20104990D

HOUSE BILL NO. 1472

Offered January 8, 2020
Prefiled January 8, 2020

A BILL to amend and reenact §§ 2.2-3705.3, 2.2-3711, 8.01-405, and 54.1-111 of the Code of Virginia; to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 45, containing articles numbered 1, 2, and 3, consisting of sections numbered 54.1-4500 through 54.1-4521; and to repeal Chapter 10 (§§ 17.1-1000 through 17.1-1005) of Title 17.1 of the Code of Virginia, relating to court reporters; Virginia Board for Court Reporters.

Patron—Miyares

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.3, 2.2-3711, 8.01-405, and 54.1-111 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 45, containing articles numbered 1, 2, and 3, consisting of sections numbered 54.1-4500 through 54.1-4521, as follows:

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

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth pursuant to § 54.1-108.

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

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

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this subdivision shall prevent the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

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

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and

INTRODUCED

Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is excluded by this subdivision, the information disclosed shall include the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

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

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

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

11. Information contained in (i) an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application, and (ii) an active investigation conducted by or for the Board of Education related to the denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel licenses including investigator notes and other correspondence and information, furnished in confidence with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a) application information to the applicant at his own expense or (b) investigation information to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The completed investigation information disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information regarding a current or former student shall be released except as permitted by state or federal law.

12. Information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, information related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses, or other individuals involved in the investigation.

13. Records of active investigations being conducted by the Virginia Board for Court Reporters pursuant to Chapter 45 (§ 54.1-4500 et seq.) of Title 54.1.

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

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

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve

discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

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

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

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

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

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

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

8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

9. Discussion or consideration by governing boards of public institutions of higher education of matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in the Commonwealth shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, the Fort Monroe Authority, and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private sources.

11. Discussion or consideration of honorary degrees or special awards.

12. Discussion or consideration of tests, examinations, or other information used, administered, or prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

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

14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing

body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

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

16. Discussion or consideration of medical and mental health records subject to the exclusion in subdivision 1 of § 2.2-3705.5.

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

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of meetings in which individual death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7, and those portions of meetings in which individual maternal death cases are discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8.

22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties

with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. Discussion or consideration by the Virginia Commonwealth University Health System Authority or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or disposition by the Authority of real property, equipment, or technology software or hardware and related goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of the Authority's medical and teaching staffs and qualifications for appointments thereto.

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

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.

26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, of trade secrets 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, *the Virginia Board for Court Reporters,* 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 information subject to the exclusion in 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 information subject to the exclusion in 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 information subject to the exclusion in subdivision 5 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. Discussion or consideration of confidential proprietary information and trade secrets developed and held by a local public body providing certain telecommunication services or cable television services and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

33. 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 information and trade secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6.

34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1.

35. 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 criminal investigative files subject to the exclusion in subdivision B 1 of § 2.2-3706.

36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of information or confidential matters subject to the exclusion in subdivision A 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.

37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port Authority.

38. 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 § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-3705.6 related to economic development.

40. Discussion or consideration by the Board of Education of information relating to the denial, suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

41. 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 information subject to the exclusion in subdivision 8 of § 2.2-3705.2.

42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable information of donors.

43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information contained in grant applications.

44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain proprietary information of a private entity provided to the Authority.

45. Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to investigations of applicants for licenses and permits and of licensees and permittees.

47. Discussion or consideration of grant or loan application records subject to the exclusion in subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of § 23.1-3133 or by the Virginia Research Investment Committee.

48. Discussion or development of grant proposals by a regional council established pursuant to Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity Board.

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii) individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to §§ 15.2-1627.5 and 63.2-1605.

50. Discussion or consideration by the Board of the Virginia Economic Development Partnership Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33 of § 2.2-3705.7.

51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of § 60.2-114.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a

closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

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

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

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

§ 8.01-405. Who may administer oath to witness.

A. Any person before whom a witness is to be examined may administer an oath to such witness. In addition, a clerk or deputy clerk may administer an oath to a witness in the presence and at the direction of a judge before whom the witness is to be examined.

