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## HOUSE BILL NO. 2339

Offered January 9, 2019

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A BILL to amend and reenact §§ 2.2-3803 and 58.1-3 of the Code of Virginia, relating to the Department of Taxation; sharing information with the Department of Social Services.

Patron—Roem

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-3803 and 58.1-3 of the Code of Virginia are amended and reenacted as follows:****§ 2.2-3803. Administration of systems including personal information; Internet privacy policy; exceptions.**

A. Any agency maintaining an information system that includes personal information shall:

1. Collect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency;

2. Collect information to the greatest extent feasible from the data subject directly, or through the sharing of data with other agencies, in order to accomplish a proper purpose of the agency;

3. Establish categories for maintaining personal information to operate in conjunction with confidentiality requirements and access controls;

4. Maintain information in the system with accuracy, completeness, timeliness, and pertinence as necessary to ensure fairness in determinations relating to a data subject;

5. Make no dissemination to another system without (i) specifying requirements for security and usage including limitations on access thereto, and (ii) receiving reasonable assurances that those requirements and limitations will be observed. This subdivision shall not apply, however, to a dissemination made by an agency to an agency in another state, district or territory of the United States where the personal information is requested by the agency of such other state, district or territory in connection with the application of the data subject therein for a service, privilege or right under the laws thereof, nor shall this apply to information transmitted to family advocacy representatives of the United States Armed Forces in accordance with subsection N of § 63.2-1503;

6. Maintain a list of all persons or organizations having regular access to personal information in the information system;

7. Maintain for a period of three years or until such time as the personal information is purged, whichever is shorter, a complete and accurate record, including identity and purpose, of every access to any personal information in a system, including the identity of any persons or organizations not having regular access authority but excluding access by the personnel of the agency wherein data is put to service for the purpose for which it is obtained;

8. Take affirmative action to establish rules of conduct and inform each person involved in the design, development, operation, or maintenance of the system, or the collection or use of any personal information contained therein, about all the requirements of this chapter, the rules and procedures, including penalties for noncompliance, of the agency designed to assure compliance with such requirements;

9. Establish appropriate safeguards to secure the system from any reasonably foreseeable threat to its security; and

10. Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects that is maintained, used or disseminated in or by any information system operated by any agency unless authorized explicitly by statute or ordinance.

B. Every public body, as defined in § 2.2-3701, that has an Internet website associated with that public body shall develop an Internet privacy policy and an Internet privacy policy statement that explains the policy to the public. The policy shall be consistent with the requirements of this chapter. The statement shall be made available on the public body's website in a conspicuous manner. The Secretary of Technology or his designee shall provide guidelines for developing the policy and the statement, and each public body shall tailor the policy and the statement to reflect the information practices of the individual public body. At minimum, the policy and the statement shall address (i) what information, including personally identifiable information, will be collected, if any; (ii) whether any information will be automatically collected simply by accessing the website and, if so, what information; (iii) whether the website automatically places a computer file, commonly referred to as a "cookie," on

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59 the Internet user's computer and, if so, for what purpose; and (iv) how the collected information is being  
60 used or will be used.

61 C. Notwithstanding the provisions of subsection A, the Virginia Retirement System may disseminate  
62 information as to the retirement status or benefit eligibility of any employee covered by the Virginia  
63 Retirement System, the Judicial Retirement System, the State Police Officers' Retirement System, or the  
64 Virginia Law Officers' Retirement System, to the chief executive officer or personnel officers of the  
65 state or local agency by which he is employed.

66 D. Notwithstanding the provisions of subsection A, the Department of Social Services may  
67 disseminate client information to the Department of Taxation for the purposes of providing specified tax  
68 information as set forth in clause (ii) of subsection C of § 58.1-3.

69 E. Notwithstanding the provisions of subsection A, the State Council of Higher Education for  
70 Virginia may disseminate student information to agencies acting on behalf or in place of the U.S.  
71 government to gain access to data on wages earned outside the Commonwealth or through federal  
72 employment, for the purposes of complying with § 23.1-204.1.

73 **§ 58.1-3. Secrecy of information; penalties.**

74 A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax  
75 Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or  
76 revenue officer or employee, or any person to whom tax information is divulged pursuant to this section  
77 or § 58.1-512 or 58.1-2712.2, or any former officer or employee of any of the aforementioned offices  
78 shall not divulge any information acquired by him in the performance of his duties with respect to the  
79 transactions, property, including personal property, income or business of any person, firm or  
80 corporation. Such prohibition specifically includes any copy of a federal return or federal return  
81 information required by Virginia law to be attached to or included in the Virginia return. This  
82 prohibition shall apply to any reports, returns, financial documents or other information filed with the  
83 Attorney General pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2.  
84 Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. The provisions  
85 of this subsection shall not be applicable, however, to:

