2-5158. However, this  
706 exception shall not apply in cases where any public funds other than special assessments and  
707 incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

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

712 § 32.1-127.1:03. Health records privacy.

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

717 Pursuant to this subsection:

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

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

725 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health  
726 records of an individual, beyond the purpose for which such disclosure was made, without first  
727 obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall  
728 not, however, prevent (i) any health care entity that receives health records from another health care  
729 entity from making subsequent disclosures as permitted under this section and the federal Department of  
730 Health and Human Services regulations relating to privacy of the electronic transmission of data and  
731 protected health information promulgated by the United States Department of Health and Human  
732 Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C.  
733 § 1320d *et seq.*) or (ii) any health care entity from furnishing health records and aggregate or other data,  
734 from which individually identifying prescription information has been removed, encoded or encrypted, to  
735 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or  
736 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health

737 services research.

738 B. As used in this section:

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

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

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

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

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

754 "Health care provider" means those entities listed in the definition of "health care provider" in  
755 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the  
756 purposes of this section. Health care provider shall also include all persons who are licensed, certified,  
757 registered or permitted or who hold a multistate licensure privilege issued by any of the health  
758 regulatory boards within the Department of Health Professions, except persons regulated by the Board of  
759 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

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

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

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

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

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

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

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

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

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

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

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

787 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to  
788 § 16.1-248.3.

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

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

- 798 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant  
799 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a  
800 subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health  
801 records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in  
802 this subdivision shall be construed to prohibit any staff or employee of a health care entity from  
803 providing information about such individual to a law-enforcement officer in connection with such  
804 subpoena, search warrant, or court order;
- 805 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure  
806 is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care  
807 entity's employees or staff against any accusation of wrongful conduct; also as required in the course of  
808 an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly  
809 authorized law-enforcement, licensure, accreditation, or professional review entity;
- 810 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;
- 811 5. In compliance with the provisions of § 8.01-413;
- 812 6. As required or authorized by law relating to public health activities, health oversight activities,  
813 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,  
814 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,  
815 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,  
816 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,  
817 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;
- 818 7. Where necessary in connection with the care of the individual;
- 819 8. In connection with the health care entity's own health care operations or the health care operations  
820 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in  
821 accordance with accepted standards of practice within the health services setting; however, the  
822 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a  
823 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with  
824 §§ 54.1-3410, 54.1-3411, and 54.1-3412;
- 825 9. When the individual has waived his right to the privacy of the health records;
- 826 10. When examination and evaluation of an individual are undertaken pursuant to judicial or  
827 administrative law order, but only to the extent as required by such order;
- 828 11. To the guardian ad litem and any attorney representing the respondent in the course of a  
829 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10  
830 (§ 37.2-1000 et seq.) of Title 37.2;
- 831 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who  
832 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5  
833 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title  
834 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of  
835 Title 37.2;
- 836 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et  
837 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health  
838 authority or a designee of a community services board or behavioral health authority, or a  
839 law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter  
840 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  
841 the proceeding, and to any health care provider evaluating or providing services to the person who is the  
842 subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those  
843 provisions. Health records disclosed to a law-enforcement officer shall be limited to information  
844 necessary to protect the officer, the person, or the public from physical injury or to address the health  
845 care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any  
846 other purpose, disclosed to others, or retained;
- 847 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or  
848 administrative proceeding, if the court or administrative hearing officer has entered an order granting the  
849 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the  
850 health care entity of such order;
- 851 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records  
852 in accord with § 9.1-156;
- 853 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker  
854 designated in an individual's advance directive for health care or for decisions on anatomical gifts and  
855 organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care  
856 Decisions Act (§ 54.1-2981 et seq.);
- 857 17. To third-party payors and their agents for purposes of reimbursement;
- 858 18. As is necessary to support an application for receipt of health care benefits from a governmental  
859 agency or as required by an authorized governmental agency reviewing such application or reviewing

860 benefits already provided or as necessary to the coordination of prevention and control of disease,  
861 injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

