

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL NO. 397

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Sullivan)

A BILL to amend and reenact §§ 8.01-195.10 through 8.01-195.13, 19.2-389, and 58.1-322.02 of the Code of Virginia, relating to compensation for wrongful incarceration.

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

**1. That §§ 8.01-195.10 through 8.01-195.13, 19.2-389, and 58.1-322.02 of the Code of Virginia are amended and reenacted as follows:**

**§ 8.01-195.10. Purpose; action by the General Assembly required; definitions.**

A. The purpose of this article is to provide directions and guidelines for the compensation of persons who have been wrongfully incarcerated in the Commonwealth. Compensation for wrongful incarceration is governed by Article IV, Section 14 of the Constitution of Virginia, which prohibits the General Assembly from granting relief in cases in which the courts or other tribunals may have jurisdiction and any individual seeking payment of state funds for wrongful incarceration shall be deemed to have waived all other claims. The payment and receipt of any compensation for wrongful incarceration shall be contingent upon the General Assembly appropriating funds for that purpose. This article shall not provide an entitlement to compensation for persons wrongfully incarcerated or require the General Assembly to appropriate funds for the payment of such compensation. ~~No estate of or personal representative for a decedent shall be entitled to seek a claim for compensation for wrongful incarceration.~~

B. As used in this article:

"Incarceration" or "incarcerated" means confinement in a local or regional correctional facility, juvenile correctional center, state correctional facility, residential detention center, or facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.).

26 "Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction  
27 for which ~~(i)~~ the conviction has been vacated pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) or 19.3 (§  
28 19.2-327.10 et seq.) of Title 19.2, or the person incarcerated has been granted an absolute pardon for the  
29 commission of a crime that he did not commit; ~~(ii) the person incarcerated shall have entered a final plea~~  
30 ~~of not guilty, or, regardless of the plea, the person incarcerated was convicted of a Class 1 felony, a Class~~  
31 ~~2 felony, or any felony for which the maximum penalty is imprisonment for life; and (iii) the person~~  
32 ~~incarcerated did not by any act or omission on his part intentionally contribute to his conviction for the~~  
33 ~~felony for which he was incarcerated.~~

34 **§ 8.01-195.11. Compensation for wrongful incarceration.**

35 A. 1. Any person who is convicted of a felony by a county or city circuit court of the  
36 Commonwealth and is wrongfully incarcerated for such felony ~~may~~ shall be awarded compensation in an  
37 amount equal to ~~90 percent of the inflation adjusted Virginia per capita personal income as reported by~~  
38 ~~the Bureau of Economic Analysis of the U.S. Department of Commerce for each year of incarceration, or~~  
39 ~~portion thereof~~ the product of the total number of days that the individual was wrongfully incarcerated  
40 following a wrongful conviction multiplied by a daily rate of the Commonwealth's most recent annual  
41 median household income as published in the American Community Survey of the United States Census  
42 Bureau in the year the court finds the person wrongfully incarcerated eligible for compensation and  
43 divided by 365 days to the nearest whole cent, except as provided by subdivision 3.

44 2. In addition to the compensation awarded under subdivision 1, a wrongfully incarcerated person  
45 shall also receive:

46 a. \$25,000 for each year of imprisonment after being sentenced to death; and

47 b. \$25,000 for each year served on parole or postrelease supervision and for each year the claimant  
48 was required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter  
49 9 (§ 9.1-900 et seq.) of Title 9.1.

50 3. A person wrongfully incarcerated shall not receive compensation for any period of incarceration  
51 during which the person was concurrently serving a sentence for a conviction for another crime for which  
52 the person was lawfully incarcerated.

53 4. If an individual eligible for compensation and benefits under this subsection is deceased, the  
54 individual's estate has standing to be compensated under this section.

