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SENATE BILL NO. 971

Offered January 15, 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, 37.2-304, 58.1-4000, 58.1-4002, 58.1-4006, 58.1-4007, 58.1-4012, and 58.1-4027 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 Article 1 of Chapter 3 of Title 37.2 a section numbered 37.2-314.1, and by adding in Chapter 40 of Title 58.1 an article numbered 2, consisting of sections numbered 58.1-4030 through 58.1-4056, relating to the gaming in Virginia; penalties.*

Patrons—Howell and Norment

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, 37.2-304, 58.1-4000, 58.1-4002, 58.1-4006, 58.1-4007, 58.1-4012, and 58.1-4027 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 Article 1 of Chapter 3 of Title 37.2 a section numbered 37.2-314.1, and by adding in Chapter 40 of Title 58.1 an article numbered 2, consisting of sections numbered 58.1-4030 through 58.1-4056, 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 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be

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59 construed to permit the closure of a meeting merely because an attorney representing the public body is
60 in attendance or is consulted on a matter.

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

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

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

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

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

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

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

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

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

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

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

113 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
114 of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
115 trustees of a trust established by one or more local public bodies to invest funds for postemployment
116 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title
117 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the
118 Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,
119 holding or disposition of a security or other ownership interest in an entity, where such security or
120 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 defined in § 33.2-1800, or any independent review panel appointed to review information and advise

182 the responsible public entity concerning such records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

241 45. Discussion or consideration of personal and proprietary information related to the resource
242 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii)
243 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 electronic gaming devices 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 authorized electronic gaming devices.

This chapter shall not apply to the play of electronic gaming devices 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 any electronic gaming devices 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 information.

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

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

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

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

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

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

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

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

345 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of
346 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a
347 position of employment whenever, in the interest of public welfare or safety and as authorized in the
348 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
349 with a conviction record would be compatible with the nature of the employment under consideration;

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

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

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

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

551 purposes of this subdivision, criminal history record information includes information sent to the Central
552 Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time
553 or part-time employee of the State Police, a police department or sheriff's office that is a part of or
554 administered by the Commonwealth or any political subdivision thereof, and who is responsible for the
555 prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the
556 Commonwealth for the purposes of the administration of criminal justice;

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

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

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

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

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

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

583 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of
584 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a
585 position of employment whenever, in the interest of public welfare or safety and as authorized in the
586 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
587 with a conviction record would be compatible with the nature of the employment under consideration;

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

595 9. To the extent permitted by federal law or regulation, public service companies as defined in
596 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
597 personal contact with the public or when past criminal conduct of an applicant would be incompatible
598 with the nature of the employment under consideration;

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

601 11. A person requesting a copy of his own criminal history record information as defined in
602 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
603 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
604 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
605 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
606 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
607 Solvers or Crime Line program as defined in § 15.2-1713.1;

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

§ 37.2-304. Duties of Commissioner.

The Commissioner shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its state facilities.
2. To employ the personnel required to carry out the purposes of this title.
3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth, consistent with policies and regulations of the Board and applicable federal and state statutes and regulations.

4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the United States government, agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with conditions and execute agreements that may be necessary, convenient, or desirable, consistent with policies and regulations of the Board.

5. To accept, execute, and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.

6. To transfer between state hospitals and training centers school-age individuals who have been identified as appropriate to be placed in public school programs and to negotiate with other school divisions for placements in order to ameliorate the impact on those school divisions located in a jurisdiction in which a state hospital or training center is located.

7. To provide to the Director of the Commonwealth's designated protection and advocacy system, established pursuant to § 51.5-39.13, a written report setting forth the known facts of (i) critical incidents, as that term is defined in § 37.2-709.1, or deaths of individuals receiving services in facilities and (ii) serious injuries, as that term is defined in regulations adopted by the Board pursuant to § 37.2-400, or deaths of individuals receiving services in programs operated or licensed by the Department within 15 working days of the critical incident, serious injury, or death.

8. To work with the appropriate state and federal entities to ensure that any individual who has received services in a state facility for more than one year has possession of or receives prior to discharge any of the following documents, when they are needed to obtain the services contained in his discharge plan: a Department of Motor Vehicles approved identification card that will expire 90 days from issuance, a copy of his birth certificate if the individual was born in the Commonwealth, or a social security card from the Social Security Administration. State facility directors, as part of their responsibilities pursuant to § 37.2-837, shall implement this provision when discharging individuals.