86 1. Matters required by law to be entered on any public assessment roll or book;

87 2. Acts performed or words spoken, published, or shared with another agency or subdivision of the  
88 Commonwealth in the line of duty under state law;

89 3. Inquiries and investigations to obtain information as to the process of real estate assessments by a  
90 duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to  
91 its study, provided that any such information obtained shall be privileged;

92 4. The sales price, date of construction, physical dimensions or characteristics of real property, or any  
93 information required for building permits;

94 5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court  
95 pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;

96 6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when  
97 requested by the General Assembly or any duly constituted committee of the General Assembly;

98 7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the  
99 provisions of Article 3 (§ 3.2-4204 et seq.), when such reports or information are provided by the  
100 Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow  
101 fund pursuant to § 3.2-4201 and are limited to the brand families of that manufacturer as listed in the  
102 Tobacco Directory established pursuant to § 3.2-4206 and are limited to the current or previous two  
103 calendar years or in any year in which the Attorney General receives Stamping Agent information that  
104 potentially alters the required escrow deposit of the manufacturer. The information shall only be  
105 provided in the following manner: the manufacturer may make a written request, on a quarterly or  
106 yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the  
107 amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who  
108 reported stamping or selling its products and the amount reported. The Attorney General shall provide  
109 the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the  
110 reports the Stamping Agents filed with the Attorney General, it must first request them from the  
111 Stamping Agents pursuant to subsection C of § 3.2-4209. If the manufacturer does not receive the  
112 reports pursuant to subsection C of § 3.2-4209, the manufacturer may make a written request to the  
113 Attorney General, including a copy of the prior written request to the Stamping Agent and any response  
114 received, for copies of any reports not received. The Attorney General shall provide copies of the  
115 reports within 45 days of receipt of the request.

116 B. 1. Nothing contained in this section shall be construed to prohibit the publication of statistics so  
117 classified as to prevent the identification of particular reports or returns and the items thereof or the  
118 publication of delinquent lists showing the names of taxpayers who are currently delinquent, together  
119 with any relevant information which in the opinion of the Department may assist in the collection of  
120 such delinquent taxes. Notwithstanding any other provision of this section or other law, the Department,

upon request by the General Assembly or any duly constituted committee of the General Assembly, shall disclose the total aggregate amount of an income tax deduction or credit taken by all taxpayers, regardless of (i) how few taxpayers took the deduction or credit or (ii) any other circumstances. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

2. This section shall not prohibit the Department from disclosing whether a person, firm, or corporation is registered as a retail sales and use tax dealer pursuant to Chapter 6 (§ 58.1-600 et seq.) or whether a certificate of registration number relating to such tax is valid. Additionally, notwithstanding any other provision of law, the Department is hereby authorized to make available the names and certificate of registration numbers of dealers who are currently registered for retail sales and use tax.

3. This section shall not prohibit the Department from disclosing information to nongovernmental entities with which the Department has entered into a contract to provide services that assist it in the administration of refund processing or other services related to its administration of taxes.

4. This section shall not prohibit the Department from disclosing information to taxpayers regarding whether the taxpayer's employer or another person or entity required to withhold on behalf of such taxpayer submitted withholding records to the Department for a specific taxable year as required pursuant to subdivision C 1 of § 58.1-478.

5. This section shall not prohibit the commissioner of the revenue, treasurer, director of finance, or other similar local official who collects or administers taxes for a county, city, or town from disclosing information to nongovernmental entities with which the locality has entered into a contract to provide services that assist it in the administration of refund processing or other non-audit services related to its administration of taxes. The commissioner of the revenue, treasurer, director of finance, or other similar local official who collects or administers taxes for a county, city, or town shall not disclose information to such entity unless he has obtained a written acknowledgement by such entity that the confidentiality and nondisclosure obligations of and penalties set forth in subsection A apply to such entity and that such entity agrees to abide by such obligations.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to (i) divulge tax information to any commissioner of the revenue, director of finance, or other similar collector of county, city, or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon *entering into a written request agreement, such tax information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for as may be necessary to facilitate the administration of outreach and enrollment related to the federal earned income tax credit authorized in § 32 of the Internal Revenue Code and the income tax credit for low-income taxpayers authorized in § 58.1-339.8, child support services pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, and public assistance or social services benefits as defined in § 63.2-100*; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties, and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Virginia Alcoholic Beverage Control Authority, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the Virginia Lottery such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be

