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**SENATE BILL NO. 942**

Offered January 13, 2020

*A BILL to amend and reenact §§ 2.2-3711, 18.2-334.3, 19.2-389, as it is currently effective and as it shall become effective, 58.1-4000, 58.1-4002, 58.1-4006, 58.1-4007, 58.1-4012, 58.1-4027, 59.1-365, and 59.1-392 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 11 a section numbered 11-16.1, by adding in Chapter 40 of Title 58.1 an article numbered 2, consisting of sections numbered 58.1-4030 through 58.1-4050, and by adding a section numbered 59.1-354.1, relating to historical horse racing; transfer of regulatory authority from the Virginia Racing Commission to the Virginia Lottery Board.*

Patron—Ruff

Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3711, 18.2-334.3, 19.2-389, as it is currently effective and as it shall become effective, 58.1-4000, 58.1-4002, 58.1-4006, 58.1-4007, 58.1-4012, 58.1-4027, 59.1-365, and 59.1-392 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 11 a section numbered 11-16.1, by adding in Chapter 40 of Title 58.1 an article numbered 2, consisting of sections numbered 58.1-4030 through 58.1-4050, and by adding a section numbered 59.1-354.1 as follows:**

**§ 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

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59 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be  
60 construed to permit the closure of a meeting merely because an attorney representing the public body is  
61 in attendance or is consulted on a matter.

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

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

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

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

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

86 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to  
87 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing  
88 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating  
89 position of the governing body or the establishment of the terms, conditions and provisions of the siting  
90 agreement, or both. All discussions with the applicant or its representatives may be conducted in a  
91 closed meeting.

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

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

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

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

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

114 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or  
115 of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of  
116 trustees of a trust established by one or more local public bodies to invest funds for postemployment  
117 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title  
118 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the  
119 Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,  
120 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, 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

182 defined in § 33.2-1800, or any independent review panel appointed to review information and advise  
183 the responsible public entity concerning such records.

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

188 30. Discussion or consideration of grant or loan application information subject to the exclusion in  
189 subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation  
190 and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory  
191 Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

192 31. Discussion or consideration by the Commitment Review Committee of information subject to the  
193 exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually  
194 violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

195 32. Discussion or consideration of confidential proprietary information and trade secrets developed  
196 and held by a local public body providing certain telecommunication services or cable television services  
197 and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this  
198 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et  
199 seq.).

200 33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless  
201 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets  
202 subject to the exclusion in subdivision 19 of § 2.2-3705.6.

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

205 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee  
206 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative  
207 files subject to the exclusion in subdivision B 1 of § 2.2-3706.

208 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of  
209 information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and  
210 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and  
211 consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or  
212 recover scholarship awards.

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

216 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting  
217 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,  
218 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College  
219 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment  
220 Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in  
221 subdivision 24 of § 2.2-3705.7.

222 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of  
223 § 2.2-3705.6 related to economic development.

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

226 41. Those portions of meetings of the Virginia Military Advisory Council or any commission created  
227 by executive order for the purpose of studying and making recommendations regarding preventing  
228 closure or realignment of federal military and national security installations and facilities located in  
229 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization  
230 appointed by a local governing body, during which there is discussion of information subject to the  
231 exclusion in subdivision 8 of § 2.2-3705.2.

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

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

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

242 45. Discussion or consideration of personal and proprietary information related to the resource  
243 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.

52. *Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007 regarding the denial of, revocation of, suspension of, or refusal to renew a license related to historical horse racing and any discussion, consideration, or review of matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.*

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.

**§ 11-16.1. Exemption; play of historical horse racing.**

*This chapter shall not apply to the play of historical horse racing or related activity that is lawful under Article 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1 or to any contract, conduct, or transaction arising from conduct lawful thereunder.*

**§ 18.2-334.3. Exemptions to article; state lottery.**

Nothing in this article shall apply to any:

1. Any lottery conducted by the Commonwealth of Virginia pursuant to Article 1 (§ 58.1-4000 et seq.) of Chapter 40 of Title 58.1; or

2. The play of historical horse racing or related activity that is lawful under Article 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1.

**§ 19.2-389. (Effective until January 1, 2021) Dissemination of criminal history record**

**305 information.**

**306** A. Criminal history record information shall be disseminated, whether directly or through an  
**307** intermediary, only to:

**308** 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for  
**309** purposes of the administration of criminal justice and the screening of an employment application or  
**310** review of employment by a criminal justice agency with respect to its own employees or applicants, and  
**311** dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all  
**312** state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,  
**313** 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For  
**314** purposes of this subdivision, criminal history record information includes information sent to the Central  
**315** Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time  
**316** or part-time employee of the State Police, a police department or sheriff's office that is a part of or  
**317** administered by the Commonwealth or any political subdivision thereof, and who is responsible for the  
**318** prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the  
**319** Commonwealth for the purposes of the administration of criminal justice;

**320** 2. Such other individuals and agencies that require criminal history record information to implement  
**321** a state or federal statute or executive order of the President of the United States or Governor that  
**322** expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such  
**323** conduct, except that information concerning the arrest of an individual may not be disseminated to a  
**324** noncriminal justice agency or individual if an interval of one year has elapsed from the date of the  
**325** arrest and no disposition of the charge has been recorded and no active prosecution of the charge is  
**326** pending;

**327** 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide  
**328** services required for the administration of criminal justice pursuant to that agreement which shall  
**329** specifically authorize access to data, limit the use of data to purposes for which given, and ensure the  
**330** security and confidentiality of the data;

**331** 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities  
**332** pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,  
**333** limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and  
**334** security of the data;

**335** 5. Agencies of state or federal government that are authorized by state or federal statute or executive  
**336** order of the President of the United States or Governor to conduct investigations determining  
**337** employment suitability or eligibility for security clearances allowing access to classified information;

**338** 6. Individuals and agencies where authorized by court order or court rule;

**339** 7. Agencies of any political subdivision of the Commonwealth, public transportation companies  
**340** owned, operated or controlled by any political subdivision, and any public service corporation that  
**341** operates a public transit system owned by a local government for the conduct of investigations of  
**342** applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is  
**343** necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a  
**344** conviction record would be compatible with the nature of the employment, permit, or license under  
**345** consideration;

**346** 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of  
**347** Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a  
**348** position of employment whenever, in the interest of public welfare or safety and as authorized in the  
**349** Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person  
**350** with a conviction record would be compatible with the nature of the employment under consideration;

**351** 8. Public or private agencies when authorized or required by federal or state law or interstate  
**352** compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the  
**353** adult members of that individual's household, with whom the agency is considering placing a child or  
**354** from whom the agency is considering removing a child due to abuse or neglect, on an emergency,  
**355** temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
**356** the data shall not be further disseminated to any party other than a federal or state authority or court as  
**357** may be required to comply with an express requirement of law;

**358** 9. To the extent permitted by federal law or regulation, public service companies as defined in  
**359** § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
**360** personal contact with the public or when past criminal conduct of an applicant would be incompatible  
**361** with the nature of the employment under consideration;

**362** 10. The appropriate authority for purposes of granting citizenship and for purposes of international  
**363** travel, including, but not limited to, issuing visas and passports;

**364** 11. A person requesting a copy of his own criminal history record information as defined in  
**365** § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a  
**366** person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of

America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.) and historical horse racing as set forth in Article 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1, and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to

428 §§ 37.2-506 and 37.2-607;

429 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
430 determining an individual's fitness for employment, approval as a sponsored residential service provider,  
431 or permission to enter into a shared living arrangement with a person receiving medical assistance  
432 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

433 28. The Commissioner of Social Services for the purpose of locating persons who owe child support  
434 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the  
435 name, address, demographics and social security number of the data subject shall be released;

436 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
437 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
438 purpose of determining if any applicant who accepts employment in any direct care position or requests  
439 approval as a sponsored residential service provider or permission to enter into a shared living  
440 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted  
441 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with  
442 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and  
443 37.2-607;

444 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
445 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
446 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

447 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates  
448 for the purpose of determining if any person being considered for election to any judgeship has been  
449 convicted of a crime;

450 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
451 determining an individual's fitness for employment in positions designated as sensitive under Department  
452 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

453 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under  
454 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually  
455 Violent Predators Act (§ 37.2-900 et seq.);

456 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,  
457 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary  
458 companies, for the conduct of investigations of applications for employment or for access to facilities,  
459 by contractors, leased laborers, and other visitors;

460 35. Any employer of individuals whose employment requires that they enter the homes of others, for  
461 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

462 36. Public agencies when and as required by federal or state law to investigate (i) applicants as  
463 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
464 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
465 subject to the restriction that the data shall not be further disseminated by the agency to any party other  
466 than a federal or state authority or court as may be required to comply with an express requirement of  
467 law for such further dissemination, subject to limitations set out in subsection G;

468 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
469 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
470 or have accepted a position related to the provision of transportation services to enrollees in the  
471 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other  
472 program administered by the Department of Medical Assistance Services;

473 38. The State Corporation Commission for the purpose of investigating individuals who are current  
474 or proposed members, senior officers, directors, and principals of an applicant or person licensed under  
475 Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any  
476 other provision of law, if an application is denied based in whole or in part on information obtained  
477 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the  
478 Commissioner of Financial Institutions or his designee may disclose such information to the applicant or  
479 its designee;

480 39. The Department of Professional and Occupational Regulation for the purpose of investigating  
481 individuals for initial licensure pursuant to § 54.1-2106.1;

482 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and  
483 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment  
484 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11  
485 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

486 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

487 42. The State Treasurer for the purpose of determining whether a person receiving compensation for  
488 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

489 43. The Department of Social Services and directors of local departments of social services for the



purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

45. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

**§ 19.2-389. (Effective January 1, 2021) Dissemination of criminal history record information.**

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,

3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved

by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.) and historical horse racing as set forth in Article 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1, and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

45. The State Corporation Commission, for the purpose of screening applicants for insurance licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2; and

46. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

#### CHAPTER 40.

### VIRGINIA LOTTERY LAW; HISTORICAL HORSE RACING.

#### Article 1.

#### *Powers and Duties of Virginia Lottery Board; Administration of Tickets and Prizes.*

#### **§ 58.1-4000. Short title.**

This chapter article shall be known and may be cited as the "Virginia Lottery Law."

