

LD2876146

HOUSE BILL NO. 2294

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 5, 1995)

(Patron Prior to Substitute—Delegate Cantor)

A BILL to amend and reenact §§ 2.1-342, 9-6.25:2, and 11-45 of the Code of Virginia; to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 7.2, consisting of sections numbered 32.1-276.2 through 32.1-276.13; and to repeal Chapter 26 (§§ 9-156 through 9-166.7) of Title 9, relating to the Virginia Health Services Cost Review Council, health care cost reporting, and the Virginia Patient Level Data System.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342, 9-6.25:2, and 11-45 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 7.2, consisting of sections numbered 32.1-276.2 through 32.1-276.13, as follows:

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.

A. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of this Commonwealth, representatives of newspapers and magazines with circulation in this Commonwealth, and representatives of radio and television stations broadcasting in or into this Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within five work days after the receipt of the request by the public body which is the custodian of the requested records. Such citizen request shall designate the requested records with reasonable specificity. A specific reference to this chapter by the requesting citizen in his request shall not be necessary to invoke the provisions of this chapter and the time limits for response by the public body. The response by the public body within such five work days shall be one of the following responses:

1. The requested records shall be provided to the requesting citizen.

2. If the public body determines that an exemption applies to all of the requested records, it may refuse to release such records and provide to the requesting citizen a written explanation as to why the records are not available with the explanation making specific reference to the applicable Code sections which make the requested records exempt.

3. If the public body determines that an exemption applies to a portion of the requested records, it may delete or excise that portion of the records to which an exemption applies, disclose the remainder of the requested records and provide to the requesting citizen a written explanation as to why these portions of the record are not available to the requesting citizen with the explanation making specific reference to the applicable Code sections which make that portion of the requested records exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.

4. If the public body determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period, the public body shall so inform the requesting citizen and shall have an additional seven work days in which to provide one of the three preceding responses.

Nothing in this section shall prohibit any public body from petitioning the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with this petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records; however, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The public body may require the advance payment of charges which are subject to advance determination.

In any case where a public body determines in advance that search and copying charges for

60 producing the requested documents are likely to exceed \$200, the public body may, before continuing to
61 process the request, require the citizen requesting the information to agree to payment of an amount not
62 to exceed the advance determination by five percent. The period within which the public body must
63 respond under this section shall be tolled for the amount of time that elapses between notice of the
64 advance determination and the response of the citizen requesting the information.

65 Official records maintained by a public body on a computer or other electronic data processing
66 system which are available to the public under the provisions of this chapter shall be made reasonably
67 accessible to the public at reasonable cost.

68 Public bodies shall not be required to create or prepare a particular requested record if it does not
69 already exist. Public bodies may, but shall not be required to, abstract or summarize information from
70 official records or convert an official record available in one form into another form at the request of
71 the citizen. The public body shall make reasonable efforts to reach an agreement with the requester
72 concerning the production of the records requested.

73 Failure to make any response to a request for records shall be a violation of this chapter and deemed
74 a denial of the request.

75 B. The following records are excluded from the provisions of this chapter but may be disclosed by
76 the custodian in his discretion, except where such disclosure is prohibited by law:

77 1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult
78 arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such
79 time as the release of such photograph will no longer jeopardize the investigation; reports submitted to
80 the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police
81 departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of
82 Title 23 in confidence; portions of records of local government crime commissions that would identify
83 individuals providing information about crimes or criminal activities under a promise of anonymity;
84 records of local police departments relating to neighborhood watch programs that include the names,
85 addresses, and operating schedules of individual participants in the program that are provided to such
86 departments under a promise of confidentiality; and all records of persons imprisoned in penal
87 institutions in this Commonwealth provided such records relate to the imprisonment. Information in the
88 custody of law-enforcement officials relative to the identity of any individual other than a juvenile who
89 is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions
90 of this chapter.

91 Criminal incident information relating to felony offenses shall not be excluded from the provisions of
92 this chapter; however, where the release of criminal incident information is likely to jeopardize an
93 ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection,
94 or result in the destruction of evidence, such information may be withheld until the above-referenced
95 damage is no longer likely to occur from release of the information.

96 2. Confidential records of all investigations of applications for licenses and permits, and all licensees
97 and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery
98 Department or the Virginia Racing Commission.

