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HOUSE BILL NO. 1558**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Health, Welfare and Institutions
on January 22, 2015)

(Patron Prior to Substitute—Delegate Rust)

A BILL to amend and reenact §§ 2.2-3705.5, 2.2-3711, 2.2-4002, 32.1-283.5, and 63.2-1606 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-283.6, relating to local and regional adult fatality review teams; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.5, 2.2-3711, 2.2-4002, 32.1-283.5, and 63.2-1606 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-283.6 as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

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

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 51.5-122, 51.5-141, and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and records and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the

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60 establishment of new or the expansion of existing clinical health services, acquisition of major medical
61 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

62 8. Information required to be provided to the Department of Health Professions by certain licensees
63 pursuant to § 54.1-2506.1.

64 9. Information and records acquired (i) during a review of any child death conducted by the State
65 Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality
66 review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death
67 conducted by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or
68 (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent
69 made confidential by § 32.1-283.5 *or by a local or regional adult fatality review team to the extent*
70 *made confidential by § 32.1-283.6.*

71 10. Patient level data collected by the Board of Health and not yet processed, verified, and released,
72 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
73 Health has contracted pursuant to § 32.1-276.4.

74 11. Records of the Health Practitioners' Monitoring Program Committee within the Department of
75 Health Professions, to the extent such records may identify any practitioner who may be, or who is
76 actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

77 12. Records submitted as a grant application, or accompanying a grant application, to the
78 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of
79 Chapter 14 of Title 51.5, to the extent such records contain (i) medical or mental health records, or
80 other data identifying individual patients or (ii) proprietary business or research-related information
81 produced or collected by the applicant in the conduct of or as a result of study or research on medical,
82 rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly
83 released, published, copyrighted or patented, if the disclosure of such information would be harmful to
84 the competitive position of the applicant.

85 13. Any record copied, recorded or received by the Commissioner of Health in the course of an
86 examination, investigation or review of a managed care health insurance plan licensee pursuant to
87 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or
88 all computer or other recordings.

89 14. Records, information and statistical registries required to be kept confidential pursuant to
90 §§ 63.2-102 and 63.2-104.

91 15. All data, records, and reports relating to the prescribing and dispensing of covered substances to
92 recipients and any abstracts from such data, records, and reports that are in the possession of the
93 Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any
94 material relating to the operation or security of the Program.

95 16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be
96 kept confidential pursuant to § 38.2-5002.2.

97 17. Records of the State Health Commissioner relating to the health of any person or persons subject
98 to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of
99 Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of
100 statistical summaries, abstracts or other information in aggregate form.

101 18. Records containing the names and addresses or other contact information of persons receiving
102 transportation services from a state or local public body or its designee under Title II of the Americans
103 with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy
104 Families (TANF) created under § 63.2-600.

105 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

106 A. Public bodies may hold closed meetings only for the following purposes:

107 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
108 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
109 officers, appointees, or employees of any public body; and evaluation of performance of departments or
110 schools of public institutions of higher education where such evaluation will necessarily involve
111 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
112 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that
113 involves the teacher and some student and the student involved in the matter is present, provided the
114 teacher makes a written request to be present to the presiding officer of the appropriate board.

115 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
116 involve the disclosure of information contained in a scholastic record concerning any student of any
117 Virginia public institution of higher education or any state school system. However, any such student,
118 legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to
119 be present during the taking of testimony or presentation of evidence at a closed meeting, if such
120 student, parents, or guardians so request in writing and such request is submitted to the presiding officer
121 of the appropriate board.

122 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
123 disposition of publicly held real property, where discussion in an open meeting would adversely affect
124 the bargaining position or negotiating strategy of the public body.

125 4. The protection of the privacy of individuals in personal matters not related to public business.

126 5. Discussion concerning a prospective business or industry or the expansion of an existing business
127 or industry where no previous announcement has been made of the business' or industry's interest in
128 locating or expanding its facilities in the community.

129 6. Discussion or consideration of the investment of public funds where competition or bargaining is
130 involved, where, if made public initially, the financial interest of the governmental unit would be
131 adversely affected.