#### **§ 58.1-4002. Definitions.**

For the purposes of this chapter:

"Board" means the Virginia Lottery Board established by this chapter.

"Department" means the independent agency responsible for the administration of the Virginia Lottery created in this chapter article and the regulation of historical horse racing pursuant to Article 2 (§ 58.1-4030 et seq.).

"Director" means the Director of the Virginia Lottery.

"Lottery" or "state lottery" means the lottery or lotteries established and operated pursuant to this

797 chapter.

798 "Ticket courier service" means a service operated for the purpose of purchasing Virginia Lottery  
799 tickets on behalf of individuals located within or outside the Commonwealth and delivering or  
800 transmitting such tickets, or electronic images thereof, to such individuals as a business-for-profit  
801 delivery service.

802 **§ 58.1-4006. Powers of the Director.**

803 A. The Director shall supervise and administer ~~the~~:

804 1. *The operation of the lottery in accordance with the provisions of this ~~chapter~~ article and with the*  
805 *rules and regulations promulgated hereunder; and*

806 2. *The regulation of historical horse racing in accordance with Article 2 (§ 58.1-4030 et seq.).*

807 B. The Director shall also:

808 1. Employ such deputy directors, professional, technical and clerical assistants, and other employees  
809 as may be required to carry out the functions and duties of the Department.

810 2. Act as secretary and executive officer of the Board.

811 3. Require bond or other surety satisfactory to the Director from licensed agents as provided in  
812 subsection E of § 58.1-4009 and Department employees with access to Department funds or lottery  
813 funds, in such amount as provided in the rules and regulations of the Board. The Director may also  
814 require bond from other employees as he deems necessary.

815 4. Confer regularly, but not less than four times each year, with the Board on the operation and  
816 administration of the lottery *and the regulation of historical horse racing*; make available for inspection  
817 by the Board, upon request, all books, records, files, and other information and documents of the  
818 Department; and advise the Board and recommend such matters as he deems necessary and advisable to  
819 improve the operation and administration of the lottery *and the regulation of historical horse racing*.

820 5. Suspend, revoke, or refuse to renew any license issued pursuant to this ~~chapter~~ article or the rules  
821 and regulations adopted hereunder.

822 6. Enter into contracts for the operation of the lottery, or any part thereof, for the promotion of the  
823 lottery and into interstate lottery contracts with other states. A contract awarded or entered into by the  
824 Director shall not be assigned by the holder thereof except by specific approval of the Director.

825 7. Certify monthly to the State Comptroller and the Board a full and complete statement of lottery  
826 revenues, prize disbursements and other expenses for the preceding month.

827 8. Report monthly to the Governor, the Secretary of Finance, and the Chairmen of the Senate  
828 *Committee on Finance* ~~Committee~~, *House Committee on Finance* ~~Committee~~ and *House Committee on*  
829 *Appropriations* ~~Committee~~ the total lottery revenues, prize disbursements, and other expenses for the  
830 preceding month, and make an annual report, which shall include a full and complete statement of  
831 lottery revenues, prize disbursements, and other expenses, to the Governor and the General Assembly.  
832 Such annual report shall also include such recommendations for changes in this ~~chapter~~ article as the  
833 Director and Board deem necessary or desirable.

834 9. Report immediately to the Governor and the General Assembly any matters ~~which~~ *that* require  
835 immediate changes in the laws of this Commonwealth in order to prevent abuses and evasions of this  
836 chapter or the rules and regulations adopted hereunder or to rectify undesirable conditions in connection  
837 with the administration or operation of the lottery *or the regulation of historical horse racing*.

838 10. Notify prize winners and appropriate state and federal agencies of the payment of prizes in  
839 excess of \$600 in the manner required by the lottery rules and regulations.

840 11. Provide for the withholding of the applicable amount of state and federal income tax of persons  
841 claiming a prize for a winning ticket in excess of \$5,001.

842 C. The Director and the director of security or investigators appointed by the Director shall be vested  
843 with the powers of sheriff and sworn to enforce the statutes and regulations pertaining to the Department  
844 and to investigate violations of the statutes and regulations that the Director is required to enforce.

845 D. The Director may authorize temporary bonus or incentive programs for payments to licensed sales  
846 agents ~~which~~ *that* he determines will be cost effective and support increased sales of lottery products.

847 **§ 58.1-4007. Powers of the Board.**

848 A. The Board shall have the power to adopt regulations governing the establishment and operation of  
849 a lottery *pursuant to this article and the regulation of historical horse racing pursuant to Article 2*  
850 *(§ 58.1-4030 et seq.)*. The regulations governing the establishment and operation of the lottery *and the*  
851 *regulation of historical horse racing* shall be promulgated by the Board after consultation with the  
852 Director. Such regulations shall be in accordance with the Administrative Process Act (§ 2.2-4000 et  
853 seq.). The regulations shall provide for all matters necessary or desirable for the efficient, honest, and  
854 economical operation and administration of the lottery *and regulation of historical horse racing* and for  
855 the convenience of the purchasers of tickets or shares, ~~and~~ the holders of winning tickets or shares, *and*  
856 *the players of historical horse racing*. The regulations, which may be amended, repealed, or  
857 supplemented as necessary, shall include, but not be limited to, the following:

858 1. The type or types of lottery or game to be conducted in accordance with § 58.1-4001.

2. The price or prices of tickets or shares in the lottery.
3. The numbers and sizes of the prizes on the winning tickets or shares, including informing the public of the approximate odds of winning and the proportion of lottery revenues (i) disbursed as prizes and (ii) returned to the Commonwealth as net revenues.
4. The manner of selecting the winning tickets or shares.
5. The manner of payment of prizes to the holders of winning tickets or shares.
6. The frequency of the drawings or selections of winning tickets or shares without limitation.
7. Without limitation as to number, the type or types of locations at which tickets or shares may be sold.
8. The method to be used in selling tickets or shares.
9. The advertisement of the lottery in accordance with the provisions of subsection E of § 58.1-4022.
10. The licensing of agents to sell tickets or shares who will best serve the public convenience and promote the sale of tickets or shares. No person under the age of 18 shall be licensed as an agent. A licensed agent may employ a person who is 16 years of age or older to sell or otherwise vend tickets at the agent's place of business so long as the employee is supervised in the selling or vending of tickets by the manager or supervisor in charge at the location where the tickets are being sold. Employment of such person shall be in compliance with Chapter 5 (§ 40.1-78 et seq.) of Title 40.1.
11. The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public. Notwithstanding the provisions of this subdivision, the Board shall not be required to approve temporary bonus or incentive programs for payments to licensed sales agents.
12. Apportionment of the total revenues accruing from the sale of tickets or shares and from all other sources and establishment of the amount of the special reserve fund as provided in § 58.1-4022 of this chapter.
13. Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery.
14. *The operation of historical horse racing pursuant to Article 2 (§ 58.1-4030 et seq.).*
- The Department shall not be subject to the provisions of Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2; however, the Board shall promulgate regulations, after consultation with the Director, relative to departmental procurement which include standards of ethics for procurement consistent with the provisions of Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 and which ensure that departmental procurement will be based on competitive principles.
- The Board shall have the power to advise and recommend, but shall have no power to veto or modify administrative decisions of the Director. However, the Board shall have the power to accept, modify or reject any revenue projections before such projections are forwarded to the Governor.
- B. The Board shall carry on a continuous study and investigation of the lottery *and historical horse racing* throughout the Commonwealth to:
1. Ascertain any defects of this chapter or the regulations issued hereunder which cause abuses in the administration and operation of the lottery *or the regulation of historical horse racing* and any evasions of such provisions.
  2. Formulate, with the Director, recommendations for changes in this chapter and the regulations promulgated hereunder to prevent such abuses and evasions.
  3. Guard against the use of this chapter and the regulations promulgated hereunder as a subterfuge for organized crime and illegal gambling.
  4. Ensure that this law and the regulations of the Board are in such form and are so administered as to serve the true purpose of this chapter.
- C. The Board shall make a continuous study and investigation of (i) the operation and the administration of similar laws ~~which~~ *that* may be in effect in other states or countries, (ii) any literature on the subject ~~which~~ *that* may be published or available, (iii) any federal laws ~~which~~ *that* may affect the operation of the lottery *or historical horse racing*, and (iv) the reaction of Virginia citizens to the potential features of the lottery *or historical horse racing* with a view to recommending or effecting changes that will serve the purpose of this chapter.
- D. The Board shall hear and decide an appeal of any denial by the Director of the licensing or revocation of a license of a lottery agent pursuant to subdivision A 10 ~~of subsection A of this section~~ and subdivision B 5 ~~of subsection B of § 58.1-4006 of this chapter~~. *The Board shall also hear and decide an appeal of any penalty, any denial by the Director of a license or renewal, or any suspension or revocation of a license imposed by the Director pursuant to Article 2 (§ 58.1-4030 et seq.).*
- E. The Board shall have the authority to initiate procedures for the planning, acquisition, and construction of capital projects as set forth in Article 4 (§ 2.2-1129 et seq.) of Chapter 11 and Article 3 (§ 2.2-1819 et seq.) of Chapter 18 of Title 2.2.
- § 58.1-4012. Suspension and revocation of licenses.**

