

SENATE BILL NO. 140

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health
on February 1, 2024)

(Patron Prior to Substitute--Senator Carroll Foy)

A BILL to amend and reenact §§ 2.2-3705.5, 2.2-3711, as it is currently effective and as it may become effective, and 2.2-4002 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-283.9, relating to the Fetal and Infant Mortality Review Team established; penalty; report.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.5, 2.2-3711, as it is currently effective and as it may become effective, and 2.2-4002 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-283.9 as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall

27 continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the
28 facility to any person except the subject or except as provided by law.

29 Where the person who is the subject of health records is under the age of 18, his right of access
30 may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's
31 parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access,
32 or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where
33 the person who is the subject thereof is an emancipated minor, a student in a public institution of higher
34 education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-
35 2969, the right of access may be asserted by the subject person.

36 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning
37 abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and
38 Developmental Services shall be disclosed. No such summaries or data shall include any information that
39 identifies specific individuals receiving services.

40 2. Applications for admission to examinations or for licensure and scoring records maintained by
41 the Department of Health Professions or any board in that department on individual licensees or
42 applicants; information required to be provided to the Department of Health Professions by certain
43 licensees pursuant to § 54.1-2506.1; information held by the Health Practitioners' Monitoring Program
44 Committee within the Department of Health Professions that identifies any practitioner who may be, or
45 who is actually, impaired to the extent that disclosure is prohibited by § 54.1-2517; and information
46 relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such
47 information that are in the possession of the Prescription Monitoring Program (Program) pursuant to
48 Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of
49 the Program.

50 3. Reports, documentary evidence, and other information as specified in §§ 51.5-122 and 51.5-184
51 and Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and information and statistical registries required to be
52 kept confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2.

53 4. Investigative notes; proprietary information not published, copyrighted or patented; information
54 obtained from employee personnel records; personally identifiable information regarding residents, clients
55 or other recipients of services; other correspondence and information furnished in confidence to the
56 Department of Education in connection with an active investigation of an applicant or licensee pursuant
57 to Chapter 14.1 (§ 22.1-289.02 et seq.) of Title 22.1; other correspondence and information furnished in
58 confidence to the Department of Social Services in connection with an active investigation of an applicant
59 or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and
60 information furnished to the Office of the Attorney General in connection with an investigation or
61 litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-
62 310 et seq.) of Title 32.1. However, nothing in this subdivision shall prevent the disclosure of information
63 from the records of completed investigations in a form that does not reveal the identity of complainants,
64 persons supplying information, or other individuals involved in the investigation.

65 5. Information collected for the designation and verification of trauma centers and other specialty
66 care centers within the Statewide Emergency Medical Services System and Services pursuant to Article
67 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

68 6. Reports and court documents relating to involuntary admission required to be kept confidential
69 pursuant to § 37.2-818.

70 7. Information acquired (i) during a review of any child death conducted by the State Child Fatality
71 Review Team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to
72 the extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any death
73 conducted by a family violence fatality review team to the extent that such information is made
74 confidential by § 32.1-283.3; (iii) during a review of any adult death conducted by the Adult Fatality
75 Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review
76 team to the extent that such information is made confidential by § 32.1-283.6; (iv) by a local or regional
77 overdose fatality review team to the extent that such information is made confidential by § 32.1-283.7; (v)
78 during a review of any death conducted by the Maternal Mortality Review Team to the extent that such
79 information is made confidential by § 32.1-283.8 or the Fetal and Infant Mortality Review Team to the

80 extent that such information is made confidential by § 32.1-283.9; or (vi) during a review of any death
81 conducted by the Developmental Disabilities Mortality Review Committee to the extent that such
82 information is made confidential by § 37.2-314.1.

83 8. Patient level data collected by the Board of Health and not yet processed, verified, and released,
84 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
85 Health has contracted pursuant to § 32.1-276.4.

86 9. Information relating to a grant application, or accompanying a grant application, submitted to
87 the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of
88 Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying
89 individual patients or (b) proprietary business or research-related information produced or collected by
90 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
91 technical, or scholarly issues, when such information has not been publicly released, published,
92 copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

93 10. Any information copied, recorded, or received by the Commissioner of Health in the course of
94 an examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§
95 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all
96 computer or other recordings.