55 5. On or before July 1 of each year, the Department of Planning and Budget shall determine the  
56 percentage increase or decrease in the cost of living for the previous calendar year, based on changes in  
57 the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics of the  
58 U.S. Department of Labor. On or before July 1 of the year in which the Department of Planning and  
59 Budget makes the determination required by this subdivision, the Department of Planning and Budget  
60 shall adjust the amounts prescribed under subdivision 2 for the following calendar year by multiplying the  
61 amounts applicable to the calendar year in which the adjustment is made by the percentage amount  
62 determined under this subdivision. The adjustment shall not exceed three percent for any year. The  
63 Department of Planning and Budget shall round the adjusted limitation amount to the nearest \$100, but  
64 the unrounded amount shall be used to calculate the adjustments to the amounts in subsequent calendar  
65 years. The adjusted amounts shall become effective on July 1 of the year in which the adjustment is made  
66 and apply to all claims filed under this section on or after July 1 of that year and before July 1 of the  
67 subsequent year.

68 ~~B. Any compensation computed pursuant to subsection A and approved by the General Assembly~~  
69 ~~shall be paid by the Comptroller by his warrant on the State Treasurer in favor of the person found to have~~  
70 ~~been wrongfully incarcerated. The person wrongfully incarcerated shall be paid an initial lump sum~~  
71 ~~equal to 20 percent of the total compensation award with the remaining 80 percent of the principal of the~~  
72 ~~compensation award to be used by the State Treasurer to purchase an annuity from any A+ rated company,~~  
73 ~~including any A+ rated company from which the Virginia Lottery may purchase an annuity, to provide~~  
74 ~~equal monthly payments to such person for a period certain of 25 years commencing no later than one~~  
75 ~~year after the effective date of the appropriation; however, if such person's life expectancy, as calculated~~  
76 ~~pursuant to the provisions of § 8.01-419 based on his age on the effective date of the appropriation, is less~~  
77 ~~than 25 years, then, upon his election, the annuity period shall be equal to his life expectancy. The annuity~~  
78 ~~shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages by the~~  
79 ~~person awarded compensation. The annuity shall, however, contain beneficiary provisions providing for~~

80 ~~the annuity's continued disbursement in the event of the death of the person awarded compensation. All~~  
81 ~~payments or costs of annuities under this section shall be made by check issued by the State Treasurer on~~  
82 ~~warrant of the Comptroller.~~

83 ~~Notwithstanding the foregoing, in the event that the person wrongfully incarcerated is 60 years of~~  
84 ~~age or older or is terminally ill, the General Assembly may (i) pay 100 percent of the compensation~~  
85 ~~computed pursuant to subsection A as a lump sum to the person wrongfully incarcerated or (ii) purchase~~  
86 ~~an annuity for a period certain that is less than 25 years. For the purposes of this section, "terminally ill"~~  
87 ~~means that the individual has a medical prognosis, as certified by a licensed physician, that his life~~  
88 ~~expectancy is five years or less if the illness runs its normal course.~~

89 C. In addition to the compensation awarded pursuant to subsection A, the person wrongfully  
90 incarcerated (i) shall be entitled to receive the amount of any unreimbursed fine, fee, court cost, or  
91 restitution imposed and paid and reasonable attorney fees and costs incurred to receive an award pursuant  
92 to this section and (ii) may also be awarded other nonmonetary relief sought, including counseling,  
93 housing assistance, employment assistance, health care and dental care, and personal financial literacy  
94 assistance, as appropriate.

95 D. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth  
96 and is wrongfully incarcerated for such felony shall receive a transition assistance grant of \$15,000 to be  
97 paid from the Criminal Fund, which amount shall be deducted from any award received pursuant to  
98 subsection B, within 30 days of receipt of the written request for the disbursement of the transition  
99 assistance grant to the Executive Secretary of the Supreme Court of Virginia. Payment of the transition  
100 assistance grant from the Criminal Fund shall be made by the State Treasurer on warrants issued by the  
101 Comptroller upon written request signed by the Executive Secretary of the Supreme Court of Virginia. In  
102 addition, such person shall be entitled to receive reimbursement up to \$10,000 for tuition for career and  
103 technical training within the Virginia Community College System contingent upon successful completion  
104 of the training. Reimbursement for tuition shall be provided by the comprehensive community college at  
105 which the career or technical training was completed.