B. A court reporter licensed pursuant to Chapter 45 (§ 54.1-4500 et seq.) of Title 54.1 may administer oaths and affirmations to witnesses and other persons upon confirmation of proper identification concerning any proceeding to be commenced or pending before him, whether the witness or other person is physically present or remotely present by teleconference, videoconference, or other remote means.

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.

A. It is unlawful for any person, partnership, corporation, or other entity to engage in any of the following acts:

1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.

2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

3. Making use of any titles, words, letters, or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.

5. Failing to register as a practitioner of a profession or occupation as required by statute or regulation.

6. Materially misrepresenting facts in an application for licensure, certification, or registration.

7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.

8. Violating any statute or regulation governing the practice of any profession or occupation regulated pursuant to this title.

9. Refusing to process a request, tendered in accordance with the regulations of the relevant health regulatory board or applicable statutory law, for patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice.

B. Any person who willfully engages in any unlawful act enumerated in this section is guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a 36-month period constitutes a Class 6 felony. In addition, any person convicted of any unlawful act enumerated in subdivisions A 1 through 8, for conduct that is within the purview of any regulatory board within the Department of Professional and Occupational Regulation, may be ordered by the court to pay restitution in accordance with §§ 19.2-305 through 19.2-305.4.

C. The Director of the Department of Professional and Occupational Regulation, or his designee, may issue a notice to any person violating the provisions of subdivisions A 1 through 5 or A 8 to cease and desist such activity.

D. In addition to the criminal penalties provided for in subsection B, the Department of Professional and Occupational Regulation ~~or~~, the Department of Health Professions, *or the Virginia Board for Court Reporters,* without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the

authority to enforce the provisions of subsection A and may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section and to recover a civil penalty of at least $200 but not more than $5,000 per violation, with each unlawful act constituting a separate violation; but in no event shall the civil penalties against any one person, partnership, corporation or other entity exceed $25,000 per year. Such proceedings shall be brought in the name of the Commonwealth by the appropriate Department in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

E. This section shall not be construed to prohibit or prevent the owner of patient records from (i) retaining copies of his patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice or (ii) charging a reasonable fee, in accordance with subsections B2, B3, B4, and B6 of § 8.01-413 or subsection J of § 32.1-127.1:03, for copies of patient records, as applicable under the circumstances.

F. Nothing in this section, nor §§ 13.1-543, 13.1-1102, 54.1-2902, and 54.1-2929, shall be construed to prohibit or prevent any entity of a type listed in § 13.1-542.1 or 13.1-1101.1, which employs or contracts with an individual licensed by a health regulatory board, from (i) practicing or engaging in the practice of a profession or occupation for which such individual is licensed, (ii) providing or rendering professional services related thereto through the licensed individual, or (iii) having a legitimate interest in enforcing the terms of employment or its contract with the licensed individual.

G. This section shall apply, mutatis mutandis, to all persons holding a multistate licensure privilege to practice nursing in the Commonwealth of Virginia.

CHAPTER 45.

COURT REPORTING.

Article 1.

General Provisions.

§ 54.1-4500. Definitions.

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

"Board" means the Virginia Board for Court Reporters.

"Court reporter" means any person who is engaged in the practice of providing court reporting services.

"Court reporting services" means the making of a verbatim recording by means of machine shorthand, voice writing, or electronic/digital recording of any testimony given under oath before, or for submission to, any (i) court, (ii) court-appointed referee or examiner, or (iii) board, commission, or other body created by law, or in any other proceeding where a verbatim record is required.

"Court reporting services provider" means a business, entity, firm, or person that provides or arranges for court reporting services.

"Executive Director" means the Executive Director of the Board.

"Legal proceeding" means a court proceeding, a deposition, an administrative hearing, an arbitration hearing, an examination under oath, or a sworn statement.

§ 54.1-4501. Virginia Board for Court Reporters; membership; terms; officers; meetings; expenses.

A. The Virginia Board for Court Reporters is established as an independent board in the executive branch of state government.