97 11. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to
98 be kept confidential pursuant to § 38.2-5002.2.

99 12. Information held by the State Health Commissioner relating to the health of any person subject
100 to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter
101 2 of Title 32.1. However, nothing in this subdivision shall be construed to prevent the disclosure of
102 statistical summaries, abstracts, or other information in aggregate form.

103 13. The names and addresses or other contact information of persons receiving transportation
104 services from a state or local public body or its designee under Title II of the Americans with Disabilities
105 Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created
106 under § 63.2-600.

107 14. Information held by certain health care committees and entities that may be withheld from
108 discovery as privileged communications pursuant to § 8.01-581.17.

109 15. Data and information specified in § 37.2-308.01 relating to proceedings provided for in Article
110 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

111 16. Records of and information held by the Smartchart Network Program required to be kept
112 confidential pursuant to § 32.1-372.

113 **§ 2.2-3711. (Effective until date pursuant to Acts 2023, cc. 756 and 778, cl. 5) Closed meetings**
114 **authorized for certain limited purposes.**

115 A. Public bodies may hold closed meetings only for the following purposes:

116 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
117 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
118 officers, appointees, or employees of any public body; and evaluation of performance of departments or
119 schools of public institutions of higher education where such evaluation will necessarily involve
120 discussion of the performance of specific individuals. Any teacher shall be permitted to be present during
121 a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the
122 teacher and some student and the student involved in the matter is present, provided the teacher makes a
123 written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision,
124 however, shall be construed to authorize a closed meeting by a local governing body or an elected school
125 board to discuss compensation matters that affect the membership of such body or board collectively.

126 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
127 involve the disclosure of information contained in a scholastic record concerning any student of any public
128 institution of higher education in the Commonwealth or any state school system. However, any such
129 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be
130 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if
131 such student, parents, or guardians so request in writing and such request is submitted to the presiding
132 officer of the appropriate board.

133 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
134 disposition of publicly held real property, where discussion in an open meeting would adversely affect the
135 bargaining position or negotiating strategy of the public body.

136 4. The protection of the privacy of individuals in personal matters not related to public business.

137 5. Discussion concerning a prospective business or industry or the expansion of an existing
138 business or industry where no previous announcement has been made of the business' or industry's interest
139 in locating or expanding its facilities in the community.

140 6. Discussion or consideration of the investment of public funds where competition or bargaining
141 is involved, where, if made public initially, the financial interest of the governmental unit would be
142 adversely affected.

143 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
144 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
145 the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable
146 litigation" means litigation that has been specifically threatened or on which the public body or its legal
147 counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this
148 subdivision shall be construed to permit the closure of a meeting merely because an attorney representing
149 the public body is in attendance or is consulted on a matter.

150 8. Consultation with legal counsel employed or retained by a public body regarding specific legal
151 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be
152 construed to permit the closure of a meeting merely because an attorney representing the public body is
153 in attendance or is consulted on a matter.

154 9. Discussion or consideration by governing boards of public institutions of higher education of
155 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
156 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
157 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
158 accepted by a public institution of higher education in the Commonwealth shall be subject to public
159 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,

160 (i) "foreign government" means any government other than the United States government or the
161 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
162 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the
163 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
164 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under
165 the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or
166 national of the United States or a trust territory or protectorate thereof.

167 10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the
168 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, the Fort Monroe Authority,
169 and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private
170 sources.

171 11. Discussion or consideration of honorary degrees or special awards.

172 12. Discussion or consideration of tests, examinations, or other information used, administered, or
173 prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

174 13. Discussion, consideration, or review by the appropriate House or Senate committees of
175 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
176 statement filed by the member, provided the member may request in writing that the committee meeting
177 not be conducted in a closed meeting.

178 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or
179 to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
180 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position
181 of the governing body or the establishment of the terms, conditions and provisions of the siting agreement,
182 or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

183 15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
184 activity and estimating general and nongeneral fund revenues.