99 3. State income, business, and estate tax returns, personal property tax returns, scholastic records and
100 personnel records containing information concerning identifiable individuals, except that such access
101 shall not be denied to the person who is the subject thereof, and medical and mental records, except that
102 such records can be personally reviewed by the subject person or a physician of the subject person's
103 choice; however, the subject person's mental records may not be personally reviewed by such person
104 when the subject person's treating physician has made a part of such person's records a written statement
105 that in his opinion a review of such records by the subject person would be injurious to the subject
106 person's physical or mental health or well-being.

107 Where the person who is the subject of medical records is confined in a state or local correctional
108 facility, the administrator or chief medical officer of such facility may assert such confined person's right
109 of access to the medical records if the administrator or chief medical officer has reasonable cause to
110 believe that such confined person has an infectious disease or other medical condition from which other
111 persons so confined need to be protected. Medical records shall be reviewed only and shall not be
112 copied by such administrator or chief medical officer. The information in the medical records of a
113 person so confined shall continue to be confidential and shall not be disclosed to any person except the
114 subject by the administrator or chief medical officer of the facility or except as provided by law.

115 For the purposes of this chapter such statistical summaries of incidents and statistical data concerning
116 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental
117 Retardation and Substance Abuse Services shall be open to inspection and releasable as provided in
118 subsection A of this section. No such summaries or data shall include any patient-identifying
119 information. Where the person who is the subject of scholastic or medical and mental records is under
120 the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a
121 noncustodial parent, unless such parent's parental rights have been terminated or a court of competent

jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education, such right of access may be asserted by the subject person.

4. Memoranda, working papers and correspondence (i) held by or requested from members of the General Assembly or the Division of Legislative Services or (ii) held or requested by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institution of higher education. This exclusion shall not apply to memoranda, studies or other papers held or requested by the mayor or other chief executive officer of any political subdivision which are specifically concerned with the evaluation of performance of the duties and functions of any locally elected official and were prepared after June 30, 1992.

Except as provided in § 30-28.18, memoranda, working papers and correspondence of a member of the General Assembly held by the Division of Legislative Services shall not be released by the Division without the prior consent of the member.

5. Written opinions of the city, county and town attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

7. 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 (iii) receipt of an honor or honorary recognition.

8. Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

9. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body.

As used in this subdivision 9, "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subdivision 9 shall prohibit the release of test scores or results as provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

10. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

11. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

12. Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

14. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or § 62.1-134.1.

15. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services and records, documents and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

16. Vendor proprietary information software which may be in the official records of a public body. For the purpose of this section, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of this Commonwealth.

17. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, 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

183 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a
184 private concern, where such data, records or information has not been publicly released, published,
185 copyrighted or patented.

186 18. Financial statements not publicly available filed with applications for industrial development
187 financings.

188 19. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
189 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
190 the political subdivision.

191 20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise
192 of confidentiality from the Department of Economic Development or local industrial or economic
193 development authorities or organizations, used by the Department and such entities for business, trade
194 and tourism development.

195 21. Information which was filed as confidential under the Toxic Substances Information Act
196 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

197 22. Documents as specified in § 58.1-3.

198 23. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis
199 center or a program for battered spouses.

200 24. Computer software developed by or for a state agency, state-supported institution of higher
201 education or political subdivision of the Commonwealth.

202 25. Investigator notes, and other correspondence and information, furnished in confidence with
203 respect to an active investigation of individual employment discrimination complaints made to the
204 Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure of
205 information taken from inactive reports in a form which does not reveal the identity of charging parties,
206 persons supplying the information or other individuals involved in the investigation.

207 26. Fisheries data which would permit identification of any person or vessel, except when required
208 by court order as specified in § 28.2-204.

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

211 28. Documents and writings furnished by a member of the General Assembly to a meeting of a
212 standing committee, special committee or subcommittee of his house established solely for the purpose
213 of reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or
214 of formulating advisory opinions to members on standards of conduct, or both.

215 29. Customer account information of a public utility affiliated with a political subdivision of the
216 Commonwealth, including the customer's name and service address, but excluding the amount of utility
217 service provided and the amount of money paid for such utility service.

218 30. Investigative notes and other correspondence and information furnished in confidence with
219 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
220 under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section shall prohibit
221 the distribution of information taken from inactive reports in a form which does not reveal the identity
222 of the parties involved or other persons supplying information.