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

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

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

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

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

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

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

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

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

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

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

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

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

907 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a  
908 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article  
909 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

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

914 34. To notify a family member or personal representative of an individual who is the subject of a  
915 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8  
916 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement  
917 with the individual's health care, which may include the individual's location and general condition,  
918 when the individual has the capacity to make health care decisions and (i) the individual has agreed to  
919 the notification, (ii) the individual has been provided an opportunity to object to the notification and  
920 does not express an objection, or (iii) the health care provider can, on the basis of his professional

921 judgment, reasonably infer from the circumstances that the individual does not object to the notification.  
922 If the opportunity to agree or object to the notification cannot practicably be provided because of the  
923 individual's incapacity or an emergency circumstance, the health care provider may notify a family  
924 member or personal representative of the individual of information that is directly relevant to such  
925 person's involvement with the individual's health care, which may include the individual's location and  
926 general condition if the health care provider, in the exercise of his professional judgment, determines  
927 that the notification is in the best interests of the individual. Such notification shall not be made if the  
928 provider has actual knowledge the family member or personal representative is currently prohibited by  
929 court order from contacting the individual; and

930 35. To a threat assessment team established by a public institution of higher education pursuant to  
931 § 23-9.2:10 when such records concern a student at the public institution of higher education, including  
932 a student who is a minor.

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

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

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

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

980 Any health record copied for review by any such designated physician or clinical psychologist shall  
981 be accompanied by a statement from the custodian of the health record that the individual's treating  
982 physician or clinical psychologist determined that the individual's review of his health record would be



983 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely  
984 to cause substantial harm to a person referenced in the health record who is not a health care provider.

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

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

990 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

991 Individual's Name .....

992 Health Care Entity's Name .....

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

995 Information or Health Records to be disclosed .....

996 Purpose of Disclosure or at the Request of the Individual .....

997 As the person signing this authorization, I understand that I am giving  
998 my permission to the above-named health care entity for disclosure of  
999 confidential health records. I understand that the health care entity

1000 may not condition treatment or payment on my willingness to sign this  
1001 authorization unless the specific circumstances under which such

1002 conditioning is permitted by law are applicable and are set forth in

1003 this authorization. I also understand that I have the right to revoke

1004 This authorization at any time, but that my revocation is not effective

1005 until delivered in writing to the person who is in possession of my

1006 health records and is not effective as to health records already

1007 disclosed under this authorization. A copy of this authorization and a

1008 notation concerning the persons or agencies to whom disclosure was made

1009 shall be included with my original health records. I understand that

1010 health information disclosed under this authorization might be

1011 redisclosed by a recipient and may, as a result of such disclosure, no

1012 longer be protected to the same extent as such health information was

1013 protected by law while solely in the possession of the health care

1014 entity.

1015 This authorization expires on (date) or (event) .....

1016 Signature of Individual or Individual's Legal Representative if

1017 Individual is Unable to Sign .....

1018 Relationship or Authority of Legal Representative .....

1019 Date of Signature .....

1020 H. Pursuant to this subsection:

1021 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or  
1022 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another  
1023 party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the  
1024 request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's  
1025 counsel or to the other party if pro se, simultaneously with filing the request or issuance of the  
1026 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces  
1027 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a  
1028 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the  
1029 request or issuance of the attorney-issued subpoena.

1030 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date  
1031 of the subpoena except by order of a court or administrative agency for good cause shown. When a  
1032 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces  
1033 tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the  
1034 subpoena.

1035 Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena  
1036 duces tecum is being issued shall have the duty to determine whether the individual whose health  
1037 records are being sought is pro se or a nonparty.