9. To work with the Department of Veterans Services and the Department for Aging and Rehabilitative Services to establish a program for mental health and rehabilitative services for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service and their family members pursuant to § 2.2-2001.1.

10. To establish and maintain a pharmaceutical and therapeutics committee composed of representatives of the Department of Medical Assistance Services, state facilities operated by the Department, community services boards, at least one health insurance plan, and at least one individual receiving services to develop a drug formulary for use at all community services boards, state facilities operated by the Department, and providers licensed by the Department.

11. To establish and maintain the Commonwealth Mental Health First Aid Program pursuant to § 37.2-312.2.

12. To submit a report for the preceding fiscal year by December 1 of each year to the Governor and the Chairmen of the House Appropriations and Senate Finances Committees that provides information on the operation of Virginia's publicly funded behavioral health and developmental services system. The report shall include a brief narrative and data on the number of individuals receiving state facility services or community services board services, including purchased inpatient psychiatric services; the types and amounts of services received by these individuals; and state facility and community services board service capacities, staffing, revenues, and expenditures. The annual report shall describe major new initiatives implemented during the past year and shall provide information on the accomplishment of systemic outcome and performance measures during the year.

13. *To administer the Problem Gambling Treatment and Support Fund established pursuant to § 37.2-314.1.*

Unless specifically authorized by the Governor to accept or undertake activities for compensation, the Commissioner shall devote his entire time to his duties.

§ 37.2-314.1. Problem Gambling Treatment and Support Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Problem Gambling Treatment and Support Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys required to be deposited into the Fund pursuant to subsection A of § 58.1-4049 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of (i) providing counseling and other support services for compulsive and problem gamblers, (ii) developing and implementing problem gambling treatment and prevention programs, and (iii) providing grants to supporting organizations that provide assistance to compulsive gamblers. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

CHAPTER 40.

VIRGINIA LOTTERY LAW; ELECTRONIC GAMING DEVICES.

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 electronic gaming devices 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 chapter.

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

§ 58.1-4006. Powers of the Director.

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

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

2. The regulation of electronic gaming devices in accordance with Article 2 (§ 58.1-4030 *et seq.*) and with the rules and regulations promulgated hereunder.

B. The Director shall also:

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 58.1-4007. Powers of the Board.

920 A. The Board shall have the power to adopt regulations governing the establishment and operation of
921 a lottery *pursuant to this article and the regulation of electronic gaming devices pursuant to Article 2*
922 (*§ 58.1-4030 et seq.*). The regulations governing the establishment and operation of the lottery *and the*
923 *regulation of electronic gaming devices* shall be promulgated by the Board after consultation with the
924 Director. Such regulations shall be in accordance with the Administrative Process Act (*§ 2.2-4000 et*
925 *seq.*). The regulations shall provide for all matters necessary or desirable for the efficient, honest, and
926 economical operation and administration of the lottery *and regulation of electronic gaming devices* and
927 for the convenience of the purchasers of tickets or shares, ~~and~~ the holders of winning tickets or shares,
928 *and the players of electronic gaming devices*. The regulations, which may be amended, repealed, or
929 supplemented as necessary, shall include, but not be limited to, the following:

