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HOUSE BILL NO. 602

Offered January 8, 2020

Prefiled January 6, 2020

A BILL to amend and reenact § 2.2-3705.4 of the Code of Virginia, relating to the Virginia Freedom of Information Act; scholastic records; charges.

Patron—Freitas

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-3705.4 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.**

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

1. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. *Scholastic records shall be furnished in electronic format, upon request, to the student who is the subject thereof, or the parent or legal guardian of the student, once per academic quarter at no charge to the requester. A physical copy of such records shall be furnished, upon request, to the student who is the subject thereof, or the parent or legal guardian of the student, once per academic year at no charge to the requester.* However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a public institution of higher education in the Commonwealth, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such records shall be disclosed.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

3. Information held by the Brown v. Board of Education Scholarship Committee that would reveal personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such information has not been publicly released, published, copyrighted or patented.

5. Information held by the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain 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 be harmful to the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College

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59 Savings Plan or its employees by or on behalf of individuals who have requested information about,
60 applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to
61 Chapter 7 (§ 23.1-700 et seq.) of Title 23.1, including personal information related to (i) qualified
62 beneficiaries as that term is defined in § 23.1-700, (ii) designated survivors, or (iii) authorized
63 individuals. Nothing in this subdivision shall be construed to prevent disclosure or publication of
64 information in a statistical or other form that does not identify individuals or provide personal
65 information. Individuals shall be provided access to their own personal information.

66 For purposes of this subdivision:

67 "Authorized individual" means an individual who may be named by the account owner to receive
68 information regarding the account but who does not have any control or authority over the account.

69 "Designated survivor" means the person who will assume account ownership in the event of the
70 account owner's death.

71 7. Information maintained in connection with fundraising activities by or for a public institution of
72 higher education that would reveal (i) personal fundraising strategies relating to identifiable donors or
73 prospective donors or (ii) wealth assessments; estate, financial, or tax planning information;
74 health-related information; employment, familial, or marital status information; electronic mail addresses,
75 facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or
76 prospective donors. Nothing in this subdivision, however, shall be construed to prevent the disclosure of
77 information relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of
78 the donor unless the donor has requested anonymity in connection with or as a condition of making a
79 pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure
80 (i) the identities of sponsors providing grants to or contracting with the institution for the performance
81 of research services or other work or (ii) the terms and conditions of such grants or contracts.

82 8. Information held by a threat assessment team established by a local school board pursuant to
83 § 22.1-79.4 or by a public institution of higher education pursuant to § 23.1-805 relating to the
84 assessment or intervention with a specific individual. However, in the event an individual who has been
85 under assessment commits an act, or is prosecuted for the commission of an act that has caused the
86 death of, or caused serious bodily injury, including any felony sexual assault, to another person, such
87 information of the threat assessment team concerning the individual under assessment shall be made
88 available as provided by this chapter, with the exception of any criminal history records obtained
89 pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic
90 records as defined in § 22.1-289. The public body providing such information shall remove personally
91 identifying information of any person who provided information to the threat assessment team under a
92 promise of confidentiality.

93 9. Records provided to the Governor or the designated reviewers by a qualified institution, as those
94 terms are defined in § 23.1-1239, related to a proposed memorandum of understanding, or proposed
95 amendments to a memorandum of understanding, submitted pursuant to Chapter 12.1 (§ 23.1-1239 et
96 seq.) of Title 23.1. A memorandum of understanding entered into pursuant to such chapter shall be
97 subject to public disclosure after it is agreed to and signed by the Governor.

98 B. The custodian of a scholastic record shall not release the address, phone number, or email address
99 of a student in response to a request made under this chapter without written consent. For any student
100 who is (i) 18 years of age or older, (ii) under the age of 18 and emancipated, or (iii) attending an
101 institution of higher education, written consent of the student shall be required. For any other student,
102 written consent of the parent or legal guardian of such student shall be required.