1038 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,  
1039 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness  
1040 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an  
1041 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall

1042 include the following language and the heading shall be in boldface capital letters:

1043 **NOTICE TO INDIVIDUAL**

1044 The attached document means that (insert name of party requesting or causing issuance of the  
1045 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has  
1046 been issued by the other party's attorney to your doctor, other health care providers (names of health  
1047 care providers inserted here) or other health care entity (name of health care entity to be inserted here)  
1048 requiring them to produce your health records. Your doctor, other health care provider or other health  
1049 care entity is required to respond by providing a copy of your health records. If you believe your health  
1050 records should not be disclosed and object to their disclosure, you have the right to file a motion with  
1051 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion  
1052 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued  
1053 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements  
1054 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to  
1055 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health  
1056 care provider(s), or other health care entity, that you are filing the motion so that the health care  
1057 provider or health care entity knows to send the health records to the clerk of court or administrative  
1058 agency in a sealed envelope or package for safekeeping while your motion is decided.

1059 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued  
1060 for an individual's health records shall include a Notice in the same part of the request in which the  
1061 recipient of the subpoena duces tecum is directed where and when to return the health records. Such  
1062 notice shall be in boldface capital letters and shall include the following language:

1063 **NOTICE TO HEALTH CARE ENTITIES**

1064 **A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL  
1065 WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT  
1066 INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED  
1067 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION  
1068 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.**

1069 **YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN  
1070 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED  
1071 THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:**

1072 **NO MOTION TO QUASH WAS FILED; OR**

1073 **ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE  
1074 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH  
1075 SUCH RESOLUTION.**

1076 **IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE  
1077 BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A  
1078 MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO  
1079 THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA  
1080 OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE  
1081 FOLLOWING PROCEDURE:**

1082 **PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED  
1083 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY  
1084 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE  
1085 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA.  
1086 THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER  
1087 ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE  
1088 AGENCY.**

1089 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the  
1090 duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

1091 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a  
1092 sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such  
1093 health records until they have received a certification as set forth in subdivision 5 or 8 from the party on  
1094 whose behalf the subpoena duces tecum was issued.

1095 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been  
1096 filed or if the health care entity files a motion to quash the subpoena for health records, then the health  
1097 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or  
1098 administrative agency issuing the subpoena or in whose court or administrative agency the action is  
1099 pending. The court or administrative agency shall place the health records under seal until a  
1100 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened  
1101 on order of the judge or administrative agency. In the event the court or administrative agency grants  
1102 the motion to quash, the health records shall be returned to the health care entity in the same sealed  
1103 envelope in which they were delivered to the court or administrative agency. In the event that a judge or

1104 administrative agency orders the sealed envelope to be opened to review the health records in camera, a  
1105 copy of the order shall accompany any health records returned to the health care entity. The health  
1106 records returned to the health care entity shall be in a securely sealed envelope.

1107 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued  
1108 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the  
1109 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion  
1110 to quash was filed. Any health care entity receiving such certification shall have the duty to comply  
1111 with the subpoena duces tecum by returning the specified health records by either the return date on the  
1112 subpoena or five days after receipt of the certification, whichever is later.

1113 6. In the event that the individual whose health records are being sought files a motion to quash the  
1114 subpoena, the court or administrative agency shall decide whether good cause has been shown by the  
1115 discovering party to compel disclosure of the individual's health records over the individual's objections.  
1116 In determining whether good cause has been shown, the court or administrative agency shall consider (i)  
1117 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of  
1118 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the  
1119 disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or  
1120 proceeding; and (v) any other relevant factor.

1121 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if  
1122 subpoenaed health records have been submitted by a health care entity to the court or administrative  
1123 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no  
1124 submitted health records should be disclosed, return all submitted health records to the health care entity  
1125 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide  
1126 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon  
1127 determining that only a portion of the submitted health records should be disclosed, provide such portion  
1128 to the party on whose behalf the subpoena was issued and return the remaining health records to the  
1129 health care entity in a sealed envelope.