B. The Board shall consist of nine nonlegislative citizen members appointed by the Governor as follows:

1. Four members who are individual court reporters licensed pursuant to this chapter. The appointments may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Court Reporters Association, ensuring that each method described in this chapter is represented where possible;

2. Two members of the Virginia State Bar in good standing. The appointments may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia State Bar;

3. One member of the Judicial Council of Virginia. A list of nominations for this position shall be submitted to the Governor by the Executive Secretary of the Supreme Court of Virginia; and

4. Two citizen members.

Citizen members shall participate in all matters except decisions regarding the examination of applicants for licensure or decisions regarding the professional competence of licensees. Nominations for appointments shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the Virginia Court Reporters Association, the Virginia State Bar, or the Executive Secretary, respectively, of any vacancy other than by expiration, and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

C. After an initial staggering of terms, members of the Board shall serve for terms of four years. Each member shall serve until his successor is duly appointed and qualified.

D. The Board shall elect a chair and vice-chair. No member shall be elected to serve more than two

consecutive years in the same office. A majority of the members of the Board shall constitute a quorum. Meetings of the Board shall be held upon the call of the chair or whenever a majority of the members so request.

E. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. The compensation and expenses shall be paid out of the funds of the Board. Reimbursement shall be made if available funds are sufficient for this purpose.

§ 54.1-4502. Powers and duties of the Board; maintenance of registry.

A. The Board shall have the power and duty to:

1. Establish the qualifications of applicants for licensure or registration, provided that all qualifications shall be necessary to ensure competence and integrity.

2. Examine, or cause to be examined, the qualifications of each applicant for licensure or registration.

3. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to (i) ensure continued competency; (ii) prevent deceptive or misleading practices; (iii) establish and maintain requirements for the ethical behavior of court reporters, including conflict-of-interest provisions, inappropriate relationships with a party or a party's attorney, and failure to honor an agreement or commitment to furnish transcripts by licensees and registrants; (iv) establish an apprenticeship program; and (v) effectively administer the regulatory system.

4. Levy and collect fees for the issuance, renewal, or reinstatement of licenses and registrations that are sufficient to cover all expenses of the administration and operation of the Board.

5. Initiate or receive complaints concerning the conduct of licensees or registrants or concerning their violation of the provisions of this chapter or regulations promulgated by the Board, and to take appropriate disciplinary action if warranted.

6. Revoke, suspend, or refuse to renew or reinstate a license or registration for just cause as prescribed by the Board.

7. Establish continuing professional educational requirements as a condition for issuance, renewal, or reinstatement of a license or registration.

8. Enter into contracts necessary or convenient for carrying out the provisions of this chapter or the functions of the Board.

9. Do all things necessary and convenient for carrying into effect this chapter and regulations promulgated by the Board.

B. The Board shall maintain and make available to the public a current registry of registered court reporting services providers, licensed court reporters, apprentice court reporters, and court reporters on inactive status.

§ 54.1-4503. Biennial report.

The Board shall submit a biennial report to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain, at a minimum, the following information: (i) a summary of the Board's fiscal affairs, (ii) a description of the Board's activities, (iii) statistical information regarding the administrative hearings and decisions of the Board, and (iv) a general summary of all complaints received against licensees and registrants and the procedures used to resolve the complaints.

§ 54.1-4504. Liability of Board members.

All members of the Board shall be immune from civil liability while acting within the scope of their duties.

§ 54.1-4505. Executive Director; powers and duties; legal counsel.

A. The Board shall employ an Executive Director who shall serve at the pleasure of the Board. The Executive Director shall direct the affairs of the Board; keep records of all proceedings, transactions, communications, and official acts of the Board; be custodian of all records of the Board; and perform such duties as the Board may require. The Executive Director, with approval of the Board, may employ such additional staff as needed. The annual salary of the Executive Director shall be established by the Board.

