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HOUSE BILL NO. 450

House Amendments in [] — January 22, 2002

A BILL to amend and reenact § 2.2-3705 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 41.1, consisting of sections numbered 2.2-4115 through 2.2-4119, relating to the establishment of the Virginia Administrative Dispute Resolution Act.

Patron Prior to Engrossment—Delegate Dillard

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 41.1, consisting of sections numbered 2.2-4115 through 2.2-4119, as follows:

§ 2.2-3705. 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 that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 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

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60 § 2.2-3704. No such summaries or data shall include any patient-identifying information. Where the
61 person who is the subject of medical and mental records is under the age of eighteen, his right of access
62 may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's
63 parental rights have been terminated or a court of competent jurisdiction has restricted or denied such
64 access. In instances where the person who is the subject thereof is an emancipated minor or a student in
65 a public institution of higher education, the right of access may be asserted by the subject person.

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

72 As used in this subdivision:

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

75 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet
76 Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor
77 has delegated his authority pursuant to § 2.2-104.

78 7. Written advice of legal counsel to state, regional or local public bodies or public officials and any
79 other records protected by the attorney-client privilege.

80 8. Legal memoranda and other work product compiled specifically for use in litigation or for use in
81 an active administrative investigation concerning a matter that is properly the subject of a closed
82 meeting under § 2.2-3711.

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

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

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

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

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

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

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

111 14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to
112 § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed
113 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

114 15. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.1-55.4.

115 16. Proprietary information gathered by or for the Virginia Port Authority as provided in
116 § 62.1-132.4 or § 62.1-134.1.

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

120 18. Vendor proprietary information software that may be in the official records of a public body. For
121 the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a

122 vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

123 19. Financial statements not publicly available filed with applications for industrial development
124 financings.

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

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

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

142 23. Information that was filed as confidential under the Toxic Substances Information Act
143 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

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

157 29. Records and writings furnished by a member of the General Assembly to a meeting of a standing
158 committee, special committee or subcommittee of his house established solely for the purpose of
159 reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
160 formulating advisory opinions to members on standards of conduct, or both.

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

164 31. Investigative notes and other correspondence and information furnished in confidence with
165 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
166 under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in
167 accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted
168 prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human
169 relations commissions. However, nothing in this section shall prohibit the distribution of information
170 taken from inactive reports in a form that does not reveal the identity of the parties involved or other
171 persons supplying information.

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

180 33. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
181 Authority concerning individuals who have applied for or received loans or other housing assistance or
182 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by

183 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
184 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
185 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
186 waiting list for housing assistance programs funded by local governments or by any such authority; or
187 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
188 local government agency concerning persons who have applied for occupancy or who have occupied
189 affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's
190 own information shall not be denied.

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

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

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

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

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

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

224 40. Records concerning reserves established in specific claims administered by the Department of the
225 Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of
226 Chapter 18 of this title, or by any county, city, or town.

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

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

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

243 44. Data formerly required to be submitted to the Commissioner of Health relating to the
244 establishment of new or the expansion of existing clinical health services, acquisition of major medical

equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

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

46. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, 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.

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 § 2.2-4342 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 § 2.2-4317.

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 that 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

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

309 58. All records of the University of Virginia or the University of Virginia Medical Center that
310 contain proprietary, business-related information pertaining to the operations of the University of
311 Virginia Medical Center, including its business development or marketing strategies and its activities
312 with existing or future joint venturers, partners, or other parties with whom the University of Virginia
313 Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of
314 such information would be harmful to the competitive position of the Medical Center.

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

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

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

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

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

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

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

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

67. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

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 of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

72. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

73. Records of the Department for 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.

74. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

75. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

76. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations, and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

77. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.1-53 and 63.1-209.

78. *Communications and materials required to be kept confidential pursuant to § 2.2-4119 [of the Virginia Administrative Dispute Resolution Act] .*

B. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 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 or Chapter 21 (§ 30-178 et seq.) of Title 30 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.

CHAPTER 41.1

VIRGINIA ADMINISTRATIVE DISPUTE RESOLUTION ACT.

§ 2.2-4115. Definitions.

As used in this chapter, unless the context requires otherwise:

"Dispute resolution proceeding" means any structured process in which a neutral assists parties to a dispute in reaching a voluntary settlement by means of dispute resolution processes such as mediation, conciliation, facilitation, partnering, fact-finding, neutral evaluation, use of ombudsmen or any other proceeding leading to a voluntary settlement. For the purposes of this chapter, the term "dispute resolution proceeding" does not include arbitration.

"Mediation" means a process in which a neutral facilitates communication between the parties and without deciding the issues or imposing a solution on the parties enables them to understand and resolve their dispute.

"Mediation program" means a program of a public body through which mediators or mediation is made available and includes the director, agents and employees of the program.

"Mediator" means a neutral who is an impartial third party selected by agreement of the parties to a dispute to assist them in mediation.

"Neutral" means an individual who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services.

"Public body" means any legislative body; any authority, board, bureau, commission, district or agency of the Commonwealth or any political subdivision of the Commonwealth, including counties, cities and towns, city councils, boards of supervisors, school boards, planning commissions, boards of visitors of institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. "Public body" includes any committee, subcommittee, or other entity however designated, of the public body or formed to advise the public body, including those with private sector or citizen members and corporations organized by the Virginia Retirement System. For the purposes of this chapter the term "public body" does not include courts of the Commonwealth.

