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SENATE BILL NO. 1156

Offered January 20, 1997

A *BILL to amend §§ 2.1-342 and 9-6.14:4.1 of the Code of Virginia and to repeal Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia, relating to horse racing with pari-mutuel wagering.*

Patron—Earley

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.1-342 and 9-6.14:4.1 of the Code of Virginia are amended 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 the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the 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, but shall 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 segregable 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. The public body may also make a reasonable charge for preparing documents produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records or documents, 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.

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

66 Official records maintained by a public body on a computer or other electronic data processing
67 system which are available to the public under the provisions of this chapter shall be made reasonably
68 accessible to the public at reasonable cost. Beginning July 1, 1997, every public body of state
69 government shall compile, and annually update, an index of computer databases which contains at a
70 minimum those databases created by them on or after July 1, 1997. "Computer database" means a
71 structured collection of data or documents residing in a computer. Such index shall be an official record
72 and shall include, at a minimum, the following information with respect to each database listed therein:
73 a list of data fields, a description of the format or record layout, the date last updated, a list of any data
74 fields to which public access is restricted, a description of each format in which the database can be
75 copied or reproduced using the public body's computer facilities, and a schedule of fees for the
76 production of copies in each available form. The form, context, language, and guidelines for the indices
77 and the databases to be indexed shall be developed by the Director of the Department of Information
78 Technology in consultation with the State Librarian and the State Archivist. The public body shall not
79 be required to disclose its software security, including passwords.

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

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

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

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

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

108 2. Confidential records of all investigations of applications for licenses and permits, and all licensees
109 and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery
110 Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

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

119 Where the person who is the subject of medical records is confined in a state or local correctional
120 facility, the administrator or chief medical officer of such facility may assert such confined person's right
121 of access to the medical records if the administrator or chief medical officer has reasonable cause to

believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall be reviewed only and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed to any person except the subject by the administrator or chief medical officer of the facility or except as provided by law.

For the purposes of this chapter such statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and releasable as provided in subsection A of this section. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his 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. 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 nor shall this exclusion apply to agenda packets prepared and distributed to public bodies for use at a meeting.

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

183 executive or closed meetings lawfully held pursuant to § 2.1-344.

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

185 14. Proprietary information gathered by or for the Virginia Port Authority as provided in
186 § 62.1-132.4 or § 62.1-134.1.

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

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

193 17. Data, records or information of a proprietary nature produced or collected by or for faculty or
194 staff of state institutions of higher learning, other than the institutions' financial or administrative
195 records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly
196 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a
197 private concern, where such data, records or information has not been publicly released, published,
198 copyrighted or patented.

199 18. Financial statements not publicly available filed with applications for industrial development
200 financings.

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

204 20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise
205 of confidentiality from the Department of Business Assistance, the Virginia Economic Development
206 Partnership or local or regional industrial or economic development authorities or organizations, used by
207 the Department, the Partnership, or such entities for business, trade and tourism development; and
208 memoranda, working papers or other records related to businesses that are considering locating or
209 expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and
210 where, if such records are made public, the financial interest of the governmental unit would be
211 adversely affected.

212 21. Information which was filed as confidential under the Toxic Substances Information Act
213 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

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

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

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

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

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

240 31. Investigative notes; proprietary information not published, copyrighted or patented; information
241 obtained from employee personnel records; personally identifiable information regarding residents,
242 clients or other recipients of services; and other correspondence and information furnished in confidence
243 to the Department of Social Services in connection with an active investigation of an applicant or
244 licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however,

nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent, as determined by the Director of the Department of Corrections or his designee or of the Virginia Board of Juvenile Justice, the Virginia Department of Juvenile Justice or any facility thereof to the extent as determined by the Director of the Department of Juvenile Justice, or his designee, that disclosure or public dissemination of such materials would jeopardize the security of any correctional or juvenile facility or institution, as follows:

- (i) Security manuals, including emergency plans that are a part thereof;
- (ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational specifications of security systems utilized by the Departments, provided the general descriptions of such security systems, cost and quality shall be made available to the public;
- (iii) Training manuals designed for correctional and juvenile facilities to the extent that they address 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

306 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game
307 to which it pertains.