223 31. Investigative notes; proprietary information not published, copyrighted or patented; information
224 obtained from employee personnel records; personally identifiable information regarding residents,
225 clients or other recipients of services; and other correspondence and information furnished in confidence
226 to the Department of Social Services in connection with an active investigation of an applicant or
227 licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however,
228 nothing in this section shall prohibit disclosure of information from the records of completed
229 investigations in a form that does not reveal the identity of complainants, persons supplying information,
230 or other individuals involved in the investigation.

231 32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other
232 information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or
233 any institution thereof to the extent, as determined by the Director of the Department of Corrections or
234 his designee or of the Virginia Board of Youth and Family Services, the Virginia Department of Youth
235 and Family Services or any facility thereof to the extent as determined by the Director of the
236 Department of Youth and Family Services, or his designee, that disclosure or public dissemination of
237 such materials would jeopardize the security of any correctional or juvenile facility or institution, as
238 follows:

239 (i) Security manuals, including emergency plans that are a part thereof;

240 (ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational
241 specifications of security systems utilized by the Departments, provided the general descriptions of such
242 security systems, cost and quality shall be made available to the public;

243 (iii) Training manuals designed for correctional and juvenile facilities to the extent that they address
244 procedures for institutional security, emergency plans and security equipment;

(iv) Internal security audits of correctional and juvenile facilities, but only to the extent that they specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;

(v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;

(vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of complainants or charging parties, persons supplying information, confidential sources, or other individuals involved in the investigation, or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution; nothing herein shall permit the disclosure of materials otherwise exempt as set forth in subdivision 1 of subsection B of this section;

(vii) Logs or other documents containing information on movement of inmates, juvenile clients or employees; and

(viii) Documents disclosing contacts between inmates, juvenile clients and law-enforcement personnel.

Notwithstanding the provisions of this subdivision, reports and information regarding the general operations of the Departments, including notice that an escape has occurred, shall be open to inspection and copying as provided in this section.

33. Personal information, as defined in § 2.1-379, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority, (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs, or (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority. However, access to one's own information shall not be denied.

34. Documents regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body which has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Official records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Official records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations which cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the building code in obtaining a building permit which would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee; however, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

40. [Repealed.]

306 41. Records concerning reserves established in specific claims administered by the Department of
307 General Services through its Division of Risk Management as provided in Article 5.1 (§ 2.1-526.1 et
308 seq.) of Chapter 32 of this title, or by any county, city, or town.

309 42. Information and records collected for the designation and verification of trauma centers and other
310 specialty care centers within the Statewide Emergency Medical Care System pursuant to § 32.1-112.

311 43. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

312 44. [Repealed.]

313 45. Investigative notes; correspondence and information furnished in confidence with respect to an
314 investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided
315 to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review
316 Commission; or investigative notes, correspondence, documentation and information furnished and
317 provided to or produced by or for the Department of the State Internal Auditor with respect to an
318 investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; however, nothing in
319 this chapter shall prohibit disclosure of information from the records of completed investigations in a
320 form that does not reveal the identity of complainants, persons supplying information or other
321 individuals involved in the investigation.

322 46. Data formerly required to be submitted to the Commissioner of Health relating to the
323 establishment of new or expansion of existing clinical health services, acquisition of major medical
324 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

325 47. Documentation or other information which describes the design, function, operation or access
326 control features of any security system, whether manual or automated, which is used to control access to
327 or use of any automated data processing or telecommunications system.

328 48. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections
329 provided to the Department of Rail and Public Transportation, provided such information is exempt
330 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws
331 administered by the Interstate Commerce Commission or the Federal Rail Administration with respect to
332 data provided in confidence to the Interstate Commerce Commission and the Federal Railroad
333 Administration.

334 49. In the case of corporations organized by the Virginia Retirement System, RF&P Corporation and
335 its wholly owned subsidiaries, (i) proprietary information provided by, and financial information
336 concerning, coventurers, partners, lessors, lessees, or investors, and (ii) records concerning the condition,
337 acquisition, disposition, use, leasing, development, coventuring, or management of real estate the
338 disclosure of which would have a substantial adverse impact on the value of such real estate or result in
339 a competitive disadvantage to the corporation or subsidiary.

340 50. Confidential proprietary records related to inventory and sales, voluntarily provided by private
341 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
342 contingency planning purposes or for developing consolidated statistical information on energy supplies.

343 51. Confidential proprietary information furnished to the Board of Medical Assistance Services or the
344 Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
345 Chapter 10 of Title 32.1.