920 The Director may suspend, revoke, or refuse to renew, after notice and a hearing, any license issued  
 921 pursuant to this chapter. Such license may, however, be temporarily suspended by the Director without  
 922 prior notice, pending any prosecution, hearing or investigation, whether by a third party or by the  
 923 Director. A license may be suspended, revoked or refused renewal by the Director for one or more of  
 924 the following reasons:

- 925 1. Failure to properly account for lottery tickets received or the proceeds of the sale of lottery tickets;
- 926 2. Failure to file a bond if required by the Director or to comply with instructions and rules and  
 927 regulations of the Department concerning the licensed activity, especially with regard to the prompt  
 928 payment of claims;
- 929 3. Conviction of any offense referenced in subsection C of § 58.1-4009 subsequent to licensure;
- 930 4. Failure to file any return or report, to keep records or to pay any fees or other charges required by  
 931 this chapter;
- 932 5. Any act of fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the  
 933 Commonwealth lottery *or the administration and regulation of historical horse racing*;
- 934 6. If the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative  
 935 costs and public convenience is adequately served by other licensees;
- 936 7. A material change, since issuance of the license, with respect to any matters required to be  
 937 considered by the Director under this chapter; ~~or~~
- 938 8. *Failure to pay any fees or penalties required by this chapter; or*
- 939 9. Other factors established by Department regulation.

940 **§ 58.1-4027. Judicial review.**

941 The action of the Board in (i) granting; ~~or in refusing to grant, in or denying a license or~~  
 942 ~~registration or suspending or revoking any license or registration under the provisions of this chapter~~  
 943 ~~article and (ii) granting, denying, suspending, or revoking any license or imposing any penalty pursuant~~  
 944 ~~to Article 2 (§ 58.1-4030 et seq.) shall be subject to review in accordance with the provisions of the~~  
 945 ~~Administrative Process Act (§ 2.2-4000 et seq.). Such review shall be limited to the evidential record of~~  
 946 ~~the proceedings provided by the Board. Both the petitioner and the Board shall have the right to appeal~~  
 947 ~~to the Court of Appeals from any order of the court.~~

948 *Article 2.*

949 *Historical Horse Racing.*

950 **§ 58.1-4030. Definitions.**

951 *As used in this article:*

952 *"Applicant" means a person who has submitted an application to obtain a license to offer*  
 953 *pari-mutuel wagering on historical horse racing from the Director.*

954 *"Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a*  
 955 *multiple of \$0.10.*

956 *"Commission" means the Virginia Racing Commission.*

957 *"Historical horse racing" means a form of horse racing that creates pari-mutuel pools from wagers*  
 958 *placed on previously conducted horse races and is hosted at (i) a racetrack owned or operated by a*  
 959 *significant infrastructure limited licensee or (ii) a satellite facility that is owned or operated by (a) a*  
 960 *significant infrastructure limited licensee or (b) the nonprofit industry stakeholder organization*  
 961 *recognized by the Commission and licensed to own or operate such satellite facility.*

962 *"Independent testing laboratory" means a laboratory with a national reputation for honesty,*  
 963 *independence, and timeliness that is demonstratively competent and qualified to scientifically test and*  
 964 *evaluate devices for compliance with this article and to otherwise perform the functions assigned to it*  
 965 *by this article. An independent testing laboratory shall not be owned or controlled by a licensee, the*  
 966 *Commonwealth, or any manufacturer, supplier, or operator of historical horse racing terminals.*

967 *"Integrity auditor" means a company that conducts periodic and regular tests on the validity of*  
 968 *pari-mutuel wagering, deductions, and payout for the applicable historical horse racing event, including*  
 969 *the legitimacy of the event itself, and tests that the order of the finish of the race selected in the game is*  
 970 *valid, matches to the order of finish that occurred empirically, and that all runners that were listed as*  
 971 *entered into the race for the purposes of the game legitimately ran in the race.*

972 *"Licensee" means any person who holds an owner's or operator's license under Article 2 (§*  
 973 *59.1-375 et seq.) of Chapter 29 of Title 59.1 and who is granted a license by the Director under this*  
 974 *article to conduct pari-mutuel wagering on historical horse racing.*

975 *"Pari-mutuel wagering" means the system of wagering on horse races in which those who wager on*  
 976 *horses that finish in the position or positions for which wagers are taken share in the total amounts*  
 977 *wagered, plus any amounts provided by a licensee, less deductions required or permitted by law.*

978 *"Racetrack" means an outdoor course located in Virginia that is laid out for horse racing and is*  
 979 *licensed by the Commission under the provisions of Chapter 29 (§ 59.1-364 et seq.) of Title 59.1.*

980 *"Retainage" means the total amount deducted from the pari-mutuel wagering pool for (i) a license*  
 981 *fee to the Board and localities, (ii) the licensee, (iii) purse money for the participants, (iv) the Virginia*



Breeders Fund, and (v) certain enumerated organizations as required or permitted by law, regulation, or contract approved by the Commission.

"Satellite facility" means all areas of the property licensed under the provisions of Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 at which simulcast horse racing is received for the purposes of pari-mutuel wagering, and any additional areas designated by the Director for conducting pari-mutuel wagering on historical horse racing.

"Significant infrastructure limited licensee" means a person who owns or operates a significant infrastructure facility and holds a limited license under § 59.1-376.

**§ 58.1-4031. Powers and duties of the Director related to historical horse racing; reporting.**

A. The Director shall have the following additional powers and duties related to the regulation of historical horse racing:

1. Issue licenses under this article, and supervise all activities licensed under the provisions of this article.

2. Suspend, revoke, or refuse to renew any license issued pursuant to this article or the rules and regulations adopted pursuant to this article.

3. Inspect, investigate, and have free access to the offices, facilities, or other places of business of any licensee, and compel the production of any books, documents, records, or memoranda of any licensee for the purpose of satisfying itself that this article and Board regulations are strictly complied with.

4. Order such audits as deemed necessary.

5. Certify monthly to the State Comptroller and the Board a full and complete statement of historical horse racing revenue and expenses for the previous month;

6. Assess and collect civil penalties and civil charges for violations of this article and Board regulations;

7. Report monthly to the Governor, the Secretary of Finance, and the Chairmen of the Senate Committee on Finance, House Committee on Finance, and House Committee on Appropriations the total historical horse racing and expenses for the previous month and make an annual report, which shall include a full and complete statement of historical horse racing revenues and expenses, to the Governor and the General Assembly, including recommendations for changes in this article as the Director and Board deem prudent; and

8. Do all acts necessary and advisable to carry out the purposes of this article.

B. The Director may require bond or other surety satisfactory to the Director from license holders in such amount as provided in the rules and regulations of the Board adopted under this article;

**§ 58.1-4032. Powers and duties of the Board related to historical horse racing.**

In addition to the regulations adopted pursuant to § 58.1-4007, the Board shall promulgate regulations related to historical horse racing that:

1. Develop such forms, licenses, identification cards, and applications as are necessary or convenient for the administration of this article;

2. Provide a schedule of application, license, and renewal fees;

3. Establish requirements for all licensees under this article for the form, content, and retention of all records and accounts;

4. Establish technical specifications and requirements for historical horse racing terminals, including requirements for the electrical components; paper currency acceptors; currency storage areas; test, diagnostic, or demonstration modes; video monitor touch screens; and critical memory storage of such terminals. The Board shall also promulgate regulations establishing security standards intended to protect the integrity of such terminals;

5. Establish a process for the approval or disapproval of historical horse racing terminals and games offered on such terminals;

6. Establish cash handling procedures for owner and host location licensees that require such licensees to keep separate accounts for historical horse racing and non-historical horse racing transactions;

7. Establish accounting and occurrence meter requirements;

8. Establish permit requirements for all racing officials employed in a satellite facility or a significant infrastructure facility that offers pari-mutuel wagering on historical horse racing, as well as all participants employed in such facilities;

9. Require inspections of all licensees at a frequency determined by the Board; and

10. Establish a program of periodic testing and inspection for all historical horse racing terminals and games.

**§ 58.1-4033. Pari-mutuel wagering; generally,**

The Director is authorized to issue licenses to (i) holders of a significant infrastructure limited license or (ii) holders of a satellite facility license to conduct pari-mutuel wagering on historical horse

1043 racing for the promotion, sustenance, and growth of a native industry in a manner consistent with the  
1044 health, safety, and welfare of the people. Pari-mutuel wagering on historical horse racing shall be  
1045 conducted so as to maintain horse racing in the Commonwealth of Virginia of the highest quality and  
1046 free of any corrupt, incompetent, dishonest, or unprincipled practices and to maintain in horse racing  
1047 complete honesty and integrity. This article shall exclusively govern all matters related to pari-mutuel  
1048 wagering on historical horse racing.

