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## SENATE BILL NO. 552

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions  
on February 29, 2000)

(Patron Prior to Substitute—Senator Hanger)

*A BILL to amend and reenact § 2.1-342.01 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 8 of Title 51.5 a section numbered 51.5-37.1, relating to persons with mental retardation, developmental disabilities or mental illness.*

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

**1. That § 2.1-342.01 of the Code of Virginia is amended and reenacted and the Code of Virginia is amended by adding in Chapter 8 of Title 51.5 a section numbered 51.5-37.1 as follows:**

§ 2.1-342.01. Exclusions to application of chapter.

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

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

2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.

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

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right 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 only be reviewed 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 by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

For the purposes of this chapter, 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 copying as provided in § 2.1-342. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of 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

60 parental rights have been terminated or a court of competent jurisdiction has restricted or denied such  
61 access. In instances where the person who is the subject thereof is an emancipated minor or a student in  
62 a public institution of higher education, the right of access may be asserted by the subject person.

63 6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the  
64 Attorney General; the members of the General Assembly or the Division of Legislative Services; the  
65 mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or  
66 other chief executive officer of any public institution of higher education. However, no record which is  
67 otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has  
68 been attached to or incorporated within any working paper or correspondence.

69 As used in this subdivision:

70 "Working papers" means those records prepared by or for an above-named public official for his  
71 personal or deliberative use.

72 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet  
73 Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor  
74 has delegated his authority pursuant to § 2.1-39.1.

75 7. Written advice of the county, city and town attorneys to their local government clients and any  
76 other records protected by the attorney-client privilege.

77 8. Legal memoranda and other work product compiled specifically for use in litigation or for use in  
78 an active administrative investigation concerning a matter which is properly the subject of a closed  
79 meeting under § 2.1-344.

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

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

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

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

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

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

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

108 14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to  
109 § 2.1-344. However, no record which is otherwise open to inspection under this chapter shall be deemed  
110 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

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

112 16. Proprietary information gathered by or for the Virginia Port Authority as provided in  
113 § 62.1-132.4 or § 62.1-134.1.

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

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

121 19. Financial statements not publicly available filed with applications for industrial development

122 financings.

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

129 21. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,  
130 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by  
131 the political subdivision.

132 22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise  
133 of confidentiality from the Department of Business Assistance, the Virginia Economic Development  
134 Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development  
135 authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for  
136 business, trade and tourism development; and memoranda, working papers or other records related to  
137 businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where  
138 competition or bargaining is involved and where, if such records are made public, the financial interest  
139 of the governmental unit would be adversely affected.

140 23. Information which was filed as confidential under the Toxic Substances Information Act  
141 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

142 24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis  
143 center or a program for battered spouses.

144 25. Computer software developed by or for a state agency, state-supported institution of higher  
145 education or political subdivision of the Commonwealth.

146 26. Investigator notes, and other correspondence and information, furnished in confidence with  
147 respect to an active investigation of individual employment discrimination complaints made to the  
148 Department of Personnel and Training. However, nothing in this section shall prohibit the disclosure of  
149 information taken from inactive reports in a form which does not reveal the identity of charging parties,  
150 persons supplying the information or other individuals involved in the investigation.

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

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

155 29. Records and writings furnished by a member of the General Assembly to a meeting of a standing  
156 committee, special committee or subcommittee of his house established solely for the purpose of  
157 reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or of  
158 formulating advisory opinions to members on standards of conduct, or both.

159 30. Customer account information of a public utility affiliated with a political subdivision of the  
160 Commonwealth, including the customer's name and service address, but excluding the amount of utility  
161 service provided and the amount of money paid for such utility service.

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

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

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

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

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

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

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

203 38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii)  
204 lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or  
205 regulations which cause abuses in the administration and operation of the lottery and any evasions of  
206 such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling  
207 where such official records have not been publicly released, published or copyrighted. All studies and  
208 investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon  
209 completion of the study or investigation.

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

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

219 41. Information and records collected for the designation and verification of trauma centers and other  
220 specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to  
221 Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

222 42. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

223 43. Investigative notes, correspondence and information furnished in confidence, and records  
224 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i)  
225 Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the  
226 State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste  
227 and Abuse Hotline; or (iv) the committee or the auditor with respect to an investigation or audit  
228 conducted pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that  
229 does not reveal the identity of the complainants or persons supplying information to investigators.  
230 Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to,  
231 the agency involved, the identity of the person who is the subject of the complaint, the nature of the  
232 complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective  
233 action, the identity of the person who is the subject of the complaint may be released only with the  
234 consent of the subject person.

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

238 45. Documentation or other information which describes the design, function, operation or access  
239 control features of any security system, whether manual or automated, which is used to control access to  
240 or use of any automated data processing or telecommunications system.

241 46. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections  
242 provided to the Department of Rail and Public Transportation, provided such information is exempt  
243 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws  
244 administered by the Surface Transportation Board or the Federal Railroad Administration with respect to

data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

47. In the case of corporations organized by the Virginia Retirement System (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate, the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

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

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

50. 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 Transportation Equity Act for the 21st Century (P.L. 105-178) 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 Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

51. 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.

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

53. 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.