185 16. Discussion or consideration of medical and mental health records subject to the exclusion in
186 subdivision 1 of § 2.2-3705.5.

187 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
188 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
189 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
190 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3
191 and subdivision 11 of § 2.2-3705.7.

192 18. Those portions of meetings in which the State Board of Local and Regional Jails discusses or
193 discloses the identity of, or information tending to identify, any prisoner who (i) provides information
194 about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or
195 in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
196 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

197 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
198 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement
199 or emergency service officials concerning actions taken to respond to such matters or a related threat to
200 public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2,
201 where discussion in an open meeting would jeopardize the safety of any person or the security of any
202 facility, building, structure, information technology system, or software program; or discussion of reports
203 or plans related to the security of any governmental facility, building or structure, or the safety of persons
204 using such facility, building or structure.

205 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30,
206 or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
207 trustees of a trust established by one or more local public bodies to invest funds for postemployment
208 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2,
209 or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board
210 of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or
211 disposition of a security or other ownership interest in an entity, where such security or ownership interest
212 is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i)
213 concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared

214 by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings
215 Plan or provided to the retirement system, a local finance board or board of trustees, or the Virginia
216 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or
217 the future financial performance of the entity, and (ii) would have an adverse effect on the value of the
218 investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of
219 trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing
220 in this subdivision shall be construed to prevent the disclosure of information relating to the identity of
221 any investment held, the amount invested or the present value of such investment.

222 21. Those portions of meetings in which individual child death cases are discussed by the State
223 Child Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which
224 individual child death cases are discussed by a regional or local child fatality review team established
225 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
226 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
227 which individual adult death cases are discussed by the state Adult Fatality Review Team established
228 pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed
229 by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of
230 meetings in which individual death cases are discussed by overdose fatality review teams established
231 pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are
232 discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, those portions of meetings
233 in which individual fetal and infant death cases are discussed by the Fetal and Infant Mortality Review
234 Team pursuant to § 32.1-283.9, and those portions of meetings in which individual death cases of persons
235 with developmental disabilities are discussed by the Developmental Disabilities Mortality Review
236 Committee established pursuant to § 37.2-314.1.

237 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern
238 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
239 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
240 Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary,

241 business-related information pertaining to the operations of the University of Virginia Medical Center or
242 Eastern Virginia Medical School, as the case may be, including business development or marketing
243 strategies and activities with existing or future joint venturers, partners, or other parties with whom the
244 University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed,
245 or forms, any arrangement for the delivery of health care, if disclosure of such information would
246 adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as
247 the case may be.

248 23. Discussion or consideration by the Virginia Commonwealth University Health System
249 Authority or the board of visitors of Virginia Commonwealth University of any of the following: the
250 acquisition or disposition by the Authority of real property, equipment, or technology software or
251 hardware and related goods or services, where disclosure would adversely affect the bargaining position
252 or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities
253 of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing
254 or operational strategies plans of the Authority where disclosure of such strategies or plans would
255 adversely affect the competitive position of the Authority; and members of the Authority's medical and
256 teaching staffs and qualifications for appointments thereto.

257 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee
258 within the Department of Health Professions to the extent such discussions identify any practitioner who
259 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

260 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
261 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by
262 or on behalf of individuals who have requested information about, applied for, or entered into prepaid
263 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
264 23.1 is discussed.

265 26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery
266 Subcommittee created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as
267 defined in § 56-484.12, related to the provision of wireless E-911 service.

268 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
269 Professional and Occupational Regulation, Department of Health Professions, or the Board of
270 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a
271 decision or meetings of health regulatory boards or conference committees of such boards to consider
272 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as
273 requested by either of the parties.

274 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-
275 3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in
276 § 33.2-1800, or any independent review panel appointed to review information and advise the responsible
277 public entity concerning such records.

278 29. Discussion of the award of a public contract involving the expenditure of public funds,
279 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
280 discussion in an open session would adversely affect the bargaining position or negotiating strategy of the
281 public body.