106 **§ 8.01-195.12. Conditions for compensation.**

107 ~~A. Any person awarded compensation under this article who is subsequently convicted of a felony~~  
108 ~~shall, immediately upon such conviction, not be eligible to receive any unpaid amounts from any~~  
109 ~~compensation awarded and his beneficiaries shall not be eligible to receive any payments under an annuity~~  
110 ~~purchased pursuant to subsection B of § 8.01-195.11. Any unpaid amounts remaining under any annuity~~  
111 ~~shall become the property of the Commonwealth and shall be deposited into the general fund of the state~~  
112 ~~treasury.~~

113 ~~A1. Any person awarded compensation under this article who is subsequently incarcerated upon~~  
114 ~~the revocation of parole or probation resulting from the commission of an act that constitutes a crime shall,~~  
115 ~~during the period of such incarceration, forfeit any payments under an annuity purchased pursuant to~~  
116 ~~subsection B of § 8.01-195.11. Any forfeited amounts under any annuity shall become the property of the~~  
117 ~~Commonwealth and shall be deposited into the general fund of the state treasury.~~

118 ~~B. As a condition of receiving any compensation under this article, a person shall execute a release~~  
119 ~~and waiver forever releasing (i) the Commonwealth or any agency, instrumentality, officer, employee, or~~  
120 ~~political subdivision thereof, (ii) any legal counsel appointed pursuant to § 19.2-159, and (iii) all other~~  
121 ~~parties of interest, from any present or future claims the person receiving compensation may have against~~  
122 ~~such enumerated parties and arising out of the factual situation in connection with the conviction for which~~  
123 ~~compensation is being sought under this article. In addition, the person receiving compensation shall not~~  
124 ~~have been awarded a finally adjudicated judgment in a court of law against or received any funds pursuant~~  
125 ~~to a settlement agreement with any person or entity described in this subsection for compensation or~~  
126 ~~damages arising out of the factual situation in connection with the conviction.~~

127 **§ 8.01-195.13. Compensation for certain intentional acts.**

128 A. In any matter resulting in compensation for wrongful incarceration pursuant to this article, if a  
129 court of competent jurisdiction over the matter determines, or the court record clearly demonstrates, that  
130 the Commonwealth or any agency, instrumentality, officer or employee, or political subdivision thereof  
131 (i) intentionally and wrongfully fabricated evidence that was used to obtain the wrongful conviction in  
132 such manner and (ii) intentionally, willfully, and continuously suppressed or withheld evidence  
133 establishing the innocence of the person wrongfully incarcerated, including but not limited to suppression

134 or withholding of evidence to the Governor for the purpose of clemency, the Commonwealth may  
135 compensate the person wrongfully incarcerated for such intentional acts. Such amount shall be in addition  
136 to any compensation awarded pursuant to § 8.01-195.11 and may be up to or equal to the amount of such  
137 compensation. The additional compensation shall be added to any amount awarded pursuant to § 8.01-  
138 195.11, and the total compensation shall be paid pursuant to subdivision B of § 8.01-195.11. Nothing  
139 provided in this section shall be interpreted to supplant, revoke, or supersede any other provision of this  
140 article applicable to the award of compensation for wrongful incarceration, and the additional  
141 compensation shall be subject to any conditions set forth in this article.

142 B. Any compensation awarded pursuant to this article that includes the additional compensation  
143 for intentional acts as set forth in subsection A shall not become effective and payable by the  
144 Commonwealth unless and until (i) the person wrongfully incarcerated executes the release and waiver  
145 pursuant to ~~subsection B of § 8.01-195.12~~ and (ii) the instrumentality, or political subdivision thereof,  
146 employing any individual committing the intentional acts set forth in clauses (i) and (ii) of subsection A  
147 enters into an agreement with the person wrongfully incarcerated requiring such instrumentality or  
148 political subdivision to compensate the person with a sum at least equal to the total compensation provided  
149 pursuant to § 8.01-195.11 and this section.