1049 **§ 58.1-4034. General licensing requirements; penalty.**

1050 A. An applicant for a license to conduct pari-mutuel wagering on historical horse racing shall  
1051 submit an application to the Director on forms provided by the Director, accompanied by any fees  
1052 required by the Board. The application shall contain all materials and information required by Board  
1053 regulations, including detailed information on the games to be offered by the applicant and information  
1054 demonstrating compliance with the provisions of this article and Board regulations.

1055 B. The chief security officer of the Virginia Lottery shall conduct a background investigation, to  
1056 include a Virginia criminal history record information check search and fingerprinting, that shall be  
1057 submitted to the Federal Bureau of Investigation if the Director deems a national criminal history  
1058 record information check search is necessary, on applicants for licensure pursuant to this article.

1059 C. The Director may refuse to grant a license or may suspend, revoke, or refuse to renew a license  
1060 issued pursuant to this article to any person who has been (i) convicted of a crime involving moral  
1061 turpitude, (ii) convicted of bookmaking or other forms of illegal gambling, (iii) found guilty of any fraud  
1062 or misrepresentation in any connection, (iv) convicted of a felony, or (v) engaged in conduct prejudicial  
1063 to public confidence in the Lottery and historical horse racing.

1064 D. The Director may refuse to grant a license or may suspend, revoke or refuse to renew a license  
1065 issued pursuant to this article to a partnership or corporation, if he determines that any general or  
1066 limited partner, or officer or director of such partnership or corporation has been (a) convicted of a  
1067 crime involving moral turpitude, (b) convicted of bookmaking or other forms of illegal gambling, (c)  
1068 found guilty of any fraud or misrepresentation in any connection, (d) convicted of a felony, or (e)  
1069 engaged in conduct prejudicial to public confidence in the Lottery and historical horse racing.

1070 E. The Director may also refuse to grant a license pursuant to this article if:

1071 1. The Director reasonably believes that the applicant or any general or limited partner, or officer  
1072 or director of such applicant lacks good character, honesty, or integrity;

1073 2. The Director reasonably believes that the applicant's prior activities, criminal record, reputation,  
1074 or associations are likely to either (i) pose a threat to the public interest, (ii) impede the regulation of  
1075 historical horse racing, or (iii) promote unfair or illegal activities in the conduct of historical horse  
1076 racing;

1077 3. The applicant or any general or limited partner, or officer or director of such applicant knowingly  
1078 makes a false statement of material fact or deliberately fails to disclose information requested by the  
1079 Director;

1080 4. The applicant or any general or limited partner, or officer or director of such applicant knowingly  
1081 fails to comply with the provisions of this article or any requirements of the Director;

1082 5. The applicant's license to conduct pari-mutuel wagering on historical horse racing issued by any  
1083 other jurisdiction has been suspended or revoked;

1084 6. The applicant defaults in payment of any obligation or debt due to the Commonwealth; or

1085 7. The applicant's application is incomplete.

1086 E. Any person who knowingly and willfully falsifies, conceals, or misrepresents a material fact or  
1087 knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in any  
1088 application pursuant to this article is guilty of a Class 1 misdemeanor. The Director shall revoke the  
1089 license of a licensee if, subsequent to the issuance of the license, the Director determines that the  
1090 licensee knowingly or recklessly made a false statement of material fact to the Director in applying for  
1091 the license.

1092 **§ 58.1-4035. License posting; expiration.**

1093 A. Each license granted by the Director shall designate the place where the business of the licensee  
1094 will be carried out.

1095 B. Each license shall be posted in a location conspicuous to the public at the place where the  
1096 licensee carries out the business for which the license is granted.

1097 C. The privileges conferred by any license granted by the Director shall continue until the last day  
1098 of the twelfth month next ensuing or the last day of the designated month and year of expiration, except  
1099 the license may be sooner terminated for any cause for which the Director would be entitled to refuse to  
1100 grant a license or by operation of law, voluntary surrender, or order of the Director.

1101 D. A license for conducting pari-mutuel wagering on historical horse racing shall be effective for  
1102 one calendar year or so long as the licensee holds a significant infrastructure limited license or satellite  
1103 facility license for the particular location, whichever is shorter. A licensee may not transfer its license,  
1104 or assign responsibility for compliance with the conditions of its license, to any party, including a

transfer of effective control of the licensee, without approval by the Director.

E. At least 60 days before the expiration of a license, the license holder may submit a renewal application on forms prescribed by the Director. The Director may deny a license renewal if he finds grounds for denial as described in § 58.1-4034.

**§ 58.1-4036. Suspension and revocation of licenses; civil penalties; hearing and appeal.**

A. If the Director determines that any provision of this article, or any regulation or condition of the Board, has not been complied with or has been violated by a licensee, he may, with at least 15 days' notice and a hearing, (i) assess a civil penalty against the holder thereof in a sum not to exceed \$100,000 and (ii) suspend or revoke the license holder's license. If any license or permit is suspended or revoked, the Director shall state its reasons for doing so, which shall be entered of record.

B. Any person aggrieved by a refusal of the Director to issue any license or permit, the suspension or revocation of a license or permit, the imposition of a fine, or any other action of the Director may seek review of such action in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act in the Circuit Court of the City of Richmond. Further appeals shall also be in accordance with Article 5 of the Administrative Process Act.

C. Suspension or revocation of a license or permit by the Director for any violation shall not preclude criminal liability for such violation.

**§ 58.1-4037. Requirements for wagering on historical horse racing.**

A. Wagering on historical horse racing shall only be conducted by persons licensed by the Director pursuant to § 58.1-4034 and who are also:

1. A significant infrastructure limited licensee; or
2. A satellite facility licensee.

B. Wagering on historical horse race terminals may only take place on terminals approved by the Director pursuant to § 58.1-3040.

C. Historical horse racing terminals shall:

1. Have a power switch that is located inside of the terminal to prevent power from being switched off from outside of the terminal;
2. Be designed such that power and data cables into and out of the terminal are routed so that they are not accessible by the general public;
3. Have an identification badge affixed to the exterior of the terminal by the manufacturer that is not removable without leaving evidence of tampering. Such badge shall include the following information:
  - a. The name of the manufacturer;
  - b. A unique serial number;
  - c. The terminal model number; and
  - d. The date of manufacture.
4. Be constructed of materials that are designed to allow only authorized access inside of the terminal. Such materials shall be designed to show evidence of tampering if unauthorized access does occur;

5. Have seals between the terminal and the doors of a locked area that are designed to resist the use of tools or other objects used to breach the locked area by physical force;

6. Have external doors that shall be locked and monitored by door access sensors; and

7. Have a currency storage area that is secured by two locks before the currency can be removed and that is only accessibly by the licensee.

D. A terminal may display the wager and its outcome as part of an entertaining display or game, provided the wager functions according to the pari-mutuel wagering pool specifications provided by the licensee to and approved by the Director pursuant to § 58.1-4040.

E. Terminals shall be capable of displaying wager recall, which shall:

1. Include the last 50 wagers on the terminal;
2. Be retrievable on the terminal via an external key-switch or other secure method not available to the patron; and
3. Provide all information required to fully reconstruct the wagers, including:
  - a. Initial credits or ending credits associated with the wager;
  - b. Credits wagered;
  - c. Credits won;
  - d. Entertaining game display symbol combinations and credits paid whether the outcome resulted in a win or a loss;
  - e. Representation in a graphical or text format;
  - f. Final wager outcome, including all patron choices and all bonus features; and
  - g. As an optional feature, display of values as currency in place of wagering credits.

F. A licensee shall at all times maintain at least two terminals offering wagering on historical horse races for each pool and minimum wager denomination;

G. The minimum wager to be accepted by any licensee on the outcome of a historical horse race shall be \$0.10. The minimum payout on any wager shall not be less than the amount wagered.