346 52. Patient level data collected by the Virginia Health Services Cost Review Council and not yet
347 processed, verified, and released, pursuant to § 9-166.7 32.1-276.12, to the Council by the nonprofit
348 organization with which the Executive Director Commissioner has contracted pursuant to § 9-166.4
349 32.1-276.5.

350 53. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and
351 cost projections provided by a private transportation business to the Virginia Department of
352 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
353 transportation studies needed to obtain grants or other financial assistance under the Intermodal Surface
354 Transportation Efficiency Act of 1991 (P.L. 102-240) for transportation projects, provided such
355 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce
356 Act or other laws administered by the Interstate Commerce Commission or the Federal Rail
357 Administration with respect to data provided in confidence to the Interstate Commerce Commission and
358 the Federal Railroad Administration. However, the exemption provided by this subdivision shall not
359 apply to any wholly owned subsidiary of a public body.

360 54. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department
361 of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the
362 Department not release such information.

363 55. Reports, documents, memoranda or other information or materials which describe any aspect of
364 security used by the Virginia Museum of Fine Arts to the extent that disclosure or public dissemination
365 of such materials would jeopardize the security of the Museum or any warehouse controlled by the
366 Museum, as follows:

367 a. Operational, procedural or tactical planning documents, including any training manuals to the

extent they discuss security measures;

b. Surveillance techniques;

c. Installation, operation, or utilization of any alarm technology;

d. Engineering and architectural drawings of the Museum or any warehouse;

e. Transportation of the Museum's collections, including routes and schedules; or

f. Operation of the Museum or any warehouse used by the Museum involving the:

(1) Number of employees, including security guards, present at any time; or

(2) Busiest hours, with the maximum number of visitors in the Museum.

56. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Department of Alcoholic Beverage Control to the extent that disclosure or public dissemination of such materials would jeopardize the security of any government store as defined in Title 4.1, or warehouse controlled by the Department of Alcoholic Beverage Control, as follows:

(i) Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

(ii) Surveillance techniques;

(iii) The installation, operation, or utilization of any alarm technology;

(iv) Engineering and architectural drawings of such government stores or warehouses;

(v) The transportation of merchandise, including routes and schedules; and

(vi) The operation of any government store or the central warehouse used by the Department of Alcoholic Beverage Control involving the:

a. Number of employees present during each shift;

b. Busiest hours, with the maximum number of customers in such government store; and

c. Banking system used, including time and place of deposits.

57. Information required to be provided pursuant to § 54.1-2506.1.

58. (Effective July 1, 1995) Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 3 of subsection B of this section, or to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to, any public officer, official or employee at any level of state, local or regional government in this Commonwealth or to the compensation or benefits paid by any corporation organized by the Virginia Retirement System, RF&P Corporation and its wholly owned subsidiaries, to their officers or employees. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

§ 9-6.25:2. Policy boards, commissions and councils.

There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following policy boards, commissions and councils:

Apprenticeship Council

Athletic Board

Auctioneers Board

Blue Ridge Regional Education and Training Council

Board for Accountancy

Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects

Board for Barbers

Board for Contractors

Board for Cosmetology

Board for Geology

Board for Hearing Aid Specialists

Board for Opticians

Board for Professional and Occupational Regulation

Board for Professional Soil Scientists

Board for Waterworks and Wastewater Works Operators

(Effective July 1, 1995) Board for the Visually Handicapped

Board of Agriculture and Consumer Services

Board of Audiology and Speech-Language Pathology

Board of Coal Mining Examiners

Board of Conservation and Recreation

429 Board of Correctional Education
430 Board of Dentistry
431 Board of Directors, Virginia Student Assistance Authorities
432 Board of Funeral Directors and Embalmers
433 Board of Health Professions
434 Board of Historic Resources
435 Board of Housing and Community Development
436 Board of Medical Assistance Services
437 Board of Medicine
438 Board of Mineral Mining Examiners
439 Board of Nursing
440 Board of Nursing Home Administrators
441 Board of Optometry
442 Board of Pharmacy
443 Board of Professional Counselors
444 Board of Psychology
445 Board of Recreation Specialists
446 Board of Social Services
447 Board of Social Work
448 Board of Surface Mining Review
449 Board of Veterinary Medicine
450 Board on Conservation and Development of Public Beaches
451 Chesapeake Bay Local Assistance Board
452 Child Day Care and Early Childhood Programs, Virginia Council on
453 Child Day-Care Council
454 Commission on Local Government
455 Commonwealth Transportation Board
456 Council on Human Rights
457 Council on Information Management
458 Criminal Justice Services Board
459 Disability Services Council
460 Farmers Market Board, Virginia
461 Interdepartmental Council on Rate-setting for Children's Facilities
462 Library Board, the Library of Virginia
463 Marine Resources Commission
464 Milk Commission
465 Pesticide Control Board
466 Real Estate Appraiser Board
467 Real Estate Board
468 Reciprocity Board, Department of Motor Vehicles
469 Safety and Health Codes Board
470 Seed Potato Board
471 Southside Virginia Marketing Council
472 Specialized Transportation Council
473 State Air Pollution Control Board
474 State Board of Corrections
475 State Board of Elections
476 State Board of Health
477 State Board of Youth and Family Services
478 State Health Department, Sewage Handling and Disposal Appeal Review Board
479 State Library Board
480 State Mental Health, Mental Retardation and Substance Abuse Services Board
481 State Water Control Board
482 Substance Abuse Certification Board
483 Treasury Board, The, Department of the Treasury
484 Virginia Aviation Board
485 Virginia Board for Asbestos Licensing
486 Virginia Fire Services Board
487 Virginia Gas and Oil Board
488 Virginia Health Planning Board
489 ~~Virginia Health Services Cost Review Council~~
490 Virginia Manufactured Housing Board

Virginia Parole Board

Virginia Public Telecommunications Board

Virginia Soil and Water Conservation Board

Virginia Voluntary Formulary Board

Virginia Waste Management Board

Virginia World Trade Council

Waste Management Facility Operators, Board for.

§ 11-45. Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.1-1374 (d).

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. The Executive Director of the Virginia Health Services Cost Review Council *Commissioner of Health* may enter into ~~agreements or contracts~~ *an agreement or contract* without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, and evaluation of patient level data pursuant to ~~Article 2 (§ 9-166.1 et seq.) of Chapter 26 of Title 9~~ *Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1* if the ~~Executive Director~~ *Commissioner* has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination.

CHAPTER 7.2.

MEASUREMENT OF QUALITY AND EFFECTIVENESS OF HEALTH CARE PROVIDERS.

§ 32.1-276.2. Definitions.

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

"Department" means the Department of Health.

"Health care institution" means (i) a general hospital, ordinary hospital, outpatient surgical hospital, nursing home or certified nursing facility licensed or certified pursuant to Chapter 5, Article 1 (§ 32.1-123 et seq.) of this title; (ii) a mental or psychiatric hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1; or (iii) a hospital operated by the University of Virginia or Virginia Commonwealth University. In no event shall a health care institution be construed to include any continuing care retirement community which files annual financial reports with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, or any nursing care facility operated by a religious body which depends upon prayer alone for healing.

"Inpatient hospital" means a hospital providing inpatient care and licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1, or a hospital operated by the University of Virginia or Virginia Commonwealth University.

"Nonprofit organization" means a nonprofit, tax-exempt health data organization with expertise and capacity to execute the powers and duties set forth for such entity in this chapter.

"System" means the Virginia Patient Level Data System.

"Department" means the Department of Health.

§ 32.1-276.3. Regulations.

The Board shall promulgate the regulations required by this chapter by July 1, 1996. Prior to that date, the Department shall enforce existing regulations of the Virginia Health Services Cost Review Council governing the activities authorized by this section.

§ 32.1-276.4. Duplicative reporting not required.

Any data, excluding data prohibited from release under federal law, required to be reported by a health care provider pursuant to this chapter that such health care provider has reported to the Department or to any other state agency pursuant to other provisions of this Code shall be collected by the Department or the nonprofit organization defined in § 32.1-276.2 directly from such source, and the health care provider shall not be required to report the data under this chapter.

§ 32.1-276.5. Agreements for data services.

The Commissioner shall negotiate and enter into a contract or agreement with a nonprofit, tax-exempt health data organization for the implementation of the methodology developed pursuant to § 32.1-276.7 and for the collection, compilation, storage, analysis, and evaluation of patient level data provided pursuant to § 32.1-276.10. Such nonprofit organization shall be governed by a board of directors comprising representatives of state government and the consumer, hospital, nonprofit and for-profit nursing homes, physician, insurance, and business communities. The articles of incorporation of such nonprofit organization shall require the nomination of such board members by organizations and associations representing those categories of persons specified for representation on the board of directors. Except as provided in subsection K of § 11-45, the provisions of the Virginia Public Procurement Act (§ 11-45 et seq.) shall not apply to the activities of the Commissioner authorized by this section. Funding for services provided pursuant to this contract or agreement shall come from general appropriations.