150 **§ 19.2-389. Dissemination of criminal history record information.**

151 A. Criminal history record information shall be disseminated, whether directly or through an  
152 intermediary, only to:

153 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for  
154 purposes of the administration of criminal justice and the screening of an employment application or  
155 review of employment by a criminal justice agency with respect to its own employees or applicants, and  
156 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-  
157 responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 4, and  
158 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of  
159 this subdivision, criminal history record information includes information sent to the Central Criminal  
160 Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-

161 time employee of the State Police, a police department or sheriff's office that is a part of or administered  
162 by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and  
163 detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for  
164 the purposes of the administration of criminal justice;

165 2. Such other individuals and agencies that require criminal history record information to  
166 implement a state or federal statute or executive order of the President of the United States or Governor  
167 that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon  
168 such conduct, except that information concerning the arrest of an individual may not be disseminated to a  
169 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest  
170 and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

171 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to  
172 provide services required for the administration of criminal justice pursuant to that agreement which shall  
173 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the  
174 security and confidentiality of the data;

175 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities  
176 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,  
177 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and  
178 security of the data;

179 5. Agencies of state or federal government that are authorized by state or federal statute or  
180 executive order of the President of the United States or Governor to conduct investigations determining  
181 employment suitability or eligibility for security clearances allowing access to classified information;

182 6. Individuals and agencies where authorized by court order or court rule;

183 7. Agencies of any political subdivision of the Commonwealth, public transportation companies  
184 owned, operated or controlled by any political subdivision, and any public service corporation that  
185 operates a public transit system owned by a local government for the conduct of investigations of  
186 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is  
187 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a

188 conviction record would be compatible with the nature of the employment, permit, or license under  
189 consideration;

190 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.)  
191 of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered  
192 a position of employment whenever, in the interest of public welfare or safety and as authorized in the  
193 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person  
194 with a conviction record would be compatible with the nature of the employment under consideration;

195 8. Public or private agencies when authorized or required by federal or state law or interstate  
196 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult  
197 members of that individual's household, with whom the agency is considering placing a child or from  
198 whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary,  
199 or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall  
200 not be further disseminated to any party other than a federal or state authority or court as may be required  
201 to comply with an express requirement of law;

202 9. To the extent permitted by federal law or regulation, public service companies as defined in §  
203 56-1, for the conduct of investigations of applicants for employment when such employment involves  
204 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
205 with the nature of the employment under consideration;

206 10. The appropriate authority for purposes of granting citizenship and for purposes of international  
207 travel, including, but not limited to, issuing visas and passports;

208 11. A person requesting a copy of his own criminal history record information as defined in § 9.1-  
209 101 at his cost, except that criminal history record information shall be supplied at no charge to a person  
210 who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii)  
211 a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent  
212 Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual  
213 who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line  
214 program as defined in § 15.2-1713.1;



215 12. Administrators and board presidents of and applicants for licensure or registration as a child  
216 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'  
217 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
218 volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing  
219 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall  
220 not be further disseminated by the facility or agency to any party other than the data subject, the  
221 Commissioner of Social Services' representative or a federal or state authority or court as may be required  
222 to comply with an express requirement of law for such further dissemination; however, nothing in this  
223 subdivision shall be construed to prohibit the Commissioner of Social Services' representative from  
224 issuing written certifications regarding the results of a background check that was conducted before July  
225 1, 2021, in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039;

226 13. The school boards of the Commonwealth for the purpose of screening individuals who are  
227 offered or who accept public school employment and those current school board employees for whom a  
228 report of arrest has been made pursuant to § 19.2-83.1;

229 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law  
230 (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, and  
231 the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in  
232 Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

233 15. Licensed nursing homes, hospitals and home care organizations for the conduct of  
234 investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-  
235 126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-  
236 162.9:1, subject to the limitations set out in subsection E;

237 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of  
238 investigations of applicants for compensated employment in licensed assisted living facilities and licensed  
239 adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

240 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set  
241 forth in § 4.1-103.1;

242 18. The State Board of Elections and authorized officers and employees thereof and general  
243 registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with  
244 respect to voter registration, limited to any record of felony convictions;

245 19. The Commissioner of Behavioral Health and Developmental Services for those individuals  
246 who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
247 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