H. Any wager placed on a historical horse race is a multiple wager.

I. A licensee may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted by the licensee.

**§ 58.1-4038. Historical horse race specifications and selection requirements.**

A. The outcome of any historical horse race wager shall be derived from the result of one or more historical horse races.

B. All historical horse races shall be chosen at random from a database of actual historical horse races. All races in the database shall have a valid historical horse race result with details recorded at the same level as other races in the database, and shall include:

1. Horse names;
2. Race location;
3. Race date; and
4. Jockey name.

C. In the case where a random number generator is used to select the historical horse races for a wager, all possible races in the database shall be available for selection.

D. Historical horse racing terminals shall meet the following requirements:

1. Prior to the patron making wager selections, the terminal shall not display any information that would allow the patron to identify the historical race on which the patron is wagering, including the location of the race, the date on which the race was run, the names of the horses in the race, or the names of the jockeys who rode the horses in the race;

2. The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to the patron making wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

3. After a patron finalizes wager selections, the terminal shall display the official results of the race and a replay of the race, or a portion thereof, whether by digital, animated, or graphical depiction or by way of a video recording. The identity of the race shall be revealed to the patron after the patron has placed a wager.

**§ 58.1-4039. Requirements for terminal displays.**

A. All historical horse racing terminals shall have video displays that clearly identify the entertaining game theme, if any, being used to offer pari-mutuel wagering on historical horse racing.

B. The video display shall make available to a patron the rules of the historical horse racing wager, the rules of any features or interactive functions that may occur on the patron interface as part of the entertaining display of the wager and its outcome, the award that will be paid to the patron if the patron obtains a specific win, and help screen information prior to the patron making a wager.

C. The video display shall clearly indicate whether awards are designated in credits or currency.

D. The video display shall display the following information to the patron at all times while the terminal is available for wagering by a patron:

1. The patron's current credit balance in currency or credits available for the patron to wager or cash out;

2. The current bet amount;

3. The amount won during the last completed game until the next game starts or betting options are modified;

4. The patron options selected for the last completed game until the next game starts or a new selection is made;

5. The cash value collected by a patron upon a cash out; and

6. A disclaimer stating, "Malfunction Voids All Pays" or some equivalent wording approved by the Director.

E. The default game display upon terminal reset shall not be a false winning outcome;

F. Entertaining game features that simulate bonus or free games shall meet the following requirements:

1. The initiation of a bonus or free game shall be based only upon the result of the wager placed by the patron on the result of the historical horse race selected for the wager;

2. The bonus or free game shall not require additional money to be wagered by the patron;

3. The entertaining display shall make it clear to the patron that the patron is in bonus mode to avoid the possibility of the patron unknowingly leaving the wagering terminal while in a bonus mode; and

4. If the bonus or free game requires an input from the patron, the terminal shall provide a means to complete the bonus or free game from a touch screen or hard button.

**§ 58.1-4040. Approval of historical horse racing terminals, games, and displays by the Director.**

A. A licensee shall submit a written request to the Commission for permission to offer a multiple wager on a historical horse race. The written request shall include a detailed description of the rules that apply to the pari-mutuel wager, the method of calculating payouts, and the method by which money will be allocated to the pari-mutuel pool, if applicable. Such written request shall fully and accurately describe:

1. The method of determining a game outcome;
2. Available wagering denominations;
3. Minimum wager amount;
4. Maximum wager amount;
5. The allocation of wagers into the pari-mutuel pool;
6. The amount of takeout for each wager;
7. The method of calculating winning payouts and breakage, where applicable;
8. Payout calculations set forth in sufficient detail to audit a payout through manual calculation;
9. The minimum payouts and the method of guaranteeing minimum payouts;
10. The method of mapping payouts to an entertaining display on the wagering terminal; and
11. Any other information requested by an independent testing laboratory for use in the testing of the pari-mutuel wagers.

B. All historical horse racing terminals shall be approved by the Director. For wagering on historical horse racing, approximate odds or payouts for each pool shall be available on each respective terminal for viewing by patrons.

C. A licensee shall not offer a new display or game without prior approval by the Director as set forth in this article and Board regulations.

**§ 58.1-4041. Requirements for vouchers issued by terminals; upload of voucher information to an online server accessible by the Director and designated third parties.**

A. Historical horse racing terminals shall not dispense currency. Each terminal shall make payments to a patron by issuing a printed voucher.

B. Payment on vouchers shall be made only upon presentation and surrender of the voucher to the licensee within 180 days after issuance of the voucher. Failure to present a voucher to the licensee within 180 days after issuance of the voucher shall constitute a waiver of the right to payment.

C. Vouchers shall include the following information:

1. Licensee name and site identifier, which may be contained on the ticket stock itself;
2. Terminal number or cashier booth location;
3. Date and time stated in a 24-hour format according to the local time zone;
4. Alpha and numeric dollar amount;
5. Ticket or voucher sequence number;
6. Validation number;
7. Bar code or any machine-readable code representing the validation number; and
8. Type of transaction or other method of differentiating voucher types. If the voucher is a noncashable item, the ticket shall explicitly express that it has "no cash value"; and
9. The expiration period from date of issue, or date and time the ticket or voucher will expire in a 24-hour format according to the local time zone.

D. Upon issuing a voucher, a terminal shall transmit the following information about the voucher to an online recordkeeping system:

1. The value of credits in local monetary units in numerical form;
2. The time of day the ticket or voucher was printed in 24-hour format, showing hours and minutes;
3. The date, in format approved by the Commission, indicating the day, month, and year that the ticket or voucher was issued;
4. The terminal number; and
5. A unique ticket or voucher validation number.

Such information shall be stored on a server, which shall be backed up at least once per day to an offsite storage facility controlled by the operator licensee. Offsite storage may include storage through a cloud service provider if approved by the Director. The server and offsite backup storage shall be accessible to the Director and employees of the Department, and subject to third-party checks and validation as provided in § 58.1-4042.

E. The Board shall prescribe regulations establishing the minimum requirements for terminals to issue offline vouchers after there has been a loss of communication between the terminal and the central monitoring and audit system.

F. Licensees shall utilize a computerized voucher validation system that is approved by the Director to validate each voucher that is presented to the licensee for payment. Such validation system shall be capable of identifying duplicate or fraudulent vouchers. Information in the system shall be retained for a minimum of two calendar years from the date upon which the voucher was issued.

**§ 58.1-4042. Payouts from pari-mutuel pools generated by wagering on historical horse racing.**

A. A wager on a historical horse race, less deductions permitted by this article, shall be placed in pari-mutuel pools approved by the Director. Such pools shall be maintained in a manner and method approved by the Director to ensure that the amount available in the pari-mutuel pools at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

B. A licensee shall provide guaranteed funding for all historical horse race pools offered by the licensee. This guarantee shall be in the form of a letter of credit, bond with surety, or other instrument of financial security in an amount and form approved by the Director sufficient to cover outstanding vouchers together with any indebtedness incurred by the licensee to the Commonwealth.

C. All prizes awarded from a historical horse race wager shall be awarded from an existing pari-mutuel pool. The money in the pool shall only consist of money wagered by patrons or allocated to the pari-mutuel pool. Wagers made on a historical horse race shall not constitute a wager against the licensee. Wagers shall not be conducted in a manner in which the amount retained by the licensee is dependent upon the outcome of any particular race or the success of any particular wager.

D. Controls shall be in place to ensure that depletion of a pari-mutuel pool below an amount required to pay all winning tickets shall be detected at the time of depletion, and depletion shall result in the automatic suspension of any wagering activity related to that pool. The Director shall be notified immediately in the event of the suspension of wagering activity of any historical horse racing pool.

**§ 58.1-4043. Integrity check of historical horse racing terminals.**

A. Each terminal used for wagering on historical horse races shall be tested by the independent testing laboratory to ensure its integrity and proper working order. This evaluation shall include a review of installed software prior to implementation and periodically within a timeframe established by the Commission.

B. Terminals shall have the ability to allow for an independent integrity check of all software that may affect the integrity of the game. The integrity check shall be by an independent testing laboratory approved by the Commission.

C. The independent testing laboratory's software may be embedded within the game software, utilize an interface port to communicate with the terminal, or require the removal of terminal media for external verification.

D. The licensee shall pay the cost of the independent testing laboratory's review and testing, and the reports of the same shall be delivered to the licensee and the Director.

**§ 58.1-4044. Integrity audit of pari-mutuel wagering and validity of race results.**

A. To ensure the integrity of pari-mutuel wagering and validity of the race results, each licensee shall permit an integrity auditor, selected and paid for by the Director, complete access to review and monitor the integrity, security, and operation of such pari-mutuel wagering and race results, including all race and handicapping data used, in order to detect any compromise of or anomalies that would allow a player to have an unfair advantage.

B. The licensee shall provide access to the integrity auditor to conduct periodic onsite inspections and terminal audits at licensed racetracks and satellite wagering facilities with assistance from the vendor.

C. The licensee shall supply advanced notification, when possible, of at least 30 calendar days of all new game products, changes in the composition of the historic horse races in the library, any changes to reporting or the method of provision of those reports, and any adverse or unusual occurrences relating to the operation of play or payouts to the integrity auditor.