B. Within the parameters of policies and guidelines established by the Board, the Executive Director shall have the power and duty to:

1. Employ personnel and assistance necessary for the operation of the Board and the purposes of this chapter;

2. Make and enter into all contracts and agreements necessary or incidental to the performance of the duties of the Board and the execution of its powers under this chapter;

3. Accept grants from the United States government, its agencies and instrumentalities, and any other source, and to these ends the Board shall have the power to comply with conditions and execute agreements that are necessary, convenient, or desirable;

4. Serve as the secretary of the Board;

5. Maintain all records of the Board and make such records available to the public;

6. Collect and account for all fees and deposit them into the Board for Court Reporters Fund, from which the expenses of the Board shall be paid;

7. Enforce all statutes and regulations the Executive Director is required to administer;

8. Exercise other powers necessary to function as the sole administrative officer of the Board; and

9. Perform any additional administrative functions prescribed by the Board.

C. The Office of the Attorney General shall provide counsel to the Board. In addition, subject to the approval of the Attorney General, the Board may, from time to time, employ such other counsel as it deems necessary.

Article 2.

Licensure and Registration.

§ 54.1-4506. License required.

Beginning July 1, 2021, no person shall engage in, or offer to engage in, work as a court reporter or otherwise provide court reporting services unless he has been licensed pursuant to the provisions of this chapter.

§ 54.1-4507. Issuance of license to persons engaged in the practice of providing court reporting services prior to July 1, 2020.

The Board shall issue a license as a court reporter to any of the following applicants upon payment of a fee in an amount determined by the Board, unless the applicant is found by the Board to have engaged in any act that would constitute grounds for disciplinary action:

1. Any applicant applying prior to January 31, 2021, who is engaged in the practice of court reporting in the Commonwealth prior to July 1, 2020, and who provides to the Board an affidavit setting forth past education and work experience as a court reporter and an affidavit attesting to the court reporter's proficiency in court reporting of either (i) a judge for whom the person has worked as an official court reporter or (ii) three licensed attorneys, unrelated by blood or marriage to the person, who have utilized the services of the court reporter.

2. Any applicant who is a member in good standing with the Virginia Court Reporters Association (VCRA) and who holds a valid VCRA certified court reporter designation on July 1, 2020.

3. Any applicant who has passed on or before July 1, 2020, (i) the National Court Reporters Association registered professional reporter examination (RPR), (ii) the National Verbatim Reporters Association certified verbatim reporter examination (CVR or CVR-S), or (iii) the American Association of Electronic Reporters and Transcribers certified electronic reporter (CER) examination.

§ 54.1-4508. Qualification for licensure; use of court reporter's license number.

A. To be licensed as a court reporter, an applicant shall submit proof of passage of the National Court Reporters Association registered professional reporter examination (RPR), the National Verbatim Reporters Association certified verbatim reporter examination (CVR or CVR-S), or the American Association of Electronic Reporters and Transcribers certified electronic reporter (CER) examination.

B. Any court reporter who has been working in another jurisdiction for more than two years shall submit to the Board sufficient proof of such work, as set forth by the Board, and of his proficiency in court reporting before licensure is issued.

C. Applications for licensure shall be signed and sworn by the applicants and submitted on forms furnished by the Board. All applicants who are found qualified to engage in the practice of court reporting pursuant to this chapter shall be issued a license as a court reporter and a license number. The license shall be valid for two years from the date of issuance.

D. No court reporter may authorize use of the court reporter's license number on any transcript not produced through the court reporter's personal effort or supervision.

§ 54.1-4509. Apprenticeship program.

A. The Board shall develop an apprenticeship program designed to provide on-the-job training for individuals who do not meet the qualifications for issuance of a license pursuant to §§ 54.1-4507 and 54.1-4508. The apprenticeship program shall require that the training and oversight for each participant is administered by a court reporter licensed in the Commonwealth under this chapter or a business, firm, entity, or person registered pursuant to § 54.1-4513. The Board shall determine and promulgate the guidelines for such apprenticeship.

B. Upon completion of the apprenticeship, the court reporter or the business, firm, entity, or person registered pursuant to § 54.1-4513 shall attest to the ability of the apprenticeship program participant. Individuals who have successfully completed the apprenticeship program shall be qualified to apply for licensure as a court reporter.

§ 54.1-4510. Reciprocal agreements; nonresident license.

