

LD2056146

HOUSE BILL NO. 2294

Offered January 23, 1995

A BILL to amend and reenact §§ 2.1-342, 9-6.25:2, and 11-45 of the Code of Virginia; to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 7.2, consisting of sections numbered 32.1-276.2 through 32.1-276.12; and to repeal Chapter 26 (§§ 9-156 through 9-166.7) of Title 9, relating to the Virginia Health Services Cost Review Council, health care cost reporting, and the Virginia Patient Level Data Base.

Patrons—Cantor, Cranwell, Diamonstein, Hall, Hamilton, Hargrove, Heilig and Rhodes; Senator: Stolle

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342, 9-6.25:2, and 11-45 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 7.2, consisting of sections numbered 32.1-276.2 through 32.1-276.12 as follows:

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

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

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

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

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

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

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

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

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60 body may require the advance payment of charges which are subject to advance determination.

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

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

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

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

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

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

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

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

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

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

117 For the purposes of this chapter such statistical summaries of incidents and statistical data concerning
118 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental
119 Retardation and Substance Abuse Services shall be open to inspection and releasable as provided in
120 subsection A of this section. No such summaries or data shall include any patient-identifying
121 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Data, records or information of a proprietary nature produced or collected by or for faculty or

183 staff of state institutions of higher learning, other than the institutions' financial or administrative
184 records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly
185 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a
186 private concern, where such data, records or information has not been publicly released, published,
187 copyrighted or patented.

188 18. Financial statements not publicly available filed with applications for industrial development
189 financings.

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

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

197 21. Information which was filed as confidential under the Toxic Substances Information Act
198 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

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

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

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

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

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

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

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

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

242 (ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational
243 specifications of security systems utilized by the Departments, provided the general descriptions of such
244 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 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

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

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

306 disclosure.

307 40. [Repealed.]

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

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

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

314 44. [Repealed.]

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

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

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

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

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

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

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

348 52. Patient level data collected by the Virginia Health Services Cost Review Council and not yet
349 processed, verified, and released, pursuant to § ~~9-166.7~~ 32.1-276.11, to the Council by the nonprofit
350 organization with which the ~~Executive Director~~ Commissioner has contracted pursuant to § ~~9-166.4~~
351 32.1-276.4.

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

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

365 55. Reports, documents, memoranda or other information or materials which describe any aspect of
366 security used by the Virginia Museum of Fine Arts to the extent that disclosure or public dissemination
367 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. (Effective July 1, 1995) Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

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

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

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

Apprenticeship Council

Athletic Board

Auctioneers Board

Blue Ridge Regional Education and Training Council

Board for Accountancy

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

Board for Barbers

Board for Contractors

Board for Cosmetology

Board for Geology

Board for Hearing Aid Specialists

Board for Opticians

Board for Professional and Occupational Regulation

Board for Professional Soil Scientists

Board for Waterworks and Wastewater Works Operators

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

Board of Agriculture and Consumer Services

Board of Audiology and Speech-Language Pathology

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

Virginia Health Services Cost Review Council

Virginia Manufactured Housing Board

Virginia Parole Board

Virginia Public Telecommunications Board

Virginia Soil and Water Conservation Board

Virginia Voluntary Formulary Board

Virginia Waste Management Board

Virginia World Trade Council

Waste Management Facility Operators, Board for.

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 7.2.

MEASUREMENT OF QUALITY AND EFFECTIVENESS OF HEALTH CARE PROVIDERS.

§ 32.1-276.2. Regulations.

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

§ 32.1-276.3. Duplicative reporting not required.

Any information or data required to be reported by a health care provider pursuant to this chapter that such health care provider has reported to the Department or to any other state agency pursuant to other provisions of this Code shall be collected by the Department or the nonprofit organization defined in § 32.1-276.8 directly from such source, and the health care provider shall not be required to report the data or information under this chapter.

§ 32.1-276.4. Agreements for data services.

The Commissioner shall negotiate and enter into contracts or agreements with nonprofit, tax-exempt health organizations for the implementation of the methodology developed pursuant to § 32.1-276.6 and for the collection, compilation, storage, analysis, and evaluation of patient level data provided pursuant to § 32.1-276.9. Such nonprofit organizations shall be governed by a board of directors comprising representatives of state government and the consumer, hospital, physician, insurance, and business communities. The articles of incorporation of such nonprofit organization shall require the nomination of such board members by organizations and associations representing those categories of persons specified for representation on the board of directors. Except as provided in subsection K of § 11-45, the provisions of the Virginia Public Procurement Act (§ 11-45 et seq.) shall not apply to the activities of the Commissioner authorized by this section. Funding for services provided pursuant to this contract or agreement shall come from general appropriations.

§ 32.1-276.5. Violations.

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

§ 32.1-276.6. Methodology to review and measure the efficiency and productivity of health care institutions.

The Board shall promulgate regulations establishing a methodology for the review and measurement of the efficiency and productivity of health care institutions by the nonprofit organization. The methodology shall provide for, but not be limited to, comparisons of a health care institution's performance to national and regional data.