- 930 1. The type or types of lottery or game to be conducted in accordance with *§ 58.1-4001*.
- 931 2. The price or prices of tickets or shares in the lottery.
- 932 3. The numbers and sizes of the prizes on the winning tickets or shares, including informing the
933 public of the approximate odds of winning and the proportion of lottery revenues (i) disbursed as prizes
934 and (ii) returned to the Commonwealth as net revenues.
- 935 4. The manner of selecting the winning tickets or shares.
- 936 5. The manner of payment of prizes to the holders of winning tickets or shares.
- 937 6. The frequency of the drawings or selections of winning tickets or shares without limitation.
- 938 7. Without limitation as to number, the type or types of locations at which tickets or shares may be
939 sold.
- 940 8. The method to be used in selling tickets or shares.
- 941 9. The advertisement of the lottery in accordance with the provisions of subsection E of *§ 58.1-4022*.
- 942 10. The licensing of agents to sell tickets or shares who will best serve the public convenience and
943 promote the sale of tickets or shares. No person under the age of 18 shall be licensed as an agent. A
944 licensed agent may employ a person who is 16 years of age or older to sell or otherwise vend tickets at
945 the agent's place of business so long as the employee is supervised in the selling or vending of tickets
946 by the manager or supervisor in charge at the location where the tickets are being sold. Employment of
947 such person shall be in compliance with Chapter 5 (*§ 40.1-78 et seq.*) of Title 40.1.
- 948 11. The manner and amount of compensation, if any, to be paid licensed sales agents necessary to
949 provide for the adequate availability of tickets or shares to prospective buyers and for the convenience
950 of the public. Notwithstanding the provisions of this subdivision, the Board shall not be required to
951 approve temporary bonus or incentive programs for payments to licensed sales agents.
- 952 12. Apportionment of the total revenues accruing from the sale of tickets or shares and from all other
953 sources and establishment of the amount of the special reserve fund as provided in *§ 58.1-4022* of this
954 chapter.
- 955 13. Such other matters necessary or desirable for the efficient and economical operation and
956 administration of the lottery.

957 14. *The operation of electronic gaming devices pursuant to Article 2 (§ 58.1-4030 et seq.).*

958 The Department shall not be subject to the provisions of Chapter 43 (*§ 2.2-4300 et seq.*) of Title 2.2;
959 however, the Board shall promulgate regulations, after consultation with the Director, relative to
960 departmental procurement which include standards of ethics for procurement consistent with the
961 provisions of Article 6 (*§ 2.2-4367 et seq.*) of Chapter 43 of Title 2.2 and which ensure that
962 departmental procurement will be based on competitive principles.

963 The Board shall have the power to advise and recommend, but shall have no power to veto or
964 modify administrative decisions of the Director. However, the Board shall have the power to accept,
965 modify or reject any revenue projections before such projections are forwarded to the Governor.

966 B. The Board shall carry on a continuous study and investigation of the lottery *and electronic*
967 *gaming devices* throughout the Commonwealth to:

- 968 1. Ascertain any defects of this chapter or the regulations issued hereunder which cause abuses in the
969 administration and operation of the lottery *or the regulation of electronic gaming devices* and any
970 evasions of such provisions.
- 971 2. Formulate, with the Director, recommendations for changes in this chapter and the regulations
972 promulgated hereunder to prevent such abuses and evasions.
- 973 3. Guard against the use of this chapter and the regulations promulgated hereunder as a subterfuge
974 for organized crime and illegal gambling.
- 975 4. Ensure that this law and the regulations of the Board are in such form and are so administered as
976 to serve the true purpose of this chapter.

977 C. The Board shall make a continuous study and investigation of (i) the operation and the
978 administration of similar laws ~~which that~~ may be in effect in other states or countries, (ii) any literature
979 on the subject ~~which that~~ may be published or available, (iii) any federal laws ~~which that~~ may affect the
980 operation of the lottery *or electronic gaming devices*, and (iv) the reaction of Virginia citizens to the
981 potential features of the lottery *or electronic gaming devices* 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.

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

1. Failure to properly account for lottery tickets received or the proceeds of the sale of lottery tickets;
2. Failure to file a bond if required by the Director or to comply with instructions and rules and regulations of the Department concerning the licensed activity, especially with regard to the prompt payment of claims;

3. Conviction of any offense referenced in subsection C of § 58.1-4009 subsequent to licensure;

4. Failure to file any return or report, to keep records or to pay any fees or other charges required by this chapter;

5. Any act of fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the Commonwealth lottery *or the administration and regulation of electronic gaming devices*;

6. If the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs and public convenience is adequately served by other licensees;

7. A material change, since issuance of the license, with respect to any matters required to be considered by the Director under this chapter; ~~or~~

8. *Failure to pay any fees or penalties required by this chapter; or*

9. Other factors established by Department regulation.

§ 58.1-4027. Judicial review.

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

Article 2.

Electronic Gaming Devices.

§ 58.1-4030. Definitions.

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

"Distributor" means any person that buys electronic gaming devices from a manufacturer and sells or otherwise distributes them to owners.