282 30. Discussion or consideration of grant or loan application information subject to the exclusion
283 in subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

284 31. Discussion or consideration by the Commitment Review Committee of information subject to
285 the exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually
286 violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

287 32. Discussion or consideration of confidential proprietary information and trade secrets developed
288 and held by a local public body providing certain telecommunication services or cable television services
289 and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
290 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et
291 seq.).

292 33. Discussion or consideration by a local authority created in accordance with the Virginia
293 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade
294 secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6.

295 34. Discussion or consideration by the State Board of Elections or local electoral boards of voting
296 security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1.

297 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
298 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal
299 investigative files.

300 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
301 information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and
302 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and
303 consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or
304 recover scholarship awards.

305 37. Discussion or consideration by the Virginia Port Authority of information subject to the
306 exclusion in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the
307 Virginia Port Authority.

308 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
309 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
310 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
311 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory
312 Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of
313 § 2.2-3705.7.

314 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-
315 3705.6 related to economic development.

316 40. Discussion or consideration by the Board of Education of information relating to the denial,
317 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

318 41. Those portions of meetings of the Virginia Military Advisory Council or any commission
319 created by executive order for the purpose of studying and making recommendations regarding preventing
320 closure or realignment of federal military and national security installations and facilities located in
321 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization

322 appointed by a local governing body, during which there is discussion of information subject to the
323 exclusion in subdivision 8 of § 2.2-3705.2.

324 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
325 information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable
326 information of donors.

327 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
328 information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information
329 contained in grant applications.

330 44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
331 of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or
332 charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain
333 proprietary information of a private entity provided to the Authority.

334 45. Discussion or consideration of personal and proprietary information related to the resource
335 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii)
336 subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records
337 that contain information that has been certified for release by the person who is the subject of the
338 information or transformed into a statistical or aggregate form that does not allow identification of the
339 person who supplied, or is the subject of, the information.

340 46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage
341 Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to
342 investigations of applicants for licenses and permits and of licensees and permittees.

343 47. Discussion or consideration of grant, loan, or investment application records subject to the
344 exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-
345 2351 et seq.) of Chapter 22.

346 48. Discussion or development of grant proposals by a regional council established pursuant to
347 Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and
348 Opportunity Board.

349 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response
350 team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses
351 involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii)
352 individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to
353 §§ 15.2-1627.5 and 63.2-1605.

354 50. Discussion or consideration by the Board of the Virginia Economic Development Partnership
355 Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the
356 portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to
357 subdivision 33 of § 2.2-3705.7.

358 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
359 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
360 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of
361 § 60.2-114 and the Department of Workforce Development and Advancement pursuant to subsection B
362 of § 2.2-2040.

363 52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership
364 Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the
365 Authority, of information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

366 53. Deliberations of the Virginia Lottery Board conducted pursuant to § 58.1-4105 regarding the
367 denial or revocation of a license of a casino gaming operator, or the refusal to issue, suspension of, or
368 revocation of any license or permit related to casino gaming, and discussion, consideration, or review of
369 matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

370 54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007
371 regarding the denial of, revocation of, suspension of, or refusal to renew any license or permit related to
372 sports betting and any discussion, consideration, or review of matters related to investigations excluded
373 from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

374 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
375 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open

376 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
377 motion that shall have its substance reasonably identified in the open meeting.

378 C. Public officers improperly selected due to the failure of the public body to comply with the
379 other provisions of this section shall be de facto officers and, as such, their official actions are valid until
380 they obtain notice of the legal defect in their election.

381 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
382 more public bodies, or their representatives, but these conferences shall be subject to the same procedures
383 for holding closed meetings as are applicable to any other public body.

384 E. This section shall not be construed to (i) require the disclosure of any contract between the
385 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
386 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
387 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
388 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
389 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record
390 at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

391 **§ 2.2-3711. (Effective pursuant to Acts 2023, cc. 756 and 778, cl. 5) Closed meetings**
392 **authorized for certain limited purposes.**

393 A. Public bodies may hold closed meetings only for the following purposes:

394 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
395 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
396 officers, appointees, or employees of any public body; and evaluation of performance of departments or
397 schools of public institutions of higher education where such evaluation will necessarily involve
398 discussion of the performance of specific individuals. Any teacher shall be permitted to be present during
399 a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the
400 teacher and some student and the student involved in the matter is present, provided that the teacher makes
401 a written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision,

402 however, shall be construed to authorize a closed meeting by a local governing body or an elected school
403 board to discuss compensation matters that affect the membership of such body or board collectively.