132 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
133 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
134 negotiating or litigating posture of the public body; and consultation with legal counsel employed or
135 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
136 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
137 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
138 will be commenced by or against a known party. Nothing in this subdivision shall be construed to
139 permit the closure of a meeting merely because an attorney representing the public body is in attendance
140 or is consulted on a matter.

141 8. In the case of boards of visitors of public institutions of higher education, discussion or
142 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
143 for services or work to be performed by such institution. However, the terms and conditions of any such
144 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
145 person and accepted by a public institution of higher education in Virginia shall be subject to public
146 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
147 (i) "foreign government" means any government other than the United States government or the
148 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
149 created under the laws of the United States or of any state thereof if a majority of the ownership of the
150 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
151 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
152 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
153 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

154 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
155 of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia,
156 discussion or consideration of matters relating to specific gifts, bequests, and grants.

157 10. Discussion or consideration of honorary degrees or special awards.

158 11. Discussion or consideration of tests, examinations, or other records excluded from this chapter
159 pursuant to subdivision 4 of § 2.2-3705.1.

160 12. Discussion, consideration, or review by the appropriate House or Senate committees of possible
161 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
162 filed by the member, provided the member may request in writing that the committee meeting not be
163 conducted in a closed meeting.

164 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to
165 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
166 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating
167 position of the governing body or the establishment of the terms, conditions and provisions of the siting
168 agreement, or both. All discussions with the applicant or its representatives may be conducted in a
169 closed meeting.

170 14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
171 activity and estimating general and nongeneral fund revenues.

172 15. Discussion or consideration of medical and mental health records excluded from this chapter
173 pursuant to subdivision 1 of § 2.2-3705.5.

174 16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
175 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
176 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
177 information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3
178 and subdivision 11 of § 2.2-3705.7.

179 17. Those portions of meetings by local government crime commissions where the identity of, or
180 information tending to identify, individuals providing information about crimes or criminal activities
181 under a promise of anonymity is discussed or disclosed.

182 18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity

183 of, or information tending to identify, any prisoner who (i) provides information about crimes or
184 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
185 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
186 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

187 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff
188 members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to
189 respond to such activity or a related threat to public safety; or discussion of reports or plans related to
190 the security of any governmental facility, building or structure, or the safety of persons using such
191 facility, building or structure.

192 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
193 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the
194 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
195 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
196 other ownership interest in an entity, where such security or ownership interest is not traded on a
197 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential
198 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement
199 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia
200 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest
201 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of
202 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of
203 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
204 construed to prevent the disclosure of information relating to the identity of any investment held, the
205 amount invested or the present value of such investment.

206 21. Those portions of meetings in which individual child death cases are discussed by the State Child
207 Fatality Review team established pursuant to § 32.1-283.1, ~~and~~ those portions of meetings in which
208 individual child death cases are discussed by a regional or local child fatality review team established
209 pursuant to § 32.1-283.2, ~~and~~ those portions of meetings in which individual death cases are discussed
210 by family violence fatality review teams established pursuant to § 32.1-283.3, *those portions of meetings*
211 *in which individual adult death cases are discussed by the state Adult Fatality Review Team established*
212 *pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are*
213 *discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.*

214 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
215 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
216 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
217 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
218 proprietary, business-related information pertaining to the operations of the University of Virginia
219 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
220 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
221 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
222 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
223 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
224 Medical School, as the case may be.

225 23. In the case of the Virginia Commonwealth University Health System Authority, discussion or
226 consideration of any of the following: the acquisition or disposition of real or personal property where
227 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
228 operational plans that could affect the value of such property, real or personal, owned or desirable for
229 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
230 contracts for services or work to be performed by the Authority; marketing or operational strategies
231 where disclosure of such strategies would adversely affect the competitive position of the Authority;
232 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications
233 or evaluations of other employees.

234 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within
235 the Department of Health Professions to the extent such discussions identify any practitioner who may
236 be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

237 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
238 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
239 by or on behalf of individuals who have requested information about, applied for, or entered into
240 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.)
241 of Title 23 is discussed.

242 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created
243 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
244 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless

E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-1800, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

44. Discussion or consideration by the Virginia Tobacco Indemnification and Community Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of

306 § 2.2-3705.6.