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

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

321 40. [Repealed.]

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

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

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

328 44. [Repealed.]

329 45. Investigative notes; correspondence and information furnished in confidence with respect to an
330 investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided
331 to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review
332 Commission; or investigative notes, correspondence, documentation and information furnished and
333 provided to or produced by or for the Department of the State Internal Auditor with respect to an
334 investigation initiated through the State Employee Fraud, Waste and Abuse Hotline. Nothing in this
335 chapter shall prohibit disclosure of information from the records of completed investigations in a form
336 that does not reveal the identity of complainants, persons supplying information or other individuals
337 involved in the investigation; however, disclosure, unless such disclosure is prohibited by this section, of
338 information from the records of completed investigations shall include, but is not limited to, the agency
339 involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and
340 the actions taken to resolve the complaint. In the event an investigation does not lead to corrective
341 action, the identity of the person who is the subject of the complaint may be released only with the
342 consent of the subject person.

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

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

349 48. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections
350 provided to the Department of Rail and Public Transportation, provided such information is exempt
351 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws
352 administered by the Interstate Commerce Commission or the Federal Rail Administration with respect to
353 data provided in confidence to the Interstate Commerce Commission and the Federal Railroad
354 Administration.

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

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

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

367 52. [Repealed.]

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

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

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

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. 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.

59. All information and records acquired during a review of any child death by the State Child Fatality Review Team established pursuant to § 32.1-283.1.

60. Investigative notes, correspondence, documentation and information provided to or produced by or for the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.1-765.2. Nothing in this section shall prohibit disclosure of information from the records of completed investigations or audits in a form that does not reveal the identity of complainants or persons supplying information.

61. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

62. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995, where, if such records were made public, the financial interest of the public

429 or private entity involved with such proposal or the process of competition or bargaining would be
430 adversely affected. In order for confidential proprietary information to be excluded from the provisions
431 of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other
432 materials for which protection from disclosure is sought, (ii) identify the data or other materials for
433 which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of
434 this subdivision, the terms public entity and private entity shall be defined as they are defined in the
435 Public-Private Transportation Act of 1995.

436 63. Records of law-enforcement agencies, to the extent that such records contain specific tactical
437 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
438 the general public; engineering plans, architectural drawings, or operational specifications of
439 governmental law-enforcement facilities, including but not limited to courthouses, jails, and detention
440 facilities, to the extent that disclosure could jeopardize the safety or security of law-enforcement offices;
441 however, general descriptions shall be provided to the public upon request.

442 64. All records of the University of Virginia or the University of Virginia Medical Center which
443 contain proprietary, business-related information pertaining to the operations of the University of
444 Virginia Medical Center, including its business development or marketing strategies and its activities
445 with existing or future joint venturers, partners, or other parties with whom the University of Virginia
446 Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of
447 such information would be harmful to the competitive position of the Medical Center.

448 65. Patient level data collected by the Board of Health and not yet processed, verified, and released,
449 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
450 Health has contracted pursuant to § 32.1-276.4.

451 66. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the
452 following: (i) an individual's qualifications for or continued membership on its medical or teaching
453 staffs; proprietary information gathered by or in the possession of the Authority from third parties
454 pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
455 awarding contracts for construction or the purchase of goods or services; data, records or information of
456 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching
457 staffs; financial statements not publicly available that may be filed with the Authority from third parties;
458 the identity, accounts or account status of any customer of the Authority; consulting or other reports
459 paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and
460 the determination of marketing and operational strategies where disclosure of such strategies would be
461 harmful to the competitive position of the Authority; and (ii) data, records or information of a
462 proprietary nature produced or collected by or for employees of the Authority, other than the Authority's
463 financial or administrative records, in the conduct of or as a result of study or research on medical,
464 scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with
465 a governmental body or a private concern, when such data, records or information have not been
466 publicly released, published, copyrighted or patented.

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

477 § 9-6.14:4.1. Exemptions and exclusions.

478 A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the
479 following agencies are exempted from the provisions of this chapter, except to the extent that they are
480 specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

481 1. The General Assembly.