1130 8. Following the court or administrative agency's resolution of a motion to quash, the party on whose  
1131 behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed  
1132 health care entity a statement of one of the following:

1133 a. All filed motions to quash have been resolved by the court or administrative agency and the  
1134 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the  
1135 health records previously delivered in a sealed envelope to the clerk of the court or administrative  
1136 agency will not be returned to the health care entity;

1137 b. All filed motions to quash have been resolved by the court or administrative agency and the  
1138 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no  
1139 health records have previously been delivered to the court or administrative agency by the health care  
1140 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records  
1141 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,  
1142 whichever is later;

1143 c. All filed motions to quash have been resolved by the court or administrative agency and the  
1144 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no  
1145 health records shall be disclosed and all health records previously delivered in a sealed envelope to the  
1146 clerk of the court or administrative agency will be returned to the health care entity;

1147 d. All filed motions to quash have been resolved by the court or administrative agency and the  
1148 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only  
1149 limited disclosure has been authorized. The certification shall state that only the portion of the health  
1150 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall  
1151 be disclosed. The certification shall also state that health records that were previously delivered to the  
1152 court or administrative agency for which disclosure has been authorized will not be returned to the  
1153 health care entity; however, all health records for which disclosure has not been authorized will be  
1154 returned to the health care entity; or

1155 e. All filed motions to quash have been resolved by the court or administrative agency and the  
1156 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no  
1157 health records have previously been delivered to the court or administrative agency by the health care  
1158 entity, the health care entity shall return only those health records specified in the certification,  
1159 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five  
1160 days after receipt of the certification, whichever is later.

1161 A copy of the court or administrative agency's ruling shall accompany any certification made  
1162 pursuant to this subdivision.

1163 9. The provisions of this subsection have no application to subpoenas for health records requested  
1164 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,

1165 audit, review or proceedings regarding a health care entity's conduct.

1166 The provisions of this subsection shall apply to subpoenas for the health records of both minors and  
1167 adults.

1168 Nothing in this subsection shall have any effect on the existing authority of a court or administrative  
1169 agency to issue a protective order regarding health records, including, but not limited to, ordering the  
1170 return of health records to a health care entity, after the period for filing a motion to quash has passed.

1171 A subpoena for substance abuse records must conform to the requirements of federal law found in 42  
1172 C.F.R. Part 2, Subpart E.

1173 I. Health care entities may testify about the health records of an individual in compliance with  
1174 §§ 8.01-399 and 8.01-400.2.

1175 J. If an individual requests a copy of his health record from a health care entity, the health care  
1176 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and  
1177 labor of copying the requested information, postage when the individual requests that such information  
1178 be mailed, and preparation of an explanation or summary of such information as agreed to by the  
1179 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on  
1180 behalf of the individual who is the subject of the health record in making decisions related to his health  
1181 care.

1182 § 32.1-283. Investigation of deaths; obtaining consent to removal of organs, etc.; fees.

1183 A. Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or  
1184 homicide, or suddenly when in apparent good health, or when unattended by a physician, or in jail,  
1185 prison, other correctional institution or in police custody, or who is a patient or resident of a state  
1186 mental health or mental retardation facility, or suddenly as an apparent result of fire, or in any  
1187 suspicious, unusual or unnatural manner, or the sudden death of any infant less than eighteen months of  
1188 age whose death is suspected to be attributable to Sudden Infant Death Syndrome (SIDS), the medical  
1189 examiner of the county or city in which death occurs shall be notified by the physician in attendance,  
1190 hospital, law-enforcement officer, funeral director or any other person having knowledge of such death.  
1191 Good faith efforts shall be made by such person or institution having custody of the dead body to  
1192 identify and to notify the next of kin of the decedent. Notification shall include informing the person  
1193 presumed to be the next of kin that he has a right to have identification of the decedent confirmed  
1194 without due delay and without being held financially responsible for any procedures performed for the  
1195 purpose of the identification. Identity of the next of kin, if determined, shall be provided to the Chief  
1196 Medical Examiner upon transfer of the dead body.