404 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
405 involve the disclosure of information contained in a scholastic record concerning any student of any public
406 institution of higher education in the Commonwealth or any state school system. However, any such
407 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be
408 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if
409 such student, parents, or guardians so request in writing and such request is submitted to the presiding
410 officer of the appropriate board.

411 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
412 disposition of publicly held real property, where discussion in an open meeting would adversely affect the
413 bargaining position or negotiating strategy of the public body.

414 4. The protection of the privacy of individuals in personal matters not related to public business.

415 5. Discussion concerning a prospective business or industry or the expansion of an existing
416 business or industry where no previous announcement has been made of the business' or industry's interest
417 in locating or expanding its facilities in the community.

418 6. Discussion or consideration of the investment of public funds where competition or bargaining
419 is involved, where, if made public initially, the financial interest of the governmental unit would be
420 adversely affected.

421 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
422 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
423 the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable
424 litigation" means litigation that has been specifically threatened or on which the public body or its legal
425 counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this
426 subdivision shall be construed to permit the closure of a meeting merely because an attorney representing
427 the public body is in attendance or is consulted on a matter.

428 8. Consultation with legal counsel employed or retained by a public body regarding specific legal
429 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be
430 construed to permit the closure of a meeting merely because an attorney representing the public body is
431 in attendance or is consulted on a matter.

432 9. Discussion or consideration by governing boards of public institutions of higher education of
433 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
434 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
435 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
436 accepted by a public institution of higher education in the Commonwealth shall be subject to public
437 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
438 (i) "foreign government" means any government other than the United States government or the
439 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
440 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the
441 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
442 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under
443 the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or
444 national of the United States or a trust territory or protectorate thereof.

445 10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the
446 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, the Fort Monroe Authority,
447 and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private
448 sources.

449 11. Discussion or consideration of honorary degrees or special awards.

450 12. Discussion or consideration of tests, examinations, or other information used, administered, or
451 prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

452 13. Discussion, consideration, or review by the appropriate House or Senate committees of
453 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure

454 statement filed by the member, provided that the member may request in writing that the committee
455 meeting not be conducted in a closed meeting.

456 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or
457 to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
458 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position
459 of the governing body or the establishment of the terms, conditions and provisions of the siting agreement,
460 or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

461 15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
462 activity and estimating general and nongeneral fund revenues.

463 16. Discussion or consideration of medical and mental health records subject to the exclusion in
464 subdivision 1 of § 2.2-3705.5.

465 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
466 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
467 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
468 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3
469 and subdivision 11 of § 2.2-3705.7.

470 18. Those portions of meetings in which the State Board of Local and Regional Jails discusses or
471 discloses the identity of, or information tending to identify, any prisoner who (i) provides information
472 about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or
473 in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
474 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

475 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
476 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement
477 or emergency service officials concerning actions taken to respond to such matters or a related threat to
478 public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2,
479 where discussion in an open meeting would jeopardize the safety of any person or the security of any
480 facility, building, structure, information technology system, or software program; or discussion of reports

481 or plans related to the security of any governmental facility, building or structure, or the safety of persons
482 using such facility, building or structure.

483 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30,
484 or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
485 trustees of a trust established by one or more local public bodies to invest funds for postemployment
486 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2,
487 or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board
488 of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or
489 disposition of a security or other ownership interest in an entity, where such security or ownership interest
490 is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i)
491 concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared
492 by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings
493 Plan or provided to the retirement system, a local finance board or board of trustees, or the Virginia
494 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or
495 the future financial performance of the entity, and (ii) would have an adverse effect on the value of the
496 investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of
497 trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing
498 in this subdivision shall be construed to prevent the disclosure of information relating to the identity of
499 any investment held, the amount invested or the present value of such investment.