The Board may promulgate different methodologies and reporting requirements for the assessment of the various types of health care institutions which report to it.

The Board, by regulation, may authorize the nonprofit organization to assess and collect reasonable fees for application to and not to exceed the reasonable costs of implementation of this section.

§ 32.1-276.7. Patient level data system continued.

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

§ 32.1-276.8. Definitions.

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

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

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

"System" means the Virginia Patient Level Data System.

§ 32.1-276.9. Reporting requirements.

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

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

1. Hospital identifier;
2. Attending physician identifier;
3. Operating physician identifier;
4. Payor identifier;

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

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

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

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

D. The Board shall by regulation authorize the nonprofit organization to collect from other health care providers such other data necessary to permit accomplishment of this mission of the Patient Level Data System as established in § 32.1-276.6. Such nonprofit organization shall evaluate and report to the Board and the Joint Commission on Health Care by January 1, 1996, on (i) the feasibility of collecting information for all outpatient encounters in the Commonwealth and (ii) the costs and benefits of implementing a system for collecting and reporting to the public comparative information regarding the performance of health plans.

§ 32.1-276.10. Fees for processing and verification of data.

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

B. The nonprofit organization providing data collection, compilation, storage, analysis, and evaluation services pursuant to an agreement or contract with the Department shall be authorized to charge and collect the fees prescribed by the Department for processing and verification of such data. The Board shall promulgate regulations permitting hospitals submitting patient level data pursuant to this chapter to pay fees to the nonprofit organization collecting, compiling, storing, analyzing, and evaluating patient level data pursuant to an agreement or contract with the Department. Such fees shall not exceed the amount authorized by the Department as provided in subsection A of this section. Such regulations also shall include provisions for the nonprofit organization, at its discretion, to grant a reduction or waiver of such for a hospital or group of hospitals, participating in a private and voluntary data collection effort, which submit the data required by this chapter in a processed and verified manner meeting the requirements of data completeness and timeliness.

C. State agencies shall not be assessed fees for the submission of data required by § 32.1-276.9. Individual employers, insurers, and other organizations may voluntarily provide the nonprofit organization with outpatient data for processing, storage, and comparative analysis and shall be subject to fees negotiated with and charged by the nonprofit organization for services provided.

§ 32.1-276.11. Fees for the dissemination of data.

The nonprofit organization providing data collection, compilation, storage, analysis, and evaluation services pursuant to an agreement or contract with the Department shall be authorized to charge and collect reasonable fees for the dissemination of such data; however, the Department shall be entitled to receive publicly available data from the nonprofit organization at no charge.

§ 32.1-276.12. Confidentiality, subsequent release of data and relief from liability for reporting; penalty for wrongful disclosure; individual action for damages.

675 A. Patient level data collected pursuant to this chapter shall be exempt from the provisions of the
676 Virginia Freedom of Information Act (§ 2.1-340 et seq.), shall be considered confidential, and shall not
677 be disclosed other than as specifically authorized by this chapter. However, upon processing and
678 verification by the nonprofit organization, all patient level data shall be publicly available, except
679 patient, physician, and employer identifier elements, which shall be released only as provided in
680 subsection B of this section. No report published by the nonprofit organization, the Department, or other
681 person may present information that reasonably could be expected to reveal the identity of any patient.
682 Publicly available information shall be designed to prevent persons from being able to gain access to
683 combinations of patient characteristic data elements that reasonably could be expected to reveal the
684 identity of the patient.

685 B. Any agreement or contract between the Department and a nonprofit organization made pursuant
686 to this chapter shall specify that, upon processing, verification, and release by the nonprofit
687 organization of patient level data, the patient identifier information, if otherwise permitted by law, may
688 be released for research purposes only, provided that such identifier is encrypted and cannot be
689 reasonably expected to reveal the patient's identity. Such nonprofit organization may, in its discretion,
690 release physician and employer identifier information. All other processed and verified patient level data
691 specified in subsections B and C of § 32.1-276.9 shall be publicly available. Data not specified in
692 subsections B and C of § 32.1-276.9 that are collected by the nonprofit organization may be released by
693 the nonprofit organization at its discretion.

694 C. No person or entity, including the nonprofit organization contracting with the Department, shall
695 be held liable in any civil action with respect to any report or disclosure of information made under this
696 chapter unless such person or entity has knowledge of any falsity of the information reported or
697 disclosed.

698 D. Any disclosure of information made in violation of this chapter, and any disclosure by any person
699 of information provided for research purposes in accordance with subsection B of this section that
700 permits identification of any patient, or that permits identification from information not publicly
701 available of any physician or employer without approval of the nonprofit organization, shall be subject
702 to a civil penalty of not more than \$5,000 per violation. This provision shall be enforceable upon
703 petition to the appropriate circuit court by the Attorney General, any attorney for the Commonwealth,
704 or any attorney for the county, city or town in which the violation occurred. Any penalty imposed shall
705 be payable to the Literary Fund. In addition, any person or entity who is the subject of any disclosure
706 in violation of this chapter shall be entitled to initiate an action to recover actual damages, if any, or
707 \$500, whichever is greater, together with the reasonable attorney's fees and court costs.

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