307 45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
308 of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

309 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
310 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
311 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
312 motion that shall have its substance reasonably identified in the open meeting.

313 C. Public officers improperly selected due to the failure of the public body to comply with the other
314 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
315 obtain notice of the legal defect in their election.

316 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
317 more public bodies, or their representatives, but these conferences shall be subject to the same
318 procedures for holding closed meetings as are applicable to any other public body.

319 E. This section shall not be construed to (i) require the disclosure of any contract between the
320 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
321 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
322 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
323 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
324 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
325 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
326 of such bonds.

327 **§ 2.2-4002. Exemptions from chapter generally.**

328 A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.),
329 the following agencies shall be exempted from the provisions of this chapter, except to the extent that
330 they are specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031:

331 1. The General Assembly.

332 2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly
333 granted any of the powers of a court of record.

334 3. The Department of Game and Inland Fisheries in promulgating regulations regarding the
335 management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2
336 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7
337 (§ 29.1-700 et seq.) of Title 29.1.

338 4. The Virginia Housing Development Authority.

339 5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created
340 under this Code, including those with federal authorities.

341 6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031,
342 such educational institutions shall be exempt from the publication requirements only with respect to
343 regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining
344 of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of
345 students.

346 7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii)
347 classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for
348 producers' milk, time and method of payment, butterfat testing and differential.

349 8. The Virginia Resources Authority.

350 9. Agencies expressly exempted by any other provision of this Code.

351 10. The Department of General Services in promulgating standards for the inspection of buildings for
352 asbestos pursuant to § 2.2-1164.

353 11. The State Council of Higher Education for Virginia, in developing, issuing, and revising
354 guidelines pursuant to § 23-9.6:2.

355 12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to
356 subsection B of § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.

357 13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and
358 Consumer Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601,
359 subsection B of § 3.2-3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206,
360 and subsection A of § 3.2-5406.

361 14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines,
362 and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of
363 optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

364 15. The Commissioner of the Department of Veterans Services in adopting regulations pursuant to
365 § 2.2-2001.3.

366 16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to
367 § 22.1-203.2.

17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.

18. The Virginia Small Business Financing Authority.

19. The Virginia Economic Development Partnership Authority.

20. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § 59.1-156.

21. The Insurance Continuing Education Board pursuant to § 38.2-1867.

22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35 and in adopting, amending or repealing regulations pursuant to subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.

23. (Expires July 1, 2016) The Commissioner of the Marine Resources Commission in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § 28.2-1000.2.

24. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § 54.1-3314.1.

25. The Virginia Department of Veterans Services when promulgating rules and regulations pursuant to § 58.1-3219.7.

26. The Virginia Department of Criminal Justice Services when developing, issuing, or revising any training standards established by the Criminal Justice Services Board under § 9.1-102, provided such actions are authorized by the Governor in the interest of public safety.

B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, militia, naval or police functions.

7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.

8. The conduct of elections or eligibility to vote.

9. Inmates of prisons or other such facilities or parolees therefrom.

10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

11. Traffic signs, markers or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.

13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.).

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the Virginia Lottery Board, and provided that such regulations are published and posted.

16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1 *and any operating procedures for review of adult deaths developed by the Adult Fatality Review Team pursuant to § 32.1-283.5.*

18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5.

20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

21. The Virginia Breeders Fund created pursuant to § 59.1-372.

22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

23. The administration of medication or other substances foreign to the natural horse.

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act (§ 2.2-4100 et seq.), made by the Virginia Code Commission pursuant to § 30-150, shall be

429 exempt from the provisions of this chapter.