D. The Board shall promulgate regulations detailing the requirements of integrity audits conducted pursuant to this section.

**§ 58.1-4045. Required reports for wagering on historical horse races; audit and inspection by the Commission.**

A. All systems used for pari-mutuel wagering on historical horse races shall provide financial reports for individual approved wager model configurations and total pool amounts for each pool. Reports shall be available at the end of the wagering day or upon request by the Commission with information current from the end of the last wagering day. The reports shall include:

1. Current values of each pari-mutuel wagering pool;
2. Total amounts wagered for all pools;
3. Total amounts won by patrons for all pools;
4. Total commission withheld for all pools;
5. Total breakage for all pools, where applicable;
6. Total amount wagered at each terminal;
7. Total amount won by patrons at a terminal;
8. The amount wagered on each mathematical model configuration and the amount won from each mathematical model configuration offered at a terminal;
9. Total amount of each type of financial instrument inserted into a terminal;

10. Total amount cashed out in vouchers or handpays at a terminal; and

11. Taxable win events, including:

a. Time and date of win;

b. Wagering terminal identification number;

c. Amount wagered resulting in taxable win;

d. Taxable amount won; and

e. Withholding amount.

B. The Director or his authorized representatives may, at any time, conduct an audit or inspection of the financial reports, software, terminals, or other equipment used by a licensee in conducting operations under this article.

**§ 58.1-4046. Location and hours of operation of terminals used for wagering on historical horse racing.**

A. Pari-mutuel wagering on historical horse races shall only be permitted in designated areas that have the prior written approval of the Director and are on the premises of a significant infrastructure limited licensee or satellite facility licensee.

B. A licensee shall request permission from the Director to alter the physical layout of the area permitted for historical horse racing.

C. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any patron who is younger than 18 years of age or is otherwise not permitted to place wagers.

D. The designated area shall provide terminals that are accessible to disabled persons.

E. Each licensee shall post in a conspicuous area (i) a general explanation of pari-mutuel wagering offered on historical horse races and (ii) an explanation of each betting pool offered in the terminal menus. Such explanations shall be submitted to the Director for approval prior to their posting.

F. A licensee may conduct pari-mutuel wagering on historical horse races on days and hours approved by the Director.

**§ 58.1-4047. Requirements of significant infrastructure limited licensees licensed under this article.**

Any significant infrastructure limited licensee that that is licensed under this article to offer pari-mutuel wagering on historical horse racing shall:

1. In accordance with the provisions of provisions of Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 and regulations promulgated thereunder, each calendar year submit to the Commission a request for live racing days at its significant infrastructure facility that includes at least:

a. Fifteen days of live racing, consisting of not less than six races per day; or

b. One day of live racing, consisting of not less than six races per day, for every 100 historical racing terminals installed at such facility together with any satellite facility owned, operated, controlled, managed, or otherwise affiliated directly or indirectly with such licensee, whichever number shall be greater.

2. Under no circumstances allow the total number of historical racing terminals at any significant infrastructure facility to exceed 700 terminals; and

3. Have live racing days assigned to it by the Commission and conduct such races in accordance with the procedure in Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 and regulations promulgated thereunder.

**§ 58.1-4048. Requirements of satellite facility licensees licensed under this article.**

A. Any satellite facility licensee that that is licensed under this article to offer pari-mutuel wagering on historical horse racing shall not reduce, limit, or otherwise alter the nature or extent of its simulcast operations if it offers pari-mutuel wagering on historical horse racing without approval by the Commission.

B. Every satellite facility licensee that that is licensed under this article to offer pari-mutuel wagering on historical horse racing shall provide the following minimum simulcast offerings:

1. An average daily simulcast schedule of not less than 14 racetracks, unless otherwise approved by the Director for a specific facility;

2. At least two tellers dedicated to simulcast wagering, or one teller for every 200 historical horse racing terminals at the satellite facility, whichever number is greater; and

3. At least 20 self-service tote machines dedicated to simulcast wagering at each satellite facility, unless otherwise approved by the Director for a specific facility.

C. Each satellite facility licensee that that is licensed under this article to offer pari-mutuel wagering on historical horse racing shall promote simulcast wagering inside its satellite facility and make available televisions broadcasting simulcast signal, tote machines, and tellers in a prominent location for use by patrons.

D. The Director may authorize a licensee under this article to provide historical racing terminals at a satellite facility located in a jurisdiction with valid and unexpired referenda on pari-mutuel wagering

1412 pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 in accordance with the following limits on the  
1413 total number of historical racing terminals located in such jurisdiction:

- 1414 a. Up to 700 terminals in a jurisdiction with a population of 120,000 or greater;
- 1415 b. Up to 300 terminals in a jurisdiction with a population between 60,000 and 120,000; and
- 1416 c. Up to 150 terminals in a jurisdiction with a population of 60,000 or less.

1417 The population of a jurisdiction shall be determined based upon the most recent University of  
1418 Virginia Weldon Cooper Center for Public Service population estimates.

1419 All such licensees shall receive all appropriate local government authorizations.

1420 E. Under no circumstances shall the total number of historical racing terminals located in a  
1421 jurisdiction set forth in subsection D exceed 25 percent of the total limit for such jurisdiction absent  
1422 formal approval by the relevant city or town council or county board of supervisors of the jurisdiction.

1423 F. Under no circumstances shall the combined statewide total number of historical racing terminals  
1424 located at satellite facilities and significant infrastructure facilities exceed 3,000.

1425 **§ 58.1-4049. Responsible gaming.**

1426 A. Each licensee shall implement a program to promote responsible gaming by its patrons and  
1427 provide details of the same to the Director. At a minimum, such program shall require:

1428 1. Posting in a conspicuous place in every place where pari-mutuel wagering on historical horse  
1429 racing is conducted a sign that bears a toll-free number for problem gambling assistance approved by  
1430 the Virginia Council on Problem Gambling or other organizations that provide assistance to problem  
1431 gamblers;

1432 2. Providing informational leaflets or other similar materials at the licensee's facilities on the  
1433 dangers associated with problem gambling;

1434 3. Including in the licensee's promotional and marketing materials information on problem gambling  
1435 and organizations that provide assistance to problem gamblers;

1436 4. Routine auditing of patron activity to identify patrons who have suffered significant financial  
1437 losses in repeated visits to the licensee's facilities and providing such patrons with information on  
1438 organizations that provide assistance to problem gamblers;

1439 5. If the licensee holds a license from the Virginia Alcoholic Beverage Control Authority to serve  
1440 alcoholic beverages, training for employees to identify patrons who have consumed excessive amounts of  
1441 alcohol to prevent such patrons from continuing to engage in wagering activity while impaired;

1442 6. Partnership with the Virginia Council on Problem Gambling, the National Council on Problem  
1443 Gambling, or other similar organization to identify and promote best practices for preventing problem  
1444 gambling;

1445 7. Training for all employees who have contact with patrons as well as administrative and corporate  
1446 staff members that shall include skills and procedures to respond to situations where a patron exhibits  
1447 warning signs of a gambling problem or where a patron discloses they may have a gambling problem.  
1448 Such employees and staff should be trained immediately upon their hiring and retrained and tested  
1449 regularly; and

1450 8. Ensuring that any request by a patron who wishes to self-exclude from the licensee's facilities is  
1451 honored by the licensee.

1452 B. A licensee shall report annually to the Director and make a copy available to the public on its  
1453 efforts to meet the requirements of subsection A, its efforts to identify problem gamblers, and steps taken  
1454 to:

1455 1. Prevent such individuals from continuing to engage in pari-mutuel wagering on historical horse  
1456 racing; and

1457 2. Provide assistance to these individuals to address problem gambling activity.

1458 **§ 58.1-4050. Percentage retained; tax.**

1459 A. The legitimate breakage from each pari-mutuel pool for historical horse racing shall be  
1460 distributed as follows:

1461 1. Seventy percent to be retained by the licensee to be used for capital improvements that are subject  
1462 to approval of the Director; and

1463 2. Thirty percent to be deposited in the Racing Benevolence Fund, administered jointly by the  
1464 licensee and the recognized majority horsemen's group racing at a licensed race meeting, to be  
1465 disbursed with the approval of the Director for gambling addiction and substance abuse counseling,  
1466 recreational, educational, or other related programs.

1467 B. On pari-mutuel pools generated by wagering on historical horse racing, the licensee shall retain  
1468 one and one-quarter percent of such pool to be distributed as follows:

1469 1. Three-quarters percent to the Commonwealth as a license tax; and

1470 2. a. If generated at a racetrack, one-half percent to the locality in which the racetrack is located;  
1471 or

1472 b. If generated at a satellite facility, one-quarter percent to the locality in which the satellite facility  
1473 is located and one-quarter percent to the Virginia locality in which the racetrack is located.



Any contractual agreement between a licensee and other entities concerning the distribution of the remaining portion of the retainage under this subsection shall be subject to the approval of the Director.