§ 32.1-276.6. Violations.

Any person violating the provisions of this chapter may be enjoined from continuing such violation by application by the Department for relief to a circuit court having jurisdiction over the offending party.

§ 32.1-276.7. Methodology to review and measure the efficiency and productivity of health care institutions.

A. The Board shall promulgate regulations establishing a methodology for the review and measurement of the efficiency and productivity of health care institutions by the nonprofit organization. The methodology shall provide for, but not be limited to, comparisons of a health care institution's performance to national and regional data. The Commissioner may compel health care institutions to submit the data necessary for implementation of the requirements of this section.

B. The Board may develop the methodology established by this section and reporting requirements necessary for the assessment of the various types of health care institutions which report to it.

C. The Board, by regulation, may authorize the nonprofit organization to assess and collect the reasonable costs of implementation of this section.

§ 32.1-276.8. Additional reporting requirements.

Each inpatient hospital or any corporation that controls an inpatient hospital shall submit audited and consolidated financial statements and consolidating financial schedules which include its total assets, liabilities, revenues, expenses, and net worth. This filing shall also include the following information: (i) the name and principal activity; (ii) the date of the affiliation; (iii) the nature of the affiliation; and (iv) the method by which each affiliate was acquired or created.

§ 32.1-276.9. Patient Level Data System.

The existence and operations of the Virginia Patient Level Data System, hereinafter referred to as the "System," are hereby continued. Its purpose shall be the establishment and administration of an integrated system for collection and analysis of data which shall be used by consumers, employers, providers, and purchasers of health care and by state government to continuously assess and improve the quality, appropriateness, and accessibility of health care in the Commonwealth and to enhance their ability to make effective health care decisions.

§ 32.1-276.10. Patient Level Data System; reporting requirements.

A. Every inpatient hospital shall submit to the nonprofit organization patient level data as set forth in subsection B of this section. Notwithstanding the provisions of Chapter 26 (§ 2.1-377 et seq.) of Title 2.1, it shall be lawful to provide information in compliance with the provisions of this chapter.

B. Patient level data elements for hospital inpatients reported by any source shall include:

1. Hospital identifier;
2. Attending physician identifier;
3. Operating physician identifier;
4. Payor identifier;
5. Employer identifier;
6. Patient identifier;
7. Patient sex, race, date of birth (including century indicator), zip code, patient relationship to insured, employment status code, status at discharge, and birth weight (for infants);
8. Admission type, source, date and hour, and diagnosis;
9. Discharge date and status;
10. Principal and secondary diagnoses;
11. External cause of injury;
12. Co-morbid conditions existing but not treated;
13. Procedures and procedure dates;
14. Revenue center codes, units, and charges; and
15. Total charges.

C. State agencies providing coverage for outpatient services shall submit patient level data regarding paid outpatient claims to the Department. Information to be submitted shall be extracted from standard claims forms and, where available, shall include:

1. Provider identifier;
2. Patient identifier;
3. Physician identifier;
4. Dates of service and diagnostic, procedural, demographic, pharmaceutical, and financial information; and
5. Other related information.

The Board shall promulgate regulations specifying the format for submission of such outpatient data. Notwithstanding the provisions of Chapter 26 (§ 2.1-377 et seq.) of Title 2.1, it shall be lawful to provide information in compliance with the provisions of this chapter.

D. The Board shall by regulation authorize the nonprofit organization to collect from other health care providers, and require such health care providers to submit, such other data as is necessary to permit accomplishment of the mission of the Patient Level Data System as established in § 32.1-276.9. Such nonprofit organization shall evaluate and report to the Board and the Joint Commission on Health Care by January 1, 1996, on (i) the feasibility of collecting information for all outpatient encounters in the Commonwealth and (ii) the costs and benefits of implementing a system for collecting and reporting to the public comparative information regarding the performance of health care plans.

§ 32.1-276.11. Patient Level Data System; fees for processing and verification of data.

A. The Department shall prescribe a reasonable fee, not to exceed one dollar per discharge, for each hospital submitting patient level data pursuant to this chapter directly to the nonprofit organization to cover the costs of the reasonable expenses incurred by the Department and such nonprofit organization in processing and verifying the data required for submission pursuant to this chapter. The fees shall be established and reviewed annually by the Department. The payment of such fees shall be at such time as the Department designates. The Department may assess a late charge on any fees paid after their due date.