430 **§ 32.1-283.5. Adult Fatality Review Team; duties; membership; confidentiality; penalties;**
431 **report; etc.**

432 A. There is hereby created the Adult Fatality Review Team, referred to in this section as "the Team,"
433 which shall develop and implement procedures to ensure that adult deaths occurring in the
434 Commonwealth are analyzed in a systematic way. The Team shall review the death of any person age
435 60 years or older, or any adult age 18 years or older who is incapacitated, who resides in the
436 Commonwealth, or who does not reside in the Commonwealth but who is temporarily in the
437 Commonwealth and who is in need of temporary or emergency protective services (i) who was the
438 subject of an adult protective services or law-enforcement investigation; (ii) whose death was due to
439 abuse ~~or~~, neglect, or exploitation or acts suggesting abuse ~~or~~, neglect, or exploitation; or (iii) whose
440 death came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner
441 pursuant to § 32.1-283. The Team shall not initiate an adult death review until the conclusion of any
442 law-enforcement investigation or criminal prosecution. *The operating procedures for the review of adult*
443 *deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision*
444 *B 17 of § 2.2-4002.*

445 B. The 16-member team shall consist of the following persons or their designees: the Chief Medical
446 Examiner, the Commissioner of Behavioral Health and Developmental Services, the Commissioner for
447 Aging and Rehabilitative Services, the Director of the Office of Licensure and Certification of the
448 Department of Health, and the State Long-Term Care Ombudsman. In addition, the Governor shall
449 appoint one representative from each of the following entities: a licensed funeral services provider, the
450 Medical Society of Virginia, and local departments of social services, emergency medical services,
451 attorneys for the Commonwealth, law-enforcement agencies, nurses specializing in geriatric care,
452 psychiatrists specializing in geriatric care, and long-term care providers. The Team further shall include
453 two members appointed by the Governor who are advocates for elderly or disabled populations in
454 Virginia. The Chief Medical Examiner shall serve as chair of the Team.

455 After the initial staggering of terms, members appointed by the Governor shall be appointed for a
456 term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the
457 unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All
458 members may be reappointed. The Chief Medical Examiner and other ex officio members of the Team
459 shall serve terms coincident with their terms of office.

460 C. Upon the request of the chair of the Team, made after the conclusion of any law-enforcement
461 investigation or prosecution, information and records regarding an adult whose death is being reviewed
462 by the Team shall be inspected and copied by the chair or his designee, including but not limited to any
463 report of the circumstances of the event maintained by any state or local law-enforcement agency or the
464 Office of the Chief Medical Examiner and information or records on the adult maintained by any facility
465 that provided services to the adult, by any social services agency, or by any court. Information, records,
466 or reports maintained by any attorney for the Commonwealth shall be made available for inspection and
467 copying by the chair or his designee pursuant to procedures that shall be developed by the Chief
468 Medical Examiner and the Commonwealth Attorneys Services Council established by § 2.2-2617. In
469 addition, a health care provider shall provide the Team, upon request, with access to the health and
470 mental health records of (i) the adult whose death is subject to review, without authorization; (ii) any
471 adult relative of the deceased, with authorization; and (iii) any minor child of the deceased, with the
472 authorization of the minor's parent or guardian. The chair of the Team also may copy and inspect the
473 presentence report, prepared pursuant to § 19.2-299, of any person convicted of a crime that led to the
474 death of the adult who is the subject of review by the Team.

475 D. All information obtained or generated by the Team regarding a review shall be confidential and
476 excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 9 of
477 § 2.2-3705.5. Such information shall not be subject to subpoena or discovery or be admissible in any
478 civil or criminal proceeding. If available from other sources, however, such information and records
479 shall not be immune from subpoena, discovery, or introduction into evidence when obtained through
480 such other sources solely because the information and records were presented to the Team during an
481 adult death review. The Team shall compile all information collected during a review. The findings of
482 the Team may be disclosed or published in statistical or other form, but shall not identify any
483 individuals. *The portions of meetings in which individual adult death cases are discussed by the Team*
484 *shall be closed pursuant to subdivision A 21 of § 2.2-3711.*

485 E. All Team members and other persons attending closed Team meetings, including any persons
486 presenting information or records on specific fatalities, shall execute a sworn statement to honor the
487 confidentiality of the information, records, discussions, and opinions disclosed during meetings at which
488 the Team reviews a specific death. No Team member or other person who participates in a review shall
489 be required to make any statement regarding the review or any information collected during the review.
490 Upon conclusion of a review, all information and records concerning the victim and the family shall be

shredded or otherwise destroyed in order to ensure confidentiality. Violations of this subsection are punishable as a Class 3 misdemeanor.