**§ 59.1-354.1. Exemption; play of historical horse racing.**

This article shall not apply to the play of historical horse racing or related activity that is lawful under Article 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1 or to any contract, conduct, or transaction arising from conduct lawful thereunder.

**§ 59.1-365. Definitions.**

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

"Advance deposit account wagering" means a method of pari-mutuel wagering conducted in the Commonwealth that is permissible under the Interstate Horseracing Act, § 3001 et seq. of Chapter 57 of Title 15 of the United States Code, and in which an individual may establish an account with an entity, licensed by the Commission, to place pari-mutuel wagers in person or electronically.

"Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of \$0.10.

"Commission" means the Virginia Racing Commission.

"Dependent" means a son, daughter, father, mother, brother, sister, or other person, whether or not related by blood or marriage, if such person receives from an officer or employee more than one-half of his financial support.

"Drug" shall have the meaning prescribed by § 54.1-3401. The Commission shall by regulation define and designate those drugs the use of which is prohibited or restricted.

"Enclosure" means all areas of the property of a track to which admission can be obtained only by payment of an admission fee or upon presentation of authorized credentials, and any additional areas designated by the Commission.

"Handle" means the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

"Historical horse racing" means a form of horse racing that creates pari-mutuel pools from wagers placed on previously conducted horse races and is hosted at (i) a racetrack owned or operated by a significant infrastructure limited licensee or (ii) a satellite facility that is owned or operated by (a) a significant infrastructure limited licensee or (b) the nonprofit industry stakeholder organization recognized by the Commission and licensed to own or operate such satellite facility.

"Horse racing" means a competition on a set course involving a race between horses on which pari-mutuel wagering is permitted and includes historical horse racing.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as an officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Licensee" includes any person holding an owner's or operator's license under Article 2 (§ 59.1-375 et seq.).

"Member" includes any person designated a member of a nonstock corporation, and any person who by means of a pecuniary or other interest in such corporation exercises the power of a member.

"Pari-mutuel wagering" means the system of wagering on horse races in which those who wager on horses that finish in the position or positions for which wagers are taken share in the total amounts wagered, plus any amounts provided by a licensee, less deductions required or permitted by law and includes pari-mutuel wagering on historical horse racing and simulcast horse racing originating within the Commonwealth or from any other jurisdiction.

"Participant" means any person who (i) has an ownership interest in any horse entered to race in the Commonwealth or who acts as the trainer, jockey, or driver of any horse entered to race in the Commonwealth or (ii) takes part in any horse racing subject to the jurisdiction of the Commission or in the conduct of a race meeting or pari-mutuel wagering there, including but not limited to a horse owner, trainer, jockey, or driver, groom, stable foreman, valet, veterinarian, agent, pari-mutuel employee, concessionaire or employee thereof, track employee, or other position the Commission deems necessary to regulate to ensure the integrity of horse racing in Virginia.

"Permit holder" includes any person holding a permit to participate in any horse racing subject to the jurisdiction of the Commission or in the conduct of a race meeting or pari-mutuel wagering thereon as provided in § 59.1-387.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Pool" means the amount wagered during a race meeting or during a specified period thereof.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members, beneficially owns or controls, directly or indirectly, five percent or more of the stock of any person which is a licensee, or who in concert with his spouse and immediate family

1535 members, has the power to vote or cause the vote of five percent or more of any such stock. However,  
1536 "principal stockholder" shall not include a broker-dealer registered under the Securities Exchange Act of  
1537 1934, as amended, which holds in inventory shares for sale on the financial markets for a publicly  
1538 traded corporation holding, directly or indirectly, a license from the Commission.

1539 "Race meeting" means the whole consecutive period of time during which horse racing with  
1540 pari-mutuel wagering is conducted by a licensee.

1541 "Racetrack" means an outdoor course located in Virginia which is laid out for horse racing and is  
1542 licensed by the Commission.

1543 "Recognized majority horsemen's group" means the organization recognized by the Commission as  
1544 the representative of the majority of owners and trainers racing at race meetings subject to the  
1545 Commission's jurisdiction.

1546 "Retainage" means the total amount deducted from the pari-mutuel wagering pool for (i) a license fee  
1547 to the Commission and localities, (ii) the licensee, (iii) purse money for the participants, (iv) the  
1548 Virginia Breeders Fund, and (v) certain enumerated organizations as required or permitted by law,  
1549 regulation or contract approved by the Commission.

1550 "Satellite facility" means all areas of the property at which simulcast horse racing is received for the  
1551 purposes of pari-mutuel wagering, and any additional areas designated by the Commission.

1552 "Significant infrastructure facility" means a horse racing facility that has been approved by a local  
1553 referendum pursuant to § 59.1-391 and has a minimum racing infrastructure consisting of (i) a one-mile  
1554 dirt track for flat racing, (ii) a seven-eighths-mile turf course for flat or jump racing, (iii) covered  
1555 seating for no fewer than 500 persons, and (iv) barns with no fewer than 400 permanent stalls.

1556 "Significant infrastructure limited licensee" means a person who owns or operates a significant  
1557 infrastructure facility and holds a limited license under § 59.1-376.

1558 "Simulcast horse racing" means the simultaneous transmission of the audio or video portion, or both,  
1559 of horse races from a licensed horse racetrack or satellite facility to another licensed horse racetrack or  
1560 satellite facility, regardless of state of licensure, whether such races originate within the Commonwealth  
1561 or any other jurisdiction, by satellite communication devices, television cables, telephone lines, or any  
1562 other means for the purposes of conducting pari-mutuel wagering.

1563 "Steward" means a racing official, duly appointed by the Commission, with powers and duties  
1564 prescribed by Commission regulations.

1565 "Stock" includes all classes of stock, partnership interest, membership interest, or similar ownership  
1566 interest of an applicant or licensee, and any debt or other obligation of such person or an affiliated  
1567 person if the Commission finds that the holder of such interest or stock derives therefrom such control  
1568 of or voice in the operation of the applicant or licensee that he should be deemed an owner of stock.

1569 "Virginia Breeders Fund" means the fund established to foster the industry of breeding race horses in  
1570 the Commonwealth of Virginia.

1571 **§ 59.1-392. Percentage retained; tax.**

1572 A. Any person holding an operator's license to operate a horse racetrack or satellite facility in the  
1573 Commonwealth pursuant to this chapter shall be authorized to conduct pari-mutuel wagering on horse  
1574 racing subject to the provisions of this chapter and the conditions and regulations of the Commission.

1575 B. On pari-mutuel pools generated by wagering at the racetrack on live horse racing conducted  
1576 within the Commonwealth, involving win, place and show wagering, the licensee shall retain a  
1577 percentage amount approved by the Commission as jointly requested by a recognized majority  
1578 horsemen's group and a licensee and the legitimate breakage, out of which shall be paid one and  
1579 one-quarter percent to be distributed as follows: one percent to the Commonwealth as a license tax and  
1580 one-quarter percent to the locality in which the racetrack is located. The remainder of the retainage shall  
1581 be paid as provided in subsection D, provided, however, that if the percentage amount approved by the  
1582 Commission is other than 18 percent, the amounts provided in subdivisions D 1, 2 and 3 shall be  
1583 adjusted by the proportion that the approved percentage amount bears to 18 percent.

1584 C. On pari-mutuel pools generated by wagering at each Virginia satellite facility on live horse racing  
1585 conducted within the Commonwealth, involving win, place and show wagering, the licensee shall retain  
1586 a percentage amount approved by the Commission as jointly requested by a recognized majority  
1587 horsemen's group and a licensee and the legitimate breakage, out of which shall be paid one and  
1588 one-quarter percent to be distributed as follows: three-quarters percent to the Commonwealth as a license  
1589 tax, one-quarter percent to the locality in which the satellite facility is located, and one-quarter percent  
1590 to the locality in which the racetrack is located. The remainder of the retainage shall be paid as provided  
1591 in subsection D; provided, however, that if the percentage amount approved by the Commission is other  
1592 than 18 percent, the amounts provided in subdivisions D 1, 2 and 3 shall be adjusted by the proportion  
1593 that the approved percentage amount bears to 18 percent.

1594 D. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on  
1595 live horse racing conducted within the Commonwealth, involving win, place and show wagering, the  
1596 licensee shall retain a percentage amount approved by the Commission as jointly requested by a

1597 recognized majority horsemen's group and a licensee and the legitimate breakage, out of which shall be  
1598 paid:

- 1599 1. Eight percent as purses or prizes to the participants in such race meeting;
- 1600 2. Seven and one-half percent, and all of the breakage and the proceeds of pari-mutuel tickets  
1601 unredeemed 180 days from the date on which the race was conducted, to the operator;
- 1602 3. One percent to the Virginia Breeders Fund;
- 1603 4. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;
- 1604 5. Five one-hundredths percent to the Virginia Horse Center Foundation;
- 1605 6. Five one-hundredths percent to the Virginia Horse Industry Board; and
- 1606 7. The remainder of the retainage shall be paid as appropriate under subsection B or C.