248 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety  
249 Action Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to offenders  
250 under § 18.2-51.4, 18.2-266, or 18.2-266.1;

251 21. Residential facilities for juveniles regulated or operated by the Department of Social Services,  
252 the Department of Education, or the Department of Behavioral Health and Developmental Services for  
253 the purpose of determining applicants' fitness for employment or for providing volunteer or contractual  
254 services;

255 22. The Department of Behavioral Health and Developmental Services and facilities operated by  
256 the Department for the purpose of determining an individual's fitness for employment pursuant to  
257 departmental instructions;

258 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
259 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such  
260 records information on behalf of such governing boards or administrators pursuant to a written agreement  
261 with the Department of State Police;

262 24. Public institutions of higher education and nonprofit private institutions of higher education  
263 for the purpose of screening individuals who are offered or accept employment;

264 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-  
265 79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution  
266 of higher education, for the purpose of assessing or intervening with an individual whose behavior may  
267 present a threat to safety; however, no member of a threat assessment team shall disclose any criminal

268 history record information obtained pursuant to this section or otherwise use any record of an individual  
269 beyond the purpose that such disclosure was made to the threat assessment team;

270 26. Executive directors of community services boards or the personnel director serving the  
271 community services board for the purpose of determining an individual's fitness for employment, approval  
272 as a sponsored residential service provider, permission to enter into a shared living arrangement with a  
273 person receiving medical assistance services pursuant to a waiver, or permission for any person under  
274 contract with the community services board to serve in a direct care position on behalf of the community  
275 services board pursuant to §§ 37.2-506 and 37.2-607;

276 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
277 determining an individual's fitness for employment, approval as a sponsored residential service provider,  
278 permission to enter into a shared living arrangement with a person receiving medical assistance services  
279 pursuant to a waiver, or permission for any person under contract with the behavioral health authority to  
280 serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506 and  
281 37.2-607;

282 28. The Commissioner of Social Services for the purpose of locating persons who owe child  
283 support or who are alleged in a pending paternity proceeding to be a putative father, provided that only  
284 the name, address, demographics and social security number of the data subject shall be released;

285 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.)  
286 of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
287 purpose of determining if any applicant who accepts employment in any direct care position or requests  
288 approval as a sponsored residential service provider, permission to enter into a shared living arrangement  
289 with a person receiving medical assistance services pursuant to a waiver, or permission for any person  
290 under contract with the provider to serve in a direct care position has been convicted of a crime that affects  
291 his fitness to have responsibility for the safety and well-being of individuals with mental illness,  
292 intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

293 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating  
294 applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
295 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

296 31. The Chairman of the Senate Committee on the Judiciary or the Chairman of the House  
297 Committee for Courts of Justice for the purpose of determining if any person being considered for election  
298 to any judgeship has been convicted of a crime;

299 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
300 determining an individual's fitness for employment in positions designated as sensitive under Department  
301 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

302 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under  
303 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually  
304 Violent Predators Act (§ 37.2-900 et seq.);

305 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,  
306 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary  
307 companies, for the conduct of investigations of applications for employment or for access to facilities, by  
308 contractors, leased laborers, and other visitors;

309 35. Any employer of individuals whose employment requires that they enter the homes of others,  
310 for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

311 36. Public agencies when and as required by federal or state law to investigate (i) applicants as  
312 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
313 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
314 subject to the restriction that the data shall not be further disseminated by the agency to any party other  
315 than a federal or state authority or court as may be required to comply with an express requirement of law  
316 for such further dissemination, subject to limitations set out in subsection G;

317 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
318 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
319 or have accepted a position related to the provision of transportation services to enrollees in the Medicaid

320 Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program  
321 administered by the Department of Medical Assistance Services;

322 38. The State Corporation Commission for the purpose of investigating individuals who are current  
323 or proposed members, senior officers, directors, and principals of an applicant or person licensed under  
324 Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of Title  
325 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on  
326 information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of  
327 Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the  
328 applicant or its designee;

329 39. The Department of Professional and Occupational Regulation for the purpose of investigating  
330 individuals for initial licensure pursuant to § 54.1-2106.1;