1197 B. Upon being notified of a death as provided in subsection A, the medical examiner shall take  
1198 charge of the dead body, make an investigation into the cause and manner of death, reduce his findings  
1199 to writing, and promptly make a full report to the Chief Medical Examiner. In order to facilitate his  
1200 investigation, the medical examiner is authorized to inspect and copy the pertinent medical records of  
1201 the decedent whose death he is investigating. Full directions as to the nature, character and extent of the  
1202 investigation to be made in such cases shall be furnished each medical examiner by the Chief Medical  
1203 Examiner, together with appropriate forms for the required reports and instructions for their use. The  
1204 facilities and personnel under the Chief Medical Examiner shall be made available to medical examiners  
1205 in such investigations. Reports and findings of the Medical Examiner shall be confidential and shall not  
1206 under any circumstance be disclosed or made available for discovery pursuant to a court subpoena or  
1207 otherwise, except as provided in this chapter. Nothing in this subsection shall prohibit the Chief Medical  
1208 Examiner from releasing the cause or manner of death, or prohibit disclosure of reports or findings to  
1209 the parties in a criminal case.

1210 C. A copy of each report pursuant to this section shall be delivered to the appropriate attorney for  
1211 the Commonwealth and to the appropriate law-enforcement agency investigating the death. A copy of  
1212 any such report regarding the death of a victim of a traffic accident shall be furnished upon request to  
1213 the State Police and the Highway Safety Commission. In addition, a copy of any autopsy report  
1214 concerning a patient or resident of a state mental health or mental retardation facility shall be delivered  
1215 to the Commissioner of Behavioral Health and Developmental Services and to the *State* Inspector  
1216 ~~General for Behavioral Health and Developmental Services~~. A copy of any autopsy report concerning a  
1217 prisoner committed to the custody of the Director of the Department of Corrections shall, upon request  
1218 of the Director of the Department of Corrections, be delivered to the Director of the Department of  
1219 Corrections. A copy of any autopsy report concerning a prisoner committed to any local correctional  
1220 facility shall be delivered to the local sheriff or superintendent. Upon request, the Chief Medical  
1221 Examiner shall release such autopsy report to the decedent's attending physician and to the personal  
1222 representative or executor of the decedent or, if no personal representative or executor is appointed, then  
1223 at the discretion of the Chief Medical Examiner, to the following persons in the following order of  
1224 priority: (i) the spouse of the decedent, (ii) an adult son or daughter of the decedent, (iii) either parent  
1225 of the decedent, (iv) an adult sibling of the decedent, (v) any other adult relative of the decedent in  
1226 order of blood relationship, or (vi) any appropriate health facility quality assurance program.

1227 D. For each investigation under this article, including the making of the required reports, the medical  
1228 examiner shall receive a fee established by the Board within the limitations of appropriations for the  
1229 purpose. Such fee shall be paid by the Commonwealth, if the deceased is not a legal resident of the  
1230 county or city in which his death occurred. In the event the deceased is a legal resident of the county or  
1231 city in which his death occurred, such county or city shall be responsible for the fee up to \$20. If the  
1232 deceased is a patient or resident of a state mental health or mental retardation facility, the fee shall be  
1233 paid by the Department of Behavioral Health and Developmental Services.

1234 E. Nothing herein shall be construed to interfere with the autopsy procedure or with the routine  
1235 obtaining of consent for removal of organs as conducted by surgical teams or others.

1236 § 58.1-202.2. Public-private partnerships; Public Private Partnership Oversight Committee.

1237 A. The Tax Commissioner is hereby authorized through the Department of General Services in  
1238 accordance with the Virginia Public Procurement Act to enter into public-private partnership contracts to  
1239 finance agency technology needs. The Tax Commissioner may issue a request for information to seek  
1240 out potential private partners interested in providing programs pursuant to an agreement under this  
1241 section. The compensation for such services shall be computed with reference to and paid from the  
1242 increased revenue attributable to the successful implementation of the technology program for the period  
1243 specified in the contract.

1244 B. The Public Private Partnership Oversight Committee, hereinafter referred to as the "Committee" is  
1245 established as an advisory committee in the executive branch of state government to review and approve  
1246 the terms of contracts under this section relating to the measurement of the revenue attributable to the  
1247 technology program. The Committee shall consist of five members as follows: one legislative employee  
1248 appointed by the Senate Committee on Rules after the consideration of the recommendation of the  
1249 President pro tempore of the Senate, if any; one legislative employee appointed by the Speaker of the  
1250 House of Delegates; and the State Comptroller, the Director of the Department of Planning and Budget,  
1251 and the State ~~Internal Auditor~~ *Inspector General*, as ex officio voting members. All members shall be  
1252 citizens of the Commonwealth.