1607 E. On pari-mutuel pools generated by wagering at the racetrack on live horse racing conducted  
1608 within the Commonwealth involving wagering other than win, place and show wagering, the licensee  
1609 shall retain a percentage amount approved by the Commission as jointly requested by a recognized  
1610 majority horsemen's group and a licensee and the legitimate breakage, out of which shall be paid two  
1611 and three-quarters percent to be distributed as follows: two and one-quarter percent to the  
1612 Commonwealth as a license tax, and one-half percent to the locality in which the racetrack is located.  
1613 The remainder of the retainage shall be paid as provided in subsection G; provided, however, that if the  
1614 percentage amount approved by the Commission is other than 22 percent, the amounts provided in  
1615 subdivisions G 1, 2 and 3 shall be adjusted by the proportion that the approved percentage amount bears  
1616 to 22 percent.

1617 F. On pari-mutuel pools generated by wagering at each Virginia satellite facility on live horse racing  
1618 conducted within the Commonwealth involving wagering other than win, place and show wagering, the  
1619 licensee shall retain a percentage amount approved by the Commission as jointly requested by a  
1620 recognized majority horsemen's group and a licensee and the legitimate breakage, out of which shall be  
1621 paid two and three-quarters percent to be distributed as follows: one and three-quarters percent to the  
1622 Commonwealth as a license tax, one-half percent to the locality in which the satellite facility is located,  
1623 and one-half percent to the locality in which the racetrack is located. The remainder of the retainage  
1624 shall be paid as provided in subsection G; provided, however, that if the percentage amount approved by  
1625 the Commission is other than 22 percent, the amounts provided in subdivisions G 1, 2 and 3 shall be  
1626 adjusted by the proportion that the approved percentage amount bears to 22 percent.

1627 G. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on  
1628 live horse racing conducted within the Commonwealth involving wagering other than win, place and  
1629 show wagering, the licensee shall retain a percentage amount approved by the Commission as jointly  
1630 requested by a recognized majority horsemen's group and a licensee and the legitimate breakage, out of  
1631 which shall be paid:

- 1632 1. Nine percent as purses or prizes to the participants in such race meeting;
- 1633 2. Nine percent, and the proceeds of the pari-mutuel tickets unredeemed 180 days from the date on  
1634 which the race was conducted, to the operator;
- 1635 3. One percent to the Virginia Breeders Fund;
- 1636 4. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;
- 1637 5. Five one-hundredths percent to the Virginia Horse Center Foundation;
- 1638 6. Five one-hundredths percent to the Virginia Horse Industry Board; and
- 1639 7. The remainder of the retainage shall be paid as appropriate under subsection E or F.

1640 H. On pari-mutuel wagering generated by simulcast horse racing transmitted from jurisdictions  
1641 outside the Commonwealth, the licensee may, with the approval of the Commission, commingle pools  
1642 with the racetrack where the transmission emanates or establish separate pools for wagering within the  
1643 Commonwealth. All simulcast horse racing in this subsection must comply with the Interstate Horse  
1644 Racing Act of 1978 (15 U.S.C. § 3001 et seq.).

1645 I. On pari-mutuel pools generated by wagering at the racetrack on simulcast horse racing transmitted  
1646 from jurisdictions outside the Commonwealth, involving win, place and show wagering, the licensee  
1647 shall retain one and one-quarter percent of such pool to be distributed as follows: three-quarters percent  
1648 to the Commonwealth as a license tax, and one-half percent to the Virginia locality in which the  
1649 racetrack is located.

1650 J. On pari-mutuel pools generated by wagering at each Virginia satellite facility on simulcast horse  
1651 racing transmitted from jurisdictions outside the Commonwealth, involving win, place and show  
1652 wagering, the licensee shall retain one and one-quarter percent of such pool to be distributed as follows:  
1653 three-quarters percent to the Commonwealth as a license tax, one-quarter percent to the locality in which  
1654 the satellite facility is located, and one-quarter percent to the Virginia locality in which the racetrack is  
1655 located.

1656 K. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on  
1657 simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving win, place

1658 and show wagering, the licensee shall retain one and thirty one-hundredths percent of such pool to be  
 1659 distributed as follows:

- 1660 1. One percent of the pool to the Virginia Breeders Fund;
- 1661 2. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;
- 1662 3. Five one-hundredths percent to the Virginia Horse Center Foundation;
- 1663 4. Five one-hundredths percent to the Virginia Horse Industry Board; and
- 1664 5. Five one-hundredths percent to the Virginia Thoroughbred Association for the promotion of  
 1665 breeding in the Commonwealth.

1666 L. On pari-mutuel pools generated by wagering at the racetrack on simulcast horse racing transmitted  
 1667 from jurisdictions outside the Commonwealth, involving wagering other than win, place and show  
 1668 wagering, the licensee shall retain two and three-quarters percent of such pool to be distributed as  
 1669 follows: one and three-quarters percent to the Commonwealth as a license tax, and one percent to the  
 1670 Virginia locality in which the racetrack is located.

1671 M. On pari-mutuel pools generated by wagering at each Virginia satellite facility on simulcast horse  
 1672 racing transmitted from jurisdictions outside the Commonwealth, involving wagering other than win,  
 1673 place and show wagering, the licensee shall retain two and three-quarters percent of such pool to be  
 1674 distributed as follows: one and three-quarters percent to the Commonwealth as a license tax, one-half  
 1675 percent to the locality in which the satellite facility is located, and one-half percent to the Virginia  
 1676 locality in which the racetrack is located.

1677 N. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on  
 1678 simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving wagering  
 1679 other than win, place and show wagering, the licensee shall retain one and thirty one-hundredths percent  
 1680 of such pool to be distributed as follows:

- 1681 1. One percent of the pool to the Virginia Breeders Fund;
- 1682 2. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;
- 1683 3. Five one-hundredths percent to the Virginia Horse Center Foundation;
- 1684 4. Five one-hundredths percent to the Virginia Horse Industry Board; and
- 1685 5. Five one-hundredths percent to the Virginia Thoroughbred Association for the promotion of  
 1686 breeding in the Commonwealth.

1687 O. Moneys payable to the Commonwealth shall be deposited in the general fund. Gross receipts for  
 1688 license tax purposes under Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1 shall not include pari-mutuel  
 1689 wagering pools and license taxes authorized by this section.

1690 P. All payments by the licensee to the Commonwealth or any locality shall be made within five days  
 1691 from the date on which such wagers are received by the licensee. All payments by the licensee to the  
 1692 Virginia Breeders Fund shall be made to the Commission within five days from the date on which such  
 1693 wagers are received by the licensee. All payments by the licensee to the Virginia-Maryland Regional  
 1694 College of Veterinary Medicine, the Virginia Horse Center Foundation, the Virginia Horse Industry  
 1695 Board, and the Virginia Thoroughbred Association shall be made by the first day of each quarter of the  
 1696 calendar year. All payments made under this section shall be used in support of the policy of the  
 1697 Commonwealth to sustain and promote the growth of a native industry.

1698 Q. If a satellite facility is located in more than one locality, any amount a licensee is required to pay  
 1699 under this section to the locality in which the satellite facility is located shall be prorated in equal shares  
 1700 among those localities.

1701 R. Any contractual agreement between a licensee and other entities concerning the distribution of the  
 1702 remaining portion of the retainage under subsections I through N ~~and subsection U~~ shall be subject to  
 1703 the approval of the Commission.

1704 S. The recognized majority horsemen's group racing at a licensed race meeting may, subject to the  
 1705 approval of the Commission, withdraw for administrative costs associated with serving the interests of  
 1706 the horsemen an amount not to exceed two percent of the amount in the horsemen's account.

1707 T. The legitimate breakage from each pari-mutuel pool for *both* live; ~~historical; and simulcast horse~~  
 1708 *and simulcast horse* racing shall be distributed as follows:

- 1709 1. Seventy percent to be retained by the licensee to be used for capital improvements that are subject  
 1710 to approval of the Commission; and
- 1711 2. Thirty percent to be deposited in the Racing Benevolence Fund, administered jointly by the  
 1712 licensee and the recognized majority horsemen's group racing at a licensed race meeting, to be disbursed  
 1713 with the approval of the Commission for gambling addiction and substance abuse counseling,  
 1714 recreational, educational or other related programs.

1715 U. ~~On pari-mutuel pools generated by wagering on historical horse racing, the licensee shall retain~~  
 1716 ~~one and one-quarter percent of such pool to be distributed as follows:~~

- 1717 1. Three-quarters percent to the Commonwealth as a license tax; and
- 1718 2. a. If generated at a racetrack, one-half percent to the locality in which the racetrack is located; or  
 1719 b. If generated at a satellite facility, one-quarter percent to the locality in which the satellite facility

1720 is located and one-quarter percent to the Virginia locality in which the racetrack is located.  
1721 2. That the regulations of the Virginia Racing Commission related to historical horse racing shall  
1722 be administered by the Virginia Lottery Board and shall remain in full force and effect until the  
1723 Virginia Lottery Board promulgates regulations pursuant to this act.

INTRODUCED

SB942