331 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and  
332 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and  
333 for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§  
334 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

335 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

336 42. The State Treasurer for the purpose of determining whether a person receiving compensation  
337 for wrongful incarceration meets the conditions for ~~continued~~ compensation under § 8.01-195.12;

338 43. The Department of Education or its agents or designees for the purpose of screening individuals  
339 seeking to enter into a contract with the Department of Education or its agents or designees for the  
340 provision of child care services for which child care subsidy payments may be provided;

341 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members  
342 of a juvenile's household when completing a predispositional or postdispositional report required by §  
343 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

344 45. The State Corporation Commission, for the purpose of screening applicants for insurance  
345 licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

346 46. Administrators and board presidents of and applicants for licensure or registration as a child  
347 day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the  
348 Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of  
349 investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034  
350 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the  
351 facility or agency to any party other than the data subject, the Superintendent of Public Instruction's  
352 representative, or a federal or state authority or court as may be required to comply with an express  
353 requirement of law for such further dissemination; however, nothing in this subdivision shall be construed  
354 to prohibit the Superintendent of Public Instruction's representative from issuing written certifications  
355 regarding the results of prior background checks in accordance with subsection J of § 22.1-289.035 or §  
356 22.1-289.039; and

357 47. Other entities as otherwise provided by law.

358 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records  
359 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal  
360 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons  
361 designated in the order on whom a report has been made under the provisions of this chapter.

362 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn  
363 to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the  
364 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a  
365 copy of conviction data covering the person named in the request to the person making the request;  
366 however, such person on whom the data is being obtained shall consent in writing, under oath, to the  
367 making of such request. A person receiving a copy of his own conviction data may utilize or further  
368 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data  
369 subject, the person making the request shall be furnished at his cost a certification to that effect.

370 B. Use of criminal history record information disseminated to noncriminal justice agencies under  
371 this section shall be limited to the purposes for which it was given and may not be disseminated further,  
372 except as otherwise provided in subdivision A 46.

373 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal  
374 history record information for employment or licensing inquiries except as provided by law.

375 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records  
376 Exchange prior to dissemination of any criminal history record information on offenses required to be  
377 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is  
378 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where  
379 time is of the essence and the normal response time of the Exchange would exceed the necessary time  
380 period. A criminal justice agency to whom a request has been made for the dissemination of criminal  
381 history record information that is required to be reported to the Central Criminal Records Exchange may  
382 direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of  
383 information regarding offenses not required to be reported to the Exchange shall be made by the criminal  
384 justice agency maintaining the record as required by § 15.2-1722.

385 E. Criminal history information provided to licensed nursing homes, hospitals and to home care  
386 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange  
387 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

388 F. Criminal history information provided to licensed assisted living facilities and licensed adult  
389 day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange  
390 for any offense specified in § 63.2-1720.

391 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be  
392 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition  
393 of barrier crime in § 19.2-392.02.

394 H. Upon receipt of a written request from an employer or prospective employer, the Central  
395 Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported  
396 to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named  
397 in the request to the employer or prospective employer making the request, provided that the person on  
398 whom the data is being obtained has consented in writing to the making of such request and has presented  
399 a photo-identification to the employer or prospective employer. In the event no conviction data is

400 maintained on the person named in the request, the requesting employer or prospective employer shall be  
401 furnished at his cost a certification to that effect. The criminal history record search shall be conducted on  
402 forms provided by the Exchange.

403 I. Nothing in this section shall preclude the dissemination of a person's criminal history record  
404 information pursuant to the rules of court for obtaining discovery or for review by the court.

405 **§ 58.1-322.02. Virginia taxable income; subtractions.**

406 In computing Virginia taxable income pursuant to § 58.1-322, to the extent included in federal  
407 adjusted gross income, there shall be subtracted:

408 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States  
409 and on obligations or securities of any authority, commission, or instrumentality of the United States to  
410 the extent exempt from state income taxes under the laws of the United States, including, but not limited  
411 to, stocks, bonds, treasury bills, and treasury notes but not including interest on refunds of federal taxes,  
412 interest on equipment purchase contracts, or interest on other normal business transactions.