F. Upon notification of an adult death, any state or local government agency or facility that provided services to the adult or maintained records on the adult or the adult's family shall retain the records for the longer of 12 months or until such time as the Team has completed its review of the case.

G. The Team shall compile an annual report by October 1 of each year that shall be made available to the Governor and the General Assembly. The annual report shall include any policy, regulatory, or budgetary recommendations developed by the Team. Any statistical compilations prepared by the Team shall be public record and shall not contain any personally identifying information.

§ 32.1-283.6. Local and regional adult fatality review teams established; membership; authority; confidentiality; immunity.

A. Upon the initiative of any local or regional law-enforcement agency, department of social services, emergency medical services agency, attorney for the Commonwealth's office, community services board, or official with the Adult Protective Services Unit established pursuant to § 51.5-148, local or regional adult fatality review teams may be established for the purpose of conducting contemporaneous reviews of local adult deaths in order to develop interventions and strategies for prevention specific to the locality or region. For the purposes of this section, the team may review the death of any person age 60 years or older, or any adult age 18 years or older who is incapacitated, who resides in the Commonwealth and who is in need of temporary or emergency protective services (i) who was the subject of an adult protective services or law-enforcement investigation; (ii) whose death was due to abuse, neglect, or exploitation or acts suggesting abuse, neglect, or exploitation; or (iii) whose death came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner as occurring in any suspicious, unusual, or unnatural manner, pursuant to § 32.1-283. Each team shall establish rules and procedures to govern the review process. Agencies may share information but shall be bound by confidentiality and execute a sworn statement to honor the confidentiality of the information they share. A violation of this subsection is punishable as a Class 3 misdemeanor. The Office of the Chief Medical Examiner shall develop a model protocol for the development and implementation of local or regional adult fatality review teams and such model protocol shall include relevant procedures for conducting reviews of adult fatalities.

B. Local and regional teams may be composed of the following persons from the localities represented on a particular board or their designees: a medical examiner appointed pursuant to § 32.1-282, a local adult protective services official, a local social services official, a director of the relevant local or district health department, an executive director of the local area agency on aging or other department representing the interests of the elderly or disabled, a chief law-enforcement officer, the attorney for the Commonwealth, an executive director of the local community services board or other local mental health agency, a local judge, and such additional persons as may be appointed to serve by the chair of the local or regional team. The chair shall be elected from among the designated membership. The additional members appointed by the chair may include, but are not restricted to, representatives of local human services agencies, local health care professionals specializing in geriatric care or care of incapacitated adults, local emergency medical services personnel, local long-term care providers, representatives of local advocacy or service organizations for elderly or disabled populations, experts in forensic medicine and pathology, local funeral services providers, local centers for independent living, local long-term care ombudsmen, and representatives of the local bar.

C. Each local or regional team shall establish operating procedures to govern the review process prior to conducting the first adult fatality review. The review of a death shall be delayed until any criminal investigations connected with the death are completed or the Commonwealth consents to the commencement of such review prior to the completion of the criminal investigation.

D. All information and records obtained or created regarding a review of a fatality shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 9 of § 2.2-3705.5. All such information and records shall be used by the team only in the exercise of its proper purpose and function and shall not be disclosed. Such information and records shall not be subject to subpoena, subpoena duces tecum, discovery, or introduction into evidence when obtained through such other sources solely because the information and records were presented to the team during the fatality review. No person who participated in the review and no member of the team shall be required to make any statement as to what transpired during the review or what information was collected during the review. Upon the conclusion of the fatality review, all information and records concerning the victim and family shall be returned to the originating agency or destroyed. However, the findings of the team may be disclosed or published in statistical or other form that does not identify any individuals. The portions of meetings in which individual cases are discussed by the team shall be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons attending closed team meetings, and persons presenting information and records on specific fatalities to

552 *the team during closed meetings shall execute a sworn statement to honor the confidentiality of the*
553 *information, records, discussions, and opinions disclosed during any closed meeting to review a specific*
554 *death. A violation of this subsection is punishable as a Class 3 misdemeanor.*