54. 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, during a review of any child death by a local or regional child fatality review team established pursuant to § 32.1-283.2, and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § 32.1-283.3.

55. 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.

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

57. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to antiterrorist activity.

58. All records of the University of Virginia or the University of Virginia Medical Center which contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of

306 such information would be harmful to the competitive position of the Medical Center.

307 59. Patient level data collected by the Board of Health and not yet processed, verified, and released,  
308 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of  
309 Health has contracted pursuant to § 32.1-276.4.

310 60. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the  
311 following: an individual's qualifications for or continued membership on its medical or teaching staffs;  
312 proprietary information gathered by or in the possession of the Authority from third parties pursuant to a  
313 promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for  
314 construction or the purchase of goods or services; data, records or information of a proprietary nature  
315 produced or collected by or for the Authority or members of its medical or teaching staffs; financial  
316 statements not publicly available that may be filed with the Authority from third parties; the identity,  
317 accounts or account status of any customer of the Authority; consulting or other reports paid for by the  
318 Authority to assist the Authority in connection with its strategic planning and goals; and the  
319 determination of marketing and operational strategies where disclosure of such strategies would be  
320 harmful to the competitive position of the Authority; and data, records or information of a proprietary  
321 nature produced or collected by or for employees of the Authority, other than the Authority's financial  
322 or administrative records, in the conduct of or as a result of study or research on medical, scientific,  
323 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a  
324 governmental body or a private concern, when such data, records or information have not been publicly  
325 released, published, copyrighted or patented.

326 61. Confidential proprietary information or trade secrets, not publicly available, provided by a private  
327 person or entity to the Virginia Resources Authority or to a fund administered in connection with  
328 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such  
329 information were made public, the financial interest of the private person or entity would be adversely  
330 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of  
331 confidentiality.

332 62. Confidential proprietary records which are provided by a franchisee under § 15.2-2108 to its  
333 franchising authority pursuant to a promise of confidentiality from the franchising authority which  
334 relates to the franchisee's potential provision of new services, adoption of new technologies or  
335 implementation of improvements, where such new services, technologies or improvements have not been  
336 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such  
337 records were made public, the competitive advantage or financial interests of the franchisee would be  
338 adversely affected. In order for confidential proprietary information to be excluded from the provisions  
339 of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other  
340 materials for which protection from disclosure is sought, (ii) identify the data or other materials for  
341 which protection is sought, and (iii) state the reason why protection is necessary.

342 63. Records of the Intervention Program Committee within the Department of Health Professions, to  
343 the extent such records may identify any practitioner who may be, or who is actually, impaired to the  
344 extent disclosure is prohibited by § 54.1-2517.

345 64. Records submitted as a grant application, or accompanying a grant application, to the  
346 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of  
347 Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other data  
348 identifying individual patients or (ii) proprietary business or research-related information produced or  
349 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,  
350 scientific, technical or scholarly issues, when such information has not been publicly released, published,  
351 copyrighted or patented, if the disclosure of such information would be harmful to the competitive  
352 position of the applicant.

353 65. Information which would disclose the security aspects of a system safety program plan adopted  
354 pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety  
355 Oversight agency; and information in the possession of such agency, the release of which would  
356 jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway  
357 safety.

358 66. Documents and other information of a proprietary nature furnished by a supplier of charitable  
359 gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

360 67. Personal information, as defined in § 2.1-379, provided to the Board of the Virginia Higher  
361 Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested  
362 information about, applied for, or entered into prepaid tuition contracts or savings trust account  
363 agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be  
364 construed to prohibit disclosure or publication of information in a statistical or other form which does  
365 not identify individuals or provide personal information. Individuals shall be provided access to their  
366 own personal information.

367 68. Any record copied, recorded or received by the Commissioner of Health in the course of an

examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

71. *Records of the Department for the Rights of Virginians with Disabilities consisting of documentary evidence received or maintained by the Department or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Department and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Department may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification, or (ii) such identification is required by court order.*

B. 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 (i) contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4 of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

*§ 51.5-37.1. Confidentiality of information.*

A. *All documentary and other evidence received or maintained by the Department or its agents in connection with specific complaints or investigations shall be confidential and not subject to the provisions concerning disclosure of public records under the Virginia Freedom of Information Act, (§ 2.1-340 et seq.). However, access to one's own records shall not be denied unless otherwise prohibited by state or federal law. Records concerning closed cases shall be subject to the disclosure requirements of the Virginia Freedom of Information Act, but in a manner that does not identify any complainant or any person with mental illness, mental retardation, developmental disabilities or other disability, unless, (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.*

B. *Communications between employees and agents of the Department and its clients or prospective clients concerning specific complaints, investigations or cases shall be confidential.*

C. *Notwithstanding the provisions of this section, the Department shall be permitted to:*

1. *Issue a public report of the results of an investigation of a founded complaint which does not release the identity of any complainant or any person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such disclosure or (ii) such disclosure is required by court order.*

2. *Report the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning any hospital, facility or other entity, its staff or employees, warranting possible sanctions or corrective action. This information may be reported to agencies responsible for licensing or accreditation, employee discipline, employee licensing or certification, or criminal prosecution.*