482 2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly
483 granted any of the powers of a court of record.

484 3. The Department of Game and Inland Fisheries in promulgating regulations regarding the
485 management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2
486 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7
487 (§ 29.1-700 et seq.) of Title 29.1.

488 4. The Virginia Housing Development Authority.

489 5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created
490 under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Council on Information Management.

12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.

13, 14. [Repealed.]

15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

18. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

21. The Virginia War Memorial Foundation.

22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-280.3.

24. The Virginia Student Assistance Authorities.

~~25. The Virginia Racing Commission, when acting by and through its duly appointed stewards or in matters related to any specific race meeting.~~

~~26. The Virginia Small Business Financing Authority.~~

~~27. The Virginia Economic Development Partnership Authority.~~

~~28. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to clause A (ii) of § 59.1-156.~~

B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, naval or police functions.

7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.

8. The conduct of elections or eligibility to vote.

9. Inmates of prisons or other such facilities or parolees therefrom.

10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

11. Traffic signs, markers or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.

13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter

552 14 of Title 2.1.

553 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
554 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
555 published and posted.

556 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
557 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

558 17. Any operating procedures for review of child deaths developed by the State Child Fatality
559 Review Team pursuant to § 32.1-283.1.

560 C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia
561 Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

562 1. Agency orders or regulations fixing rates or prices.

563 2. Regulations which establish or prescribe agency organization, internal practice or procedures,
564 including delegations of authority.

565 3. Regulations which consist only of changes in style or form or corrections of technical errors. Each
566 promulgating agency shall review all references to sections of the Code of Virginia within their
567 regulations each time a new supplement or replacement volume to the Code of Virginia is published to
568 ensure the accuracy of each section or section subdivision identification listed.

569 4. Regulations which:

570 (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no
571 agency discretion is involved;

572 (b) Are required by order of any state or federal court of competent jurisdiction where no agency
573 discretion is involved; or

574 (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations
575 do not differ materially from those required by federal law or regulation, and the Registrar has so
576 determined in writing; notice of the proposed adoption of these regulations and the Registrar's above
577 determination shall be published in the Virginia Register not less than thirty days prior to the effective
578 date thereof.

579 5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of
580 this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public
581 health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law
582 or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of
583 the law or the appropriation act or the effective date of the federal regulation, and the regulation is not
584 exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in
585 writing the nature of the emergency and of the necessity for such action and may adopt such
586 regulations. Pursuant to § 9-6.14:9, such regulations shall become effective upon approval by the
587 Governor and filing with the Registrar of Regulations. Such regulations shall be limited to no more than
588 twelve months in duration. During the twelve-month period, an agency may issue additional emergency
589 regulations as needed addressing the subject matter of the initial emergency regulation, but any such
590 additional emergency regulations shall not be effective beyond the twelve-month period from the
591 effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject
592 matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace
593 the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this
594 chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be
595 published within sixty days of the effective date of the emergency regulation, and the proposed
596 replacement regulation shall be published within 180 days after the effective date of the emergency
597 regulation.

598 6. [Repealed.]

599 7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to
600 subsection C of § 10.1-1322.2.

601 8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or
602 clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board
603 meetings and one public hearing.

604 9. Regulations of the regulatory boards served by the Department of Professional and Occupational
605 Regulation pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.

606 10. The development and issuance of procedural policy relating to risk-based mine inspections by the
607 Department of Mines, Minerals and Energy authorized pursuant to § 45.1-161.82.

608 11. General permits issued by the State Air Pollution Control Board pursuant to Chapter 13
609 (§ 10.1-1300 et seq.), of Title 10.1 if the Board: (i) provides a Notice of Intended Regulatory Action in
610 conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty
611 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory
612 committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in
613 the development of the general permit, (iii) provides notice and receives oral and written comment as

provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

12. General permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.

F. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title 28.2 by the Marine Resources Commission shall be in accordance with the provisions of this chapter.

G. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

H. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

I. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

2. That Chapter 29 (§ 59.1-364 et seq.) of the Code of Virginia is repealed.