555 *E. Members of teams, as well as their agents and employees, shall be immune from civil liability for*
556 *any act or omission made in connection with participation in an adult fatality review team review,*
557 *unless such act or omission was the result of gross negligence or willful misconduct. Any organization,*
558 *institution, or person furnishing information, data, testimony, reports, or records to review teams as part*
559 *of such review shall be immune from civil liability for any act or omission in furnishing such*
560 *information, unless such act or omission was the result of gross negligence or willful misconduct.*

561 **§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.**

562 A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported
563 immediately upon the reporting person's determination that there is such reason to suspect. Medical
564 facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately
565 while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of
566 the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall
567 be made to the local department or the adult protective services hotline in accordance with requirements
568 of this section by the following persons acting in their professional capacity:

569 1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with
570 the exception of persons licensed by the Board of Veterinary Medicine;

571 2. Any mental health services provider as defined in § 54.1-2400.1;

572 3. Any emergency medical services provider certified by the Board of Health pursuant to
573 § 32.1-111.5, unless such provider immediately reports the suspected abuse, neglect or exploitation
574 directly to the attending physician at the hospital to which the adult is transported, who shall make such
575 report forthwith;

576 4. Any guardian or conservator of an adult;

577 5. Any person employed by or contracted with a public or private agency or facility and working
578 with adults in an administrative, supportive or direct care capacity;

579 6. Any person providing full, intermittent or occasional care to an adult for compensation, including,
580 but not limited to, companion, chore, homemaker, and personal care workers; and

581 7. Any law-enforcement officer.

582 B. The report shall be made in accordance with subsection A to the local department of the county
583 or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have
584 occurred or to the adult protective services hotline. Nothing in this section shall be construed to
585 eliminate or supersede any other obligation to report as required by law. If a person required to report
586 under this section receives information regarding abuse, neglect or exploitation while providing
587 professional services in a hospital, nursing facility or similar institution, then he may, in lieu of
588 reporting, notify the person in charge of the institution or his designee, who shall report such
589 information, in accordance with the institution's policies and procedures for reporting such matters,
590 immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any
591 person required to make the report or notification required by this subsection shall do so either orally or
592 in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or
593 exploitation. Upon request, any person required to make the report shall make available to the adult
594 protective services worker and the local department investigating the reported case of adult abuse,
595 neglect or exploitation any information, records or reports which document the basis for the report. All
596 persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the
597 investigating adult protective services worker of a local department and shall make information, records
598 and reports which are relevant to the investigation available to such worker to the extent permitted by
599 state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be
600 further disseminated by the investigating agency nor shall they be subject to public disclosure; such
601 reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 *or to*
602 *a local or regional adult fatality review team as provided in § 32.1-283.6* and, if reviewed by the Team
603 *or a local or regional adult fatality review team*, shall be subject to ~~all of the Team's~~ applicable
604 confidentiality requirements *of the Team or a local or regional adult fatality review team.*

605 C. Any financial institution staff who suspects that an adult has been exploited financially may report
606 such suspected exploitation to the local department of the county or city wherein the adult resides or
607 wherein the exploitation is believed to have occurred or to the adult protective services hotline. For
608 purposes of this section, financial institution staff means any employee of a bank, savings institution,
609 credit union, securities firm, accounting firm, or insurance company.

610 D. Any person other than those specified in subsection A who suspects that an adult is an abused,
611 neglected or exploited adult may report the matter to the local department of the county or city wherein
612 the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the
613 adult protective services hotline.

E. Any person who makes a report or provides records or information pursuant to subsection A, C, or D, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.

F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision shall be a Class 2 misdemeanor.

H. Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be determined by the Commissioner for Aging and Rehabilitative Services or his designee. The Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.

I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse or neglect shall immediately report such suspicion to the appropriate medical examiner and to the appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a licensed physician. The medical examiner and the law-enforcement agency shall receive the report and determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the local department or to the adult protective services hotline.

J. No person or entity shall be obligated to report any matter if the person or entity has actual knowledge that the same matter has already been reported to the local department or to the adult protective services hotline.

K. All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of a local department in the detection, investigation and prevention of adult abuse, neglect and exploitation.