"Electronic gaming device" means an electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which is predominantly determined by the skill of the player, rather than chance, and that may deliver or entitle the person playing or operating the device to receive cash; cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; merchandise; or anything of value, whether the payoff is made automatically from the device or manually.

"Gross profits" means all revenue generated from the play of electronic gaming devices minus prizes paid out to successful players.

"Gross revenue" means all revenue generated from the play of electronic gaming devices.

"Host location" means an establishment at which electronic gaming devices are placed and offered to the public for play.

"Independent testing laboratory" means a laboratory with a national reputation for honesty, independence, and timeliness that is demonstrably competent and qualified to scientifically test and evaluate electronic gaming devices for compliance with this article and to otherwise perform the functions assigned to it by this article. An independent testing laboratory shall not be owned or controlled by a manufacturer, distributor, owner, or host location licensee or the Commonwealth.

- 1043 *"Individual" means a natural person.*
1044 *"Licensee" or "license holder" means any person holding a manufacturer, distributor, owner, or host*
1045 *location license under this article.*
1046 *"Manufacturer" means any person that manufactures and sells major components or parts, including*
1047 *software and hardware, for electronic gaming devices to distributors.*
1048 *"Owner" means any person that (i) owns electronic gaming devices, (ii) provides such devices to*
1049 *location hosts, and (iii) maintains such devices.*
1050 *"Person" means any individual, group of individuals, firm, company, corporation, partnership,*
1051 *business, trust, association, or other legal entity.*
1052 *"Player" means an individual who plays an electronic gaming device.*
1053 *"Single play" means the period beginning when a player activates and pays for the interactive game*
1054 *play function of an electronic gaming device and ending at the time when the game play function or*
1055 *series of free subgames thereunder will not continue without payment by the player of additional*
1056 *consideration.*
1057 *"Skill" means the knowledge, dexterity, or any other ability or expertise of a natural person.*
1058 *"Successful player" means an individual who wins on one or more plays of an electronic gaming*
1059 *device.*
1060 **§ 58.1-4031. Powers and duties of the Director related to electronic gaming devices; reporting.**
1061 *A. The Director shall have the following additional powers and duties related to the regulation of*
1062 *electronic gaming devices:*
1063 *1. Issue licenses under this article, and supervise all activities licensed under the provisions of this*
1064 *article, including the manufacturing, distributing, owning, hosting, and playing of electronic gaming*
1065 *devices.*
1066 *2. Suspend, revoke, or refuse to renew any license issued pursuant to this article or the rules and*
1067 *regulations adopted pursuant to this article.*
1068 *3. Inspect, investigate, and have free access to the offices, facilities, or other places of business of*
1069 *any licensee, and compel the production of any books, documents, records, or memoranda of any*
1070 *licensee for the purpose of satisfying himself that this article and Board regulations are strictly complied*
1071 *with.*
1072 *4. Order such audits as deemed necessary.*
1073 *5. Certify monthly to the State Comptroller and the Board a full and complete statement of electronic*
1074 *gaming device revenue and expenses for the previous month;*
1075 *6. Assess and collect civil penalties for violations of this article and Board regulations;*
1076 *7. Report monthly to the Governor, the Secretary of Finance, and the Chairmen of the Senate*
1077 *Committee on Finance, House Committee on Finance, and House Committee on Appropriations the total*
1078 *electronic gaming device revenues and expenses for the previous month and make an annual report,*
1079 *which shall include a full and complete statement of electronic gaming device revenues and expenses, to*
1080 *the Governor and the General Assembly, including recommendations for changes in this article as the*
1081 *Director and Board deem prudent; and*
1082 *8. Do all acts necessary and advisable to carry out the purposes of this article.*
1083 *B. The Director may require bond or other surety satisfactory to the Director from license holders in*
1084 *such amount as provided in the rules and regulations of the Board adopted under this article;*
1085 **§ 58.1-4032. Powers and duties of the Board related to electronic gaming devices.**
1086 *In addition to the regulations adopted pursuant to § 58.1-4007, the Board shall promulgate*
1087 *regulations related to electronic gaming devices that:*
1088 *1. Develop such forms, licenses, identification cards, and applications as are necessary or convenient*
1089 *for the administration of this article;*
1090 *2. Provide a schedule of application, license, and renewal fees;*
1091 *3. Establish requirements for all licensees under this article for the form, content, and retention of*
1092 *all records and accounts;*
1093 *4. Establish a process for the approval or disapproval of electronic gaming devices and games*
1094 *offered on such devices;*
1095 *5. Establish cash handling procedures for owner and host location licensees that require such*
1096 *licensees to keep separate accounts for gaming and non-gaming transactions;*
1097 *6. Require inspections of all licensees at a frequency determined by the Board; and*
1098 *7. Establish a program of periodic testing and inspection for all electronic gaming devices.*
1099 **§ 58.1-4033. Licenses that may be granted by the Director.**
1100 *The Director may grant the following licenses:*
1101 *1. Manufacturer license, which shall authorize the licensee to manufacture and sell to distributors*
1102 *major components or parts, including software and hardware, for electronic gaming devices.*
1103 *2. Distributor license, which shall authorize the licensee to buy electronic gaming devices from a*
1104 *manufacturer and sell or otherwise distribute them to owners.*