"State agency" or "agency" means any authority, instrumentality, officer, board or other unit of state government empowered by the basic laws to adopt regulations or decide cases. For the purposes of this chapter, the term "state agency" does not include the courts of the Commonwealth.

§ 2.2-4116. Authority to use dispute resolution proceedings.

A. Except as specifically prohibited by law, if the parties to the dispute agree, any public body may use dispute resolution proceedings to narrow or resolve any issue in controversy. Nothing in this chapter shall be construed to prohibit or limit other public body dispute resolution authority. Nothing in this chapter shall create or alter any right, action, cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), applicable federal or state law or any provision that requires the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program. [Nothing in this chapter shall prevent the use of the Virginia Freedom of Information Act to obtain the disclosure of information concerning expenses incurred in connection with a dispute resolution proceeding or the amount of money paid by a public body or agency to settle a dispute.]

B. A decision by a public body to participate in or not to participate in a specific dispute resolution proceeding shall be within the discretion of the public body and is not subject to judicial review. This subsection does not affect or supersede any law mandating the use of a dispute resolution proceeding.

C. An agreement arising out of any dispute resolution proceeding shall not be binding upon a public body unless the agreement is affirmed by the public body.

§ 2.2-4117. State agency promotion of dispute resolution proceedings.

A. Each state agency shall adopt a written policy that addresses the use of dispute resolution

proceedings within the agency and for the agency's program and operations. The policy shall include, among other things, training for employees involved in implementing the agency's policy and the qualifications of a neutral to be used by the agency.

B. The head of each state agency shall designate an existing or new employee to be the dispute resolution coordinator of the agency. The duties of a dispute resolution coordinator may be collateral to those of an existing official.

C. Each state agency shall review its policies, procedures and regulations and shall determine whether and how to amend such policies, procedures and regulations to authorize and encourage the use of dispute resolution proceedings.

D. Any state agency may use the services of other agencies' employees as neutrals and an agency may allow its employees to serve as neutrals for other agencies as part of a neutral-sharing program.

E. This chapter does not supersede the provisions of subdivision 2 of § 2.2-1001 and subdivision B. 4. of § 2.2-3000, which require certain agencies to participate in the mediation program administered by the Department of Employment Dispute Resolution.

§ 2.2-4118. Interagency dispute resolution advisory council.

A. The Interagency Dispute Resolution Advisory Council is hereby created as an advisory council to the Secretary of Administration.

B. The Council shall consist of two dispute resolution coordinators from each Secretariat appointed by each Secretary, [the Director of the Department of Employment Dispute Resolution, and] three persons who are not employees of the Commonwealth, at least two of whom have experience in mediation appointed by the Governor. The appointees who are not employees of the Commonwealth may be selected from nominations submitted by the Virginia Mediation Network and the Virginia State Bar and the Virginia Bar Association Joint Committee on Alternative Dispute Resolution, who shall each nominate two persons for each such vacancy. In no case shall the Governor be bound to make any appointment from such nominations. The Secretary of Administration or his designee shall serve as chairman of the Council.

C. The Council shall have the power and duty to:

1. Conduct training seminars and educational programs for the members and staff of agencies and public bodies and other interested persons on the use of dispute resolution proceedings.

2. Publish educational materials as it deems appropriate on the use of dispute resolution proceedings.

3. Report on its activities as may be appropriate and on the use of dispute resolution proceedings, including recommendations for changes in the law to the Governor and General Assembly.

4. Every state agency shall cooperate with and provide such assistance to the Council as the Council may request.

§ 2.2-4119. Confidentiality between parties; exemption to Freedom of Information Act.

A. Except for the materials described in subsection B, all dispute resolution proceedings conducted pursuant to this chapter are subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. All memoranda, work products, or other materials contained in the case file of a mediator are confidential and all materials in the case file of a mediation program pertaining to a specific mediation are confidential. Any communication made in or in connection with a mediation that relates to the dispute, including communications to schedule a mediation, whether made to a mediator, a mediation program, a party or any other person is confidential. A written settlement agreement is not confidential unless the parties agree in writing. Confidential materials and communications are not subject to disclosure or discovery in any judicial or administrative proceeding except (i) when all parties to the mediation agree, in writing, to waive the confidentiality; (ii) to the extent necessary in a subsequent action between the mediator and a party for damages arising out of the mediation; (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation; (iv) where communications are sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against the mediator; (v) where a threat to inflict bodily injury is made; (vi) where communications are intentionally used to plan, attempt to commit or commit a crime or conceal an ongoing crime; (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party, nonparty, participant or representative of a party based on conduct occurring during a mediation; (viii) where communications are sought or offered to prove or disprove any of the reasons listed in § 8.01-576.12 that would enable a court to vacate a mediated agreement; or (ix) as provided by law or rule other than the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The use of attorney work product in a mediation shall not result in a waiver of the attorney work product privilege. Unless otherwise specified by the parties, no mediation proceeding shall be electronically or stenographically recorded.