413 2. Income derived from obligations, or on the sale or exchange of obligations, of the  
414 Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

415 3. Benefits received under Title II of the Social Security Act and other benefits subject to federal  
416 income taxation solely pursuant to § 86 of the Internal Revenue Code.

417 4. Up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue  
418 Code; however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also  
419 claim a subtraction under this subdivision.

420 5. The amount of any refund or credit for overpayment of income taxes imposed by the  
421 Commonwealth or any other taxing jurisdiction.

422 6. The amount of wages or salaries eligible for the federal Work Opportunity Credit which was  
423 not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

424 7. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.

425 8. The wages or salaries received by any person for active and inactive service in the National  
426 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar



427 days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3  
428 and below shall be entitled to the deductions specified in this subdivision.

429 9. Amounts received by an individual, not to exceed \$1,000 for taxable years beginning on or  
430 before December 31, 2019, and \$5,000 for taxable years beginning on or after January 1, 2020, as a reward  
431 for information provided to a law-enforcement official or agency, or to a nonprofit corporation created  
432 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of  
433 perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an employee  
434 of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which  
435 the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

436 10. The amount of "qualified research expenses" or "basic research expenses" eligible for  
437 deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c)  
438 of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and  
439 members of limited liability companies to the extent and in the same manner as other deductions may pass  
440 through to such partners, shareholders, and members.

441 11. Any income received during the taxable year derived from a qualified pension, profit-sharing,  
442 or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account  
443 or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined  
444 by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions  
445 to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the  
446 contributions to such plan or program were subject to taxation under the income tax in another state.

447 12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract  
448 or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-  
449 700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income  
450 attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

451 13. All military pay and allowances, to the extent included in federal adjusted gross income and  
452 not otherwise subtracted, deducted, or exempted under this section, earned by military personnel while  
453 serving by order of the President of the United States with the consent of Congress in a combat zone or

454 qualified hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112  
455 of the Internal Revenue Code.

456 14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange  
457 of real property or the sale or exchange of an easement to real property which results in the real property  
458 or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a  
459 period of time not less than 30 years. To the extent that a subtraction is taken in accordance with this  
460 subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for  
461 three years following the year in which the subtraction is taken.

462 15. Fifteen thousand dollars of military basic pay for military service personnel on extended active  
463 duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar  
464 by the amount by which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if  
465 such military basic pay amount is equal to or exceeds \$30,000.

466 16. The first \$15,000 of salary for each federal and state employee whose total annual salary from  
467 all employment for the taxable year is \$15,000 or less.

468 17. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

469 18. Any amount received as military retirement income by an individual awarded the  
470 Congressional Medal of Honor.

471 19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from,  
472 hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii)  
473 damages, reparations, or other consideration received by a victim or target of Nazi persecution to  
474 compensate such individual for performing labor against his will under the threat of death, during World  
475 War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such  
476 items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost  
477 to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The  
478 provisions of this subdivision shall only apply to an individual who was the first recipient of such items  
479 of income and who was a victim or target of Nazi persecution, or a spouse, surviving spouse, or child or  
480 stepchild of such victim.

481 As used in this subdivision:

482 "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those  
483 European countries allied with Nazi Germany, or any other neutral European country or area in Europe  
484 under the influence or threat of Nazi invasion.

485 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution  
486 by the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or  
487 omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath,  
488 (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution,  
489 or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II  
490 and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual forced  
491 into labor against his will, under the threat of death, during World War II and its prelude and direct  
492 aftermath.

493 20. The military death gratuity payment made after September 11, 2001, to the survivor of  
494 deceased military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the  
495 subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from  
496 his federal gross income in accordance with § 134 of the Internal Revenue Code.

497 21. The death benefit payments from an annuity contract that are received by a beneficiary of such  
498 contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an  
499 insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under  
500 this subdivision shall be allowed only for that portion of the death benefit payment that is included in  
501 federal adjusted gross income.