3. Owner license, which shall authorize the licensee to own electronic gaming devices, provide such devices to location hosts, and maintain such devices.

4. Host location license, which shall authorize the licensee to allow the placement and offering for play by the public of electronic gaming devices at such licensee's establishment.

§ 58.1-4034. General licensing requirements; penalty.

A. An applicant for a manufacturer, distributor, owner, or host location license shall submit an application to the Director on forms provided by the Director, accompanied by any fees required by the Board.

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

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

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

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

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

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

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

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

5. The applicant's license to manufacture, distribute, own, or offer to the public for play an electronic gaming device issued by any other jurisdiction has been suspended or revoked;

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

7. The applicant's application is incomplete.

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

§ 58.1-4035. License posting; expiration.

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

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

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

D. The Director may grant licenses for one year or for multiple years, not to exceed three years. Qualifications for a multiyear license shall be determined on the basis of criteria established by the Director. Fees for multiyear licenses shall not be refundable.

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. Prohibition against the issuance of multiple licenses to one person.

A. For purposes of this section, "interest" means an equity ownership interest or a partial equity ownership interest or any other type of financial interest, including but not limited to being an investor or serving in a management position.

B. No licensee who has been issued a manufacturer license shall be issued a distributor license, owner license, or host location license, or have any interest in a distributor licensee, owner licensee, or host location licensee.

C. No licensee who has been issued a distributor license shall be issued a manufacturer license, owner license, or host location license, or have any interest in a manufacturer licensee, owner licensee, or host location licensee.

D. No licensee who has been issued an owner license shall be issued a manufacturer license, distributor license, or host location license, or have any interest in a manufacturer licensee, distributor licensee, or host location licensee.

E. No licensee who has been issued a host location license shall be issued a manufacturer license, distributor license, or owner license, or have any interest in a manufacturer licensee, distributor licensee, or owner licensee.

§ 58.1-4037. Prohibition against transferring licenses without approval by Director.

A licensee may not transfer its license, 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.

§ 58.1-4038. 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.

§ 58.1-4039. Requirement for written agreement between owner licensee and host location licensee; division of revenue.

A. No owner licensee may place or maintain an electronic gaming device on the premises of a host location licensee unless the owner licensee and the host location licensee have entered into a written agreement that sets forth the terms and conditions for the placement and maintenance of such devices.

B. A copy of the written agreement shall be maintained in the business office of both the owner licensee and the host location licensee and shall be available at all times for inspection by the Director.

C. The written agreement shall be exclusive between one owner licensee and one host location licensee.

D. The written agreement shall be valid for a term of one year.

E. The written agreement shall require that owner licensees and host location licensees equally split all proceeds from the play of electronic gaming devices. No person shall receive a portion of any proceeds from the play of electronic gaming devices except for owner licensees and host location licensees.

§ 58.1-4040. Approval of electronic gaming devices by the Director.

A. No electronic gaming device shall be offered for play by the public in the Commonwealth unless such electronic gaming device has first been approved by the Director.

B. Before selling, leasing, or otherwise providing an electronic gaming device to a distributor, a manufacturer shall provide a prototype or production sample of such electronic gaming device to an independent testing laboratory that has been approved by the Director, which shall evaluate and certify whether such electronic gaming device meets the definition of electronic gaming device under § 58.1-4030, the requirements of § 58.1-4041, and any other requirements established in Board regulations.