A. The Board may enter into reciprocal agreements with any state, agency, or other entity that licenses, certifies, or registers court reporters, including the National Court Reporters Association, the National Verbatim Reporters Association, or the American Association of Electronic Reporters and

Transcribers, if the Board finds that the state, agency, or other entity has substantially the same requirements as or more stringent requirements than the Board.

B. The Board may establish provisions for a nonresident license to allow a person who is not a resident of the Commonwealth and who desires to provide court reporting services for any proceeding, regardless of the jurisdiction of the action.

§ 54.1-4511. Continuing education; change of address notification.

A. The Board shall require continuing education as a condition for license renewal. In order to maintain licensure, all licensed court reporters will be required to obtain a minimum of two continuing education credits over a two-year period in courses approved by the Board or in compliance with the continuing education requirements of approved national or state associations. The two-year period shall begin on July 1 of the year during which the reporter is initially licensed. No credits may be carried over to the following two-year term.

B. Licensees shall notify the Board in writing of any change of address within 30 days of the change.

§ 54.1-4512. Inactive status.

The Board shall establish an inactive status for persons who are not actively engaged in the practice of court reporting. The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required. An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license is exempt from any continuing education requirement for renewal of an active license. The renewal fee for a license or certification in an active status shall also apply to a renewal or a license or certification in an inactive status, unless a lesser renewal fee is specified by the Board. In order for the holder of an inactive license to restore his license to an active status, the holder of an inactive license shall pay the required renewal fee and complete the continuing education equivalent, if required by the Board, for renewal of an active license, unless a different requirement is specified by the Board.

§ 54.1-4513. Court reporting services providers; registration required.

Any business, entity, firm, or person that provides or arranges for court reporting services in the Commonwealth shall be required to register with the Board as a court reporting services provider.

§ 54.1-4514. License and registration fees.

A. The Board shall establish license and registration fees in an amount providing sufficient revenues to pay all the costs and expenses incurred by the Board necessary to enforce the provisions of this chapter.

B. All fees and civil penalties collected under the provisions of this chapter shall be deposited into the Board for Court Reporters Fund as established in § 54.1-4515.

§ 54.1-4515. Board for Court Reporters Fund; receipts; disbursements.

A. The Board for Court Reporters Fund (the Fund) is established as a special fund in the state treasury. All fees collected as provided in this chapter and regulations promulgated by the Board shall be paid into the state treasury immediately upon collection and credited to the Fund. Any interest income shall accrue to the Fund. All disbursements from the Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Board or the Executive Director as authorized by the Board.

B. Notwithstanding any law to the contrary, the Board shall have the discretion to use the moneys in the Fund to support its operations as the Board deems appropriate.

C. Any funds remaining in the Fund at the end of each year in excess of $250,000 shall be available to provide for the education and training of court reporters or to assist indigent parties in obtaining transcripts, as may be determined by the Board. At all times, the Board may retain a sum not in excess of $250,000 to meet any emergency that may affect the efficient operation of the Board. No funds shall be withdrawn or expended except as budgeted and allocated pursuant to this chapter and only in amounts as stipulated in the general appropriation act or other appropriation bill.

Article 3.

Prohibited Conduct; Penalties.

§ 54.1-4516. Prohibited actions; exception.

A. A licensed court reporter or registered court reporting services provider shall not:

1. Authorize the use of the court reporter's license number on any transcript not produced through the court reporter's personal effort or supervision;

2. Engage in fraudulent, deceitful, negligent, or incompetent conduct in the practice of the profession;

3. Enter into an oral or written contractual agreement for more than one case, action, or legal proceeding with any party, any insurance company, or any other person or entity that has a financial interest in the case, action, or legal proceeding. This prohibition does not apply to a contract for the provision of court reporting services between a court reporter or court reporting services provider and

an attorney or law firm that is counsel of record in one or more cases, actions, or legal proceedings;

4. Give an economic or other advantage to a party or a party's attorney, representative, agent, insurer, or employee without offering the advantage to all parties or fail to offer comparable services, prices, or financial terms to all parties, except that different credit terms may be offered on the basis of payment experience and creditworthiness;