502 22. Any gain recognized from the sale of launch services to space flight participants, as defined in  
503 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of a  
504 launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch  
505 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

506 23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined  
507 in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the

508 National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8,  
509 and launched from an airport or spaceport in Virginia.

510 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income  
511 taxed as investment services partnership interest income (otherwise known as investment partnership  
512 carried interest income) for federal income tax purposes. To qualify for a subtraction under this  
513 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in §  
514 58.1-339.4, or in any other technology business approved by the Secretary of Administration, provided  
515 that the business has its principal office or facility in the Commonwealth and less than \$3 million in annual  
516 revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the  
517 investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has  
518 claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the  
519 subtraction under this subdivision for an investment in the same business.

520 25. For taxable years beginning on and after January 1, 2014, any income of an account holder for  
521 the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's  
522 first-time home buyer savings account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36  
523 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-  
524 time home buyer savings account.

525 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction  
526 taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or  
527 funds withdrawn from the first-time home buyer savings account were used for any purpose other than  
528 the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 36-174. The  
529 amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used  
530 for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for  
531 other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of  
532 the withdrawal to the total balance in the account at such time.

533 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i)  
534 withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the

535 account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101  
536 through 1330; or (iii) transferred from an account established pursuant to Chapter 12 (§ 36-171 et seq.) of  
537 Title 36 into another account established pursuant to such chapter for the benefit of another qualified  
538 beneficiary.

539 For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings  
540 account," and "qualified beneficiary" mean the same as those terms are defined in § 36-171.

541 26. For taxable years beginning on and after January 1, 2015, any income for the taxable year  
542 attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this  
543 subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal Revenue  
544 Code.

545 27. a. Income, including investment services partnership interest income (otherwise known as  
546 investment partnership carried interest income), attributable to an investment in a Virginia venture capital  
547 account. To qualify for a subtraction under this subdivision, the investment shall be made on or after  
548 January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision  
549 for an investment in a company that is owned or operated by a family member or an affiliate of the  
550 taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a  
551 subtraction under subdivision 24 or a tax credit under § 58.1-339.4 for the same investment.

552 b. As used in this subdivision 27:

553 "Qualified portfolio company" means a company that (i) has its principal place of business in the  
554 Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or  
555 service other than the management or investment of capital; and (iii) provides equity in the company to  
556 the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company"  
557 does not include a company that is an individual or sole proprietorship.

558 "Virginia venture capital account" means an investment fund that has been certified by the  
559 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital  
560 account, the operator of the investment fund shall register the investment fund with the Department prior  
561 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed

562 to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one  
563 investor who has at least four years of professional experience in venture capital investment or  
564 substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to,  
565 an undergraduate degree from an accredited college or university in economics, finance, or a similar field  
566 of study. The Department may require an investment fund to provide documentation of the investor's  
567 training, education, or experience as deemed necessary by the Department to determine substantial  
568 equivalency. If the Department determines that the investment fund employs at least one investor with the  
569 experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital  
570 account at such time as the investment fund actually invests at least 50 percent of the capital committed  
571 to its fund in qualified portfolio companies.

572 28. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for  
573 a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before  
574 December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by a  
575 family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for  
576 a taxpayer who has claimed a subtraction under subdivision 24 or 27 or a tax credit under § 58.1-339.4  
577 for the same investment.

578 b. As used in this subdivision 28:

579 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of §  
580 2.2-115.

581 "Double distressed" means satisfying the criteria applicable to a locality described in subdivision  
582 E 3 of § 2.2-115.

583 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.  
584 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be  
585 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department  
586 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia  
587 and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If  
588 the Department determines that the trust satisfies the preceding criteria, the Department shall certify the

589 trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent  
590 of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed  
591 or double distressed.

592 29. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking  
593 of real property by condemnation proceedings.

594 30. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to  
595 \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by  
596 the Governor and administered by the Department of Small Business and Supplier Diversity.

597 31. For taxable years beginning on and after January 1, 2022, any compensation for wrongful  
598 incarceration awarded pursuant to the procedures established under Article 18.2 (§ 8.01-195.10 et seq.) of  
599 Chapter 3 of Title 8.01.

600

#