Along with the prototype or production sample of the electronic gaming device, the manufacturer shall provide the following information concerning the electronic gaming device to the independent testing laboratory:

1. The method of determining the game outcome;
2. The available wagering denominations;
3. The minimum wager amount;

4. The maximum wager amount;
 5. The amount of takeout for each wager;
 6. The method of calculating winning payouts;
 7. Payout calculations set forth in sufficient detail to audit a payout through manual calculation;
 8. The minimum payouts and the method of guaranteeing minimum payouts; and
 9. Any other information requested by the independent testing laboratory or required by the Board for use in the testing of the electronic gaming device.
- The report of the independent testing laboratory shall be submitted by the manufacturer to the Director. The Director shall use the report in evaluating whether the electronic gaming device shall be approved under this article.
- If at any time a manufacturer makes a substantive change to any electronic gaming device that has previously been approved by the Director, such manufacturer shall resubmit the electronic gaming device to the Director in a manner prescribed by Board regulation.
- § 58.1-4041. Requirements of electronic gaming devices.**
- In addition to meeting the definition of electronic gaming device established in § 58.1-4030, electronic gaming devices shall:
1. Show the rules of play for each game in a way that adequately describes or displays such information so that a reasonable person could understand the game prior to placing a wager;
 2. Clearly indicate that the outcome of the game is affected by skill;
 3. Make all possible game outcomes available upon the initiation of each game;
 4. Prohibit the modification of the rules of play for a game, including the probability and award of a game outcome, once a game is initiated;
 5. Prohibit the remote modification or manipulation of games;
 6. Have a payout percentage of at least 75 percent;
 7. Have a power switch that is located inside of the device to prevent power from being switched off from outside of the device;
 8. Be designed such that power and data cables into and out of the device are routed so that they are not accessible by the general public;
 9. Have an identification badge affixed to the exterior of the device 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 device model number; and
 - d. The date of manufacture;
 10. Be constructed of materials that are designed to allow only authorized access to the interior of the device. Such materials shall be designed to show evidence of tampering if unauthorized access does occur;
 11. Have seals between the device 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;
 12. Have external doors that shall be locked and monitored by door access sensors;
 13. Have a currency storage area that is secured by two locks before the currency can be removed and that is only accessible by the owner licensee;
 14. Make payments to successful players by issuing a voucher that can be redeemed for cash at the host location; and
 15. Have the ability to allow for an independent integrity check by an independent testing laboratory approved by the Director of all software that may affect the integrity of the game.
- § 58.1-4042. Independent integrity checks of electronic gambling devices.**
- Each electronic gaming device shall be tested by an independent testing laboratory approved by the Director to ensure its integrity and proper working order. This evaluation shall include a review of installed software periodically within a timeframe established by the Director.
- The independent testing laboratory's software may be embedded within the game software, utilize an interface port to communicate with the device, or require the removal of device media for external verification.
- The owner 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.
- § 58.1-4043. Electronic accounting and reporting requirements.**
- Each electronic gaming device shall be equipped with a central monitoring and audit system to ensure the integrity of devices. Such system shall provide the ability to audit and account for machine revenues and distributions in a timely and accurate manner.
- Each electronic gaming device shall store the following information for each game played: (i) cash in, (ii) payouts, (iii) points played, (iv) points won, (v) gross terminal income, (vi) net terminal income,

1289 (vii) the number of plays of the game, (viii) the amounts paid to play the game, (ix) all taxes accrued
1290 and paid, and (x) any other information required by Board regulations.

1291 Such information shall be stored on a server, which shall be backed up at least once per day to an
1292 offsite storage facility controlled by the owner licensee. Offsite storage may include storage through a
1293 cloud service provider if approved by the Director. The server and offsite backup storage shall be
1294 accessible to the Director and employees of the Department and subject to third-party checks and
1295 validation as provided in § 58.1-4042.

1296 **§ 58.1-4044. Requirements of owner licensees.**

1297 A. No owner licensee shall own an electronic gaming device unless such device has been
1298 manufactured by a manufacturer licensee and purchased from a distributor licensee. No contract
1299 between an owner licensee and a manufacturer or distributor licensee shall grant the owner licensee
1300 exclusive rights to own, maintain, or place a type, model, or brand of electronic gaming device in the
1301 Commonwealth.