1253 Ex officio members shall serve terms coincident with their terms of office. Legislative employee  
1254 members shall be appointed for a term of two years and may be reappointed for successive terms.  
1255 Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms.  
1256 Vacancies shall be filled in the same manner as the original appointments.

1257 The Tax Commissioner shall preside over the meetings of the Committee. The Committee may select  
1258 an alternative to preside in the absence of the Tax Commissioner. A majority of the members shall  
1259 constitute a quorum. The meetings of the Committee shall be held at the call of the Tax Commissioner  
1260 or whenever the majority of the members so request.

1261 The Tax Commissioner shall submit an annual executive summary and report no later than  
1262 November 30 to the Governor and General Assembly on all agreements under this section, describing  
1263 each technology program, its progress, revenue impact, and such other information as may be relevant.  
1264 The executive summary and report shall be submitted as provided in the procedures of the Division of  
1265 Legislative Automated Systems for the processing of legislative documents and reports and shall be  
1266 posted on the General Assembly's website.

1267 C. The Tax Commissioner shall determine annually the total amount of increased revenue attributable  
1268 to the successful implementation of a technology program under this section and such amount shall be  
1269 deposited in a special fund known as the Technology Partnership Fund (the Fund). The Tax  
1270 Commissioner is authorized to use moneys deposited in the Fund to pay private partners pursuant to the  
1271 terms of contracts under this section. All moneys in excess of that required to be paid to private  
1272 partners, as determined by the Department, shall be reported to the Comptroller and transferred to the  
1273 appropriate general or nongeneral fund.

1274 **2. That Chapter 16 (§§ 2.2-1600 through 2.2-1602) of Title 2.2, Article 3 (§§ 37.2-423 through**  
1275 **37.2-425) of Chapter 4 of Title 37.2, and §§ 53.1-16 and 66-3.1 of the Code of Virginia are**  
1276 **repealed.**

1277 **3. That, effective July 1, 2012, the Office of the State Inspector General created by this act shall**  
1278 **be deemed the successor in interest to the (i) Office of the Inspector General for Behavioral Health**  
1279 **and Developmental Services, (ii) Inspector General for the Department of Corrections, (iii)**  
1280 **Inspector General of the Department of Juvenile Justice, and (iv) Inspector General of the**  
1281 **Department of Transportation to the extent that this act transfers powers and duties. All rights,**  
1282 **title, and interest in and to any real or tangible personal property vested in the Inspector General**  
1283 **for Behavioral Health and Developmental Services, the Inspector General for the Department of**  
1284 **Corrections, the Inspector General of the Department of Juvenile Justice, and the Inspector**  
1285 **General of the Department of Transportation to the extent that this act transfers powers and**  
1286 **duties as of July 1, 2011, shall be transferred to and taken as standing in the name of the Office**  
1287 **of the State Inspector General created by this act.**

- 1288 4. That the Governor may transfer an appropriation or any portion thereof within a state agency  
1289 established, abolished, or otherwise affected by the provisions of this act, or from one such agency  
1290 to another, to support the changes in organization or responsibility resulting from or required by  
1291 the provisions of this act.
- 1292 5. That the Office of the State Inspector General created by this act shall complete an  
1293 implementation plan for the transfer of internal audit programs from the State Internal Auditor.
- 1294 6. That any regulations adopted by the State Internal Auditor that are in effect as of the effective  
1295 date of this act and which pertain to the subject of this act shall remain in full force and effect  
1296 until altered, amended, or rescinded by the State Inspector General.
- 1297 7. That the provisions of this act shall become effective on July 1, 2012, except that the provisions  
1298 of Article 5 (§ 2.2-320) of Chapter 3.2 of Title 2.2 of this act relating to transportation shall  
1299 become effective on July 1, 2014.