182 necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the  
183 Commissioner of the Department of Agriculture and Consumer Services such tax information as may be  
184 necessary to identify those applicants for registration as a supplier of charitable gaming supplies who  
185 have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing  
186 and Community Development for its confidential use such tax information as may be necessary to  
187 facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270  
188 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and  
189 address information to private collectors entering into a written agreement with the Tax Commissioner,  
190 for their confidential use when acting on behalf of the Commonwealth or any of its political  
191 subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private  
192 collector who has used or disseminated in an unauthorized or prohibited manner any such information  
193 previously provided to such collector; (xiv) provide current name and address information as to the  
194 identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any  
195 person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for  
196 injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or  
197 Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering  
198 into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid  
199 wages under § 40.1-29; (xvi) provide to the Director of the Department of Human Resource  
200 Management, upon entering into a written agreement, such tax information as may be necessary to  
201 identify persons receiving workers' compensation indemnity benefits who have failed to report earnings  
202 as required by § 65.2-712; (xvii) provide to any commissioner of the revenue, director of finance, or any  
203 other officer of any county, city, or town performing any or all of the duties of a commissioner of the  
204 revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list  
205 of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii)  
206 provide to the Executive Director of the Northern Virginia Transportation Commission for his  
207 confidential use such tax information as may be necessary to facilitate the collection of the motor  
208 vehicle fuel sales tax; (xix) provide to the Commissioner of Agriculture and Consumer Services the  
209 name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as  
210 subject to regulation by the Board of Agriculture and Consumer Services pursuant to § 3.2-5130; (xx)  
211 provide to the developer or the economic development authority of a tourism project authorized by  
212 § 58.1-3851.1, upon entering into a written agreement, tax information facilitating the repayment of gap  
213 financing; and (xxi) provide to the Virginia Retirement System and the Department of Human Resource  
214 Management, after entering into a written agreement, such tax information as may be necessary to  
215 facilitate the enforcement of subdivision C 4 of § 9.1-401. The Tax Commissioner is further authorized  
216 to enter into written agreements with duly constituted tax officials of other states and of the United  
217 States for the inspection of tax returns, the making of audits, and the exchange of information relating to  
218 any tax administered by the Department of Taxation. Any person to whom tax information is divulged  
219 pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he  
220 were a tax official.

221 D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the  
222 commissioner of revenue or other assessing official is authorized to (i) provide, upon written request  
223 stating the reason for such request, the chief executive officer of any county or city with information  
224 furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of  
225 any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the  
226 local sales and use tax revenues payable to the county or city; (ii) provide to the Department of  
227 Professional and Occupational Regulation for its confidential use the name, address, and amount of gross  
228 receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a  
229 profession or occupation administered by the Department of Professional and Occupational Regulation,  
230 only after the Department of Professional and Occupational Regulation exhausts all other means of  
231 obtaining such information; and (iii) provide to any representative of a condominium unit owners'  
232 association, property owners' association or real estate cooperative association, or to the owner of  
233 property governed by any such association, the names and addresses of parties having a security interest  
234 in real property governed by any such association; however, such information shall be released only  
235 upon written request stating the reason for such request, which reason shall be limited to proposing or  
236 opposing changes to the governing documents of the association, and any information received by any  
237 person under this subsection shall be used only for the reason stated in the written request. The treasurer  
238 or other local assessing official may require any person requesting information pursuant to clause (iii) of  
239 this subsection to pay the reasonable cost of providing such information. Any person to whom tax  
240 information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties  
241 prescribed herein as though he were a tax official.

242 Notwithstanding the provisions of subsection A or B or any other provisions of this title, the  
243 treasurer or other collector of taxes for a county, city or town is authorized to provide information

244 relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course  
245 of performing his duties to the commissioner of the revenue or other assessing official for such  
246 jurisdiction for use by such commissioner or other official in performing assessments.

247 This section shall not be construed to prohibit a local tax official from imprinting or displaying on a  
248 motor vehicle local license decal the year, make, and model and any other legal identification  
249 information about the particular motor vehicle for which that local license decal is assigned.

250 E. Notwithstanding any other provisions of law, state agencies and any other administrative or  
251 regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon  
252 written request, the name, address, and social security number of a taxpayer, necessary for the  
253 performance of the Commissioner's official duties regarding the administration and enforcement of laws  
254 within the jurisdiction of the Department of Taxation. The receipt of information by the Tax  
255 Commissioner or his agent which may be deemed taxpayer information shall not relieve the  
256 Commissioner of the obligations under this section.

257 F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published  
258 any confidential tax document which he knows or has reason to know is a confidential tax document. A  
259 confidential tax document is any correspondence, document, or tax return that is prohibited from being  
260 divulged by subsection A, B, C, or D and includes any document containing information on the  
261 transactions, property, income, or business of any person, firm, or corporation that is required to be filed  
262 with any state official by § 58.1-512. This prohibition shall not apply if such confidential tax document  
263 has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person  
264 violating the provisions of this subsection is guilty of a Class 1 misdemeanor.