1302 B. No owner licensee shall place or maintain an electronic gaming device at any establishment
1303 where it is offered to the public for play for a charge, directly or indirectly, unless such establishment is
1304 a host location licensee.

1305 C. Each owner licensee that places or maintains an electronic gaming device at any establishment
1306 where it is offered to the public for play for a charge, directly or indirectly, shall submit a monthly
1307 report to the Department detailing:

- 1308 1. The gross revenue of each electronic gaming device that the owner owns and maintains; and
1309 2. The gross profits of each electronic gaming device that the owner owns and maintains.

1310 **§ 58.1-4045. Requirements of host location licensees.**

1311 A. No host location licensee shall allow an electronic gaming device to be placed upon the premises
1312 of such licensee's establishment unless such device is owned and maintained by an owner licensee.

1313 B. The primary business of a host location licensee shall not be the offering for play of electronic
1314 gaming devices.

1315 C. No host location licensee shall derive more than 50 percent of such location's monthly gross
1316 receipts from the play of electronic gaming devices at such location.

1317 D. No host location licensee shall offer more than nine electronic gaming devices to the public for
1318 play at such host location licensee's establishment.

1319 E. In no circumstance shall the combined number of electronic gaming devices located at host
1320 locations throughout the Commonwealth exceed 3,000.

1321 F. Each host location licensee shall submit a monthly report to the Department detailing:

- 1322 1. The gross receipts of the location;
1323 2. The gross revenue of each electronic gaming device; and
1324 3. The gross profits of each electronic gaming device.

1325 **§ 58.1-4046. Responsible gaming.**

1326 In an effort to promote responsible gaming by players, host location licensees shall:

1327 1. Post in a conspicuous place a sign that bears a toll-free number for problem gambling assistance
1328 that has been approved by the Virginia Council on Problem Gambling or other organizations that
1329 provide assistance to problem gamblers;

1330 2. Provide informational leaflets or other similar materials at the licensee's facilities on the dangers
1331 associated with problem gambling;

1332 3. If the licensee holds a license from the Virginia Alcoholic Beverage Control Authority to serve
1333 alcoholic beverages, train its employees to identify patrons who have consumed excessive amounts of
1334 alcohol to prevent such patrons from continuing to engage in wagering activity while impaired; and

1335 4. Ensure that any request by a patron who wishes to self-exclude from the licensee's facilities is
1336 honored by the licensee.

1337 **§ 58.1-4047. Local regulation of electronic gaming devices.**

1338 A. This article shall not be interpreted to supersede or limit the authority of a locality to adopt and
1339 enforce local ordinances to regulate businesses licensed under this article, including local zoning and
1340 land use requirements and business license requirements, to completely prohibit the establishment or
1341 operation of one or more types of businesses licensed under this article within the locality, or to limit
1342 the number of one or more types of businesses licensed under this article that may operate within the
1343 locality.

1344 B. If a locality chooses to permit the establishment or operation of one or more types of businesses
1345 licensed under this article within the locality, the locality may adopt an ordinance providing licensing
1346 requirements applicable to such businesses within the locality, which may include provisions establishing
1347 a local licensing fee schedule to defray application, administrative, and enforcement costs associated
1348 with the operation of the business in the locality.

1349 **§ 58.1-4048. Tax on gross profits.**

1350 A. There shall be imposed a tax of 10 percent on all gross profits from the play of electronic gaming

1351 devices.

1352 B. The tax imposed pursuant to this section is due monthly to the Department, and the owner
1353 licensee and host location licensee shall each remit the portion of the tax due from their equal share of
1354 the gross profits allocated pursuant to § 58.1-4039 on or before the twentieth day of the next succeeding
1355 calendar month. If the owner licensee's or host location licensee's accounting necessitates corrections to
1356 a previously remitted tax, such licensee shall document such corrections when remitting the following
1357 month's taxes.

1358 **§ 58.1-4049. Distribution of tax revenue.**

1359 A. The Department shall allocate two percent of the tax revenue collected pursuant to § 58.1-4048 to
1360 the Problem Gambling Treatment and Support Fund established pursuant to § 37.2-314.1.