B. The nonprofit organization collecting, compiling, storing, analyzing, and evaluating data pursuant to an agreement or contract with the Department shall be authorized to charge and collect the fees prescribed by the Department for processing and verifying such data. The Board shall promulgate regulations permitting hospitals submitting patient level data pursuant to this chapter to pay fees to the nonprofit organization collecting, compiling, storing, analyzing, and evaluating patient level data pursuant to an agreement or contract with the Department. Such fees shall not exceed the amount

675 authorized by the Department as provided in subsection A of this section. Such regulations also shall
676 include provisions for the nonprofit organization, at its discretion, to grant a reduction or waiver of
677 such for a hospital or group of hospitals, participating in a private and voluntary data collection effort,
678 which submits the data required by this chapter in a processed and verified manner meeting the
679 requirements of data completeness and timeliness.

680 C. State agencies shall not be assessed fees for the submission of data required by § 32.1-276.10.
681 Individual employers, insurers, and other organizations may voluntarily provide the nonprofit
682 organization with outpatient data for processing, storage, and comparative analysis and shall be subject
683 to fees negotiated with and charged by the nonprofit organization for services provided.

684 § 32.1-276.12. Patient Level Data System; fees for the dissemination of data.

685 The nonprofit organization collecting, compiling, storing, analyzing, and evaluating data pursuant to
686 an agreement or contract with the Department shall be authorized to charge and collect reasonable fees
687 reflecting market value of such information for the dissemination of such data; however, the Department
688 shall be entitled to receive publicly available data from the nonprofit organization at no charge.

689 § 32.1-276.13. Patient Level Data System; confidentiality, subsequent release of data and relief from
690 liability for reporting; penalty for wrongful disclosure; individual action for damages.

691 A. Patient level data collected pursuant to this chapter shall be exempt from the provisions of the
692 Virginia Freedom of Information Act (§ 2.1-340 et seq.), shall be considered confidential, and shall not
693 be disclosed other than as specifically authorized by this chapter. However, upon processing and
694 verification by the nonprofit organization, all patient level data shall be made available, except patient,
695 physician, and employer identifier elements, which shall be released only as provided in subsection B of
696 this section. No report published by the nonprofit organization, the Department, or other person may
697 present information that reasonably could be expected to identify any patient. Information made
698 available shall be designed to prevent persons from being able to gain access to combinations of patient
699 characteristic data elements that reasonably could be expected to identify the patient.

700 B. Any agreement or contract between the Department and a nonprofit organization made pursuant
701 to this chapter shall specify that, upon processing, verification, and release by the nonprofit
702 organization of patient level data, the patient identifier information, if otherwise permitted by law, may
703 be released for research purposes only, provided that such identifier is encrypted and cannot be
704 reasonably expected to identify the patient. Such nonprofit organization may, in its discretion, release
705 physician and employer identifier information. All other processed and verified patient level data
706 specified in subsections B and C of § 32.1-276.10 shall be publicly available. Data not specified in
707 subsections B and C of § 32.1-276.10 that is collected by the nonprofit organization may be released by
708 the nonprofit organization at its discretion.

709 C. No person or entity, including the nonprofit organization contracting with the Department, shall
710 be held liable in any civil action with respect to any report or disclosure of information made under this
711 chapter unless such person or entity knows of any falsity of the information reported or disclosed.

712 D. Any disclosure of information made in violation of this chapter, and any disclosure by any person
713 of information provided for research purposes in accordance with subsection B of this section that
714 permits identification of any patient, or that permits identification from information not publicly
715 available of any physician or employer without approval of the nonprofit organization, shall be subject
716 to a civil penalty of not more than \$5,000 per violation. This provision shall be enforceable upon
717 petition to the appropriate circuit court by the Attorney General, any attorney for the Commonwealth,
718 or any attorney for the county, city or town in which the violation occurred. Any penalty imposed shall
719 be payable to the Literary Fund. In addition, any person or entity who is the subject of any disclosure
720 in violation of this chapter shall be entitled to initiate an action to recover actual damages, if any, or
721 \$500, whichever is greater, together with reasonable attorney's fees and court costs.

722 2. That Chapter 26 (§§ 9-156 through 9-166.7) of Title 9 is repealed.