5. Offer or provide court reporting services if payment for those services is made contingent on the outcome of the legal proceeding, base the compensation for the court reporting services on the outcome of the legal proceeding, or otherwise give the court reporter or court reporting services provider a financial interest in the action;

6. Enter into an agreement for court reporting services that restricts an attorney from using the court reporter or court reporting services provider of the attorney's choosing;

7. Enter into an oral or written contractual agreement with any party, any insurance company, or any other person or entity that has a financial interest in the case, action, or legal proceeding to include a court reporter or court reporting services provider on a list of preferred providers of court reporting services that is maintained by a person, business, entity, or firm that has entered into an oral or written contractual agreement for more than one case, action, or legal proceeding with any attorney, party, insurance company, third-party administrator, or other person or entity that has a financial interest in the case, action, or legal proceeding. This prohibition does not apply to a contract between a court reporter or court reporting services provider and an attorney or law firm to include such court reporter or court reporting services provider on a list of preferred providers maintained by such attorney or law firm;

8. Allow the format, content, or body of a certified transcript as submitted by the court reporter to be manipulated in a manner that increases the cost of the transcript; or

9. Provide additional advocacy or litigation support services, including trial preparation assistance, deposition summaries, and nonpublished transcript databases.

B. Notwithstanding subdivisions A 3, 4, 5, 6, 7, 8, and 9, if authorized or required by law, ordinance, or rule, a governmental entity may obtain court reporting services on a long-term basis through competitive bidding.

§ 54.1-4517. Comparable treatment of parties.

A. At any time during or following a legal proceeding, an attorney or a party is entitled to an itemized statement of the rates and charges for all services that have been or will be provided by a court reporter or court reporting services provider that is providing court reporting services to any party to the legal proceeding.

B. Upon request, a court reporter or court reporting services provider shall provide to the parties, if known, information on prices, terms, and conditions of court reporting services in sufficient time prior to the commencement of the legal proceeding to allow the parties the opportunity to effectively negotiate for any changes necessary to ensure that comparable terms and conditions are made available to all parties.

C. Upon request, a court reporter or court reporting services provider shall provide an itemized invoice of all rates and charges for court reporting services provided in the administrative body, court, or administrative tribunal in which the action upon which the legal proceeding is based is pending or scheduled to be heard.

§ 54.1-4518. Pro bono services.

Nothing in this article shall be construed to limit the ability of a court reporter or court reporting services provider to provide pro bono services to persons or parties with limited means.

§ 54.1-4519. Complaints; violations to be made public.

A. Any person harmed by a violation of § 54.1-4516 or 54.1-4517 may submit a complaint alleging the violation to the Board. Such a complaint may also be submitted by any person with knowledge of the alleged violation, including by the administrative body, court, or administrative tribunal before which the alleged violation occurred.

B. Every violation found by the Board resulting of a complaint pursuant to this section shall be made available to the public.

§ 54.1-4520. Civil penalty.

A. Any court reporter or court reporting services provider that violates any statute or regulation pertaining to the Board and that is not criminally prosecuted shall be subject to the civil penalty provided in this section.

B. If a regulatory board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the civil penalty for the violation, which shall not exceed $2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth and deposited into the Board for Court Reporters Fund.

§ 54.1-4521. Reviews and appeals.

Any person who has been aggrieved by any action of the Board shall be entitled to a review of such

action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2. That Chapter 10 (§§ 17.1-1000 through 17.1-1005) of Title 17.1 of the Code of Virginia is repealed.

3. That the initial terms of members of the Virginia Board for Court Reporters, as created by this act, appointed by the Governor shall be staggered as follows: three members shall be appointed for terms of one year, three members shall be appointed for terms of two years, and three members shall be appointed for terms of three years.

4. That the Virginia Board for Court Reporters, as created by this act, shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

5. That on or before August 1, 2020, a list of nominations for each position to be appointed by the Governor in accordance with § 54.1-4501 of the Code of Virginia, as created by this act, shall be submitted by the designated organization.