1361 B. The Department shall allocate 55 percent of the tax revenue collected pursuant to § 58.1-4048 to
1362 the Electronic Gaming Devices Education Support Fund established pursuant to § 58.1-4050.

1363 C. The Department shall allocate the remaining 43 percent of the tax revenue collected pursuant to
1364 § 58.1-4048 to the general fund. From this amount a sum sufficient shall be appropriated to fund the
1365 operations of the Board related to the administration and regulation of electronic gaming devices
1366 pursuant to this article.

1367 **§ 58.1-4050. Electronic Gaming Devices Education Support Fund.**

1368 There is hereby created in the state treasury a special nonreverting fund to be known as the
1369 Electronic Gaming Devices Education Support Fund, referred to in this section as "the Fund." The Fund
1370 shall be established on the books of the Comptroller. All revenues allocated by the Department under
1371 § 58.1-4049 for deposit into the Fund shall be paid into the state treasury and credited to the Fund.
1372 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys
1373 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the
1374 general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of
1375 public education. Expenditures and disbursements from the Fund shall be made by the State Treasurer
1376 on warrants issued by the Comptroller upon written request signed by the chairman of the Board.

1377 **§ 58.1-4051. Illegal manufacturing, distributing, owning, or operating; penalty.**

1378 A. No person shall:

1379 1. Manufacture or sell to distributors major components or parts, including software and hardware,
1380 for electronic gaming devices without a license issued by the Director.

1381 2. Buy electronic gaming devices from a manufacturer and sell or otherwise distribute them to
1382 owners without a license issued by the Director.

1383 3. Own electronic gaming devices, provide such devices to location hosts, or maintain such devices
1384 without a license issued by the Director.

1385 4. Operate an establishment where one or more bona fide electronic gaming devices are made
1386 available for play by the public without a license issued by the Board.

1387 B. A violation of this section is a Class 6 felony.

1388 **§ 58.1-4052. Underage play prohibited; penalty.**

1389 A. No person shall play any electronic gaming device unless such person is 21 years of age or older.

1390 B. No person shall redeem any evidence of winnings from any person who is not 21 years of age or
1391 older.

1392 C. A violation of this section is a Class 1 misdemeanor.

1393 **§ 58.1-4053. Prohibited acts by host location licensees; penalty.**

1394 A. No host location licensee shall:

1395 1. Permit any person who is not 21 years of age or older to play any electronic gaming device;

1396 2. Give any reward for the play of an electronic gaming device that is not authorized by this article;
1397 or

1398 3. Give any reward for the play of an electronic gaming device that is redeemable at a location
1399 other than the host location's premises.

1400 B. A violation of this section is a Class 1 misdemeanor.

1401 **§ 58.1-4054. Illegal tampering with electronic gaming devices; penalty.**

1402 No person other than an owner licensee shall possess or use any key or device designed for the
1403 purpose of opening, entering, or affecting the operation of an electronic gaming device or otherwise
1404 tamper with an electronic gaming device. A violation of this section is a Class 6 felony.

1405 **§ 58.1-4055. Conspiracies and attempts to commit violations; penalty.**

1406 A. Any person who conspires, confederates, or combines with another, either within or outside the
1407 Commonwealth, to commit a felony prohibited by this article is guilty of a Class 6 felony.

1408 B. Any person who attempts to commit any act prohibited by this article is guilty of a criminal
1409 offense and shall be punished as provided in § 18.2-26, 18.2-27, or 18.2-28, as appropriate.

1410 **§ 58.1-4056. Certain provisions in Article 1 (§ 58.1-4000 et seq.) to apply, mutatis mutandis.**

1411 Except as provided in this article, the provisions of Article 1 (§ 58.1-4000 et seq.) shall apply to

1412 *electronic gaming devices under this article. The Board shall promulgate regulations to interpret and*
1413 *clarify the applicability of Article 1 (§ 58.1-4000 et seq.) to this article.*

1414 **2. That the Virginia Lottery Board's initial adoption of regulations necessary to implement the**
1415 **provisions of this act shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of**
1416 **the Code of Virginia), except that the Virginia Lottery Board shall provide an opportunity for**
1417 **public comment on the regulations prior to adoption.**

1418 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
1419 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
1420 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
1421 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**
1422 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**
1423 **§ 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be**
1424 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**