500 21. Those portions of meetings in which individual child death cases are discussed by the State
501 Child Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which
502 individual child death cases are discussed by a regional or local child fatality review team established
503 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
504 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
505 which individual adult death cases are discussed by the state Adult Fatality Review Team established
506 pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed
507 by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of

508 meetings in which individual death cases are discussed by overdose fatality review teams established
509 pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are
510 discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, those portions of meetings
511 in which individual fetal and infant death cases are discussed by the Fetal and Infant Mortality Review
512 Team pursuant to 32.1-283.9, and those portions of meetings in which individual death cases of persons
513 with developmental disabilities are discussed by the Developmental Disabilities Mortality Review
514 Committee established pursuant to § 37.2-314.1.

515 22. Those portions of meetings of the board of visitors of the University of Virginia or Old
516 Dominion University, as the case may be, and those portions of meetings of any persons to whom
517 management responsibilities for the University of Virginia Medical Center or the Eastern Virginia Health
518 Sciences Center at Old Dominion University, as the case may be, have been delegated, in which there is
519 discussed proprietary, business-related information pertaining to the operations of the University of
520 Virginia Medical Center or the Eastern Virginia Health Sciences Center at Old Dominion University, as
521 the case may be, including business development or marketing strategies and activities with existing or
522 future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or
523 the Eastern Virginia Health Sciences Center at Old Dominion University, as the case may be, has formed,
524 or forms, any arrangement for the delivery of health care, if disclosure of such information would
525 adversely affect the competitive position of the University of Virginia Medical Center or the Eastern
526 Virginia Health Sciences Center at Old Dominion University, as the case may be.

527 23. Discussion or consideration by the Virginia Commonwealth University Health System
528 Authority or the board of visitors of Virginia Commonwealth University of any of the following: the
529 acquisition or disposition by the Authority of real property, equipment, or technology software or
530 hardware and related goods or services, where disclosure would adversely affect the bargaining position
531 or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities
532 of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing
533 or operational strategies plans of the Authority where disclosure of such strategies or plans would

534 adversely affect the competitive position of the Authority; and members of the Authority's medical and
535 teaching staffs and qualifications for appointments thereto.

536 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee
537 within the Department of Health Professions to the extent such discussions identify any practitioner who
538 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

539 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
540 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by
541 or on behalf of individuals who have requested information about, applied for, or entered into prepaid
542 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
543 23.1 is discussed.

544 26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery
545 Subcommittee created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as
546 defined in § 56-484.12, related to the provision of wireless E-911 service.

547 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
548 Professional and Occupational Regulation, Department of Health Professions, or the Board of
549 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a
550 decision or meetings of health regulatory boards or conference committees of such boards to consider
551 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as
552 requested by either of the parties.

553 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-
554 3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in
555 § 33.2-1800, or any independent review panel appointed to review information and advise the responsible
556 public entity concerning such records.

557 29. Discussion of the award of a public contract involving the expenditure of public funds,
558 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
559 discussion in an open session would adversely affect the bargaining position or negotiating strategy of the
560 public body.

561 30. Discussion or consideration of grant or loan application information subject to the exclusion
562 in subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

563 31. Discussion or consideration by the Commitment Review Committee of information subject to
564 the exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually
565 violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

566 32. Discussion or consideration of confidential proprietary information and trade secrets developed
567 and held by a local public body providing certain telecommunication services or cable television services
568 and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
569 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et
570 seq.).

571 33. Discussion or consideration by a local authority created in accordance with the Virginia
572 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade
573 secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6.

574 34. Discussion or consideration by the State Board of Elections or local electoral boards of voting
575 security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1.

576 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
577 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal
578 investigative files.

579 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
580 information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and
581 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and
582 consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or
583 recover scholarship awards.

584 37. Discussion or consideration by the Virginia Port Authority of information subject to the
585 exclusion in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the
586 Virginia Port Authority.

587 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
588 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
589 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
590 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory
591 Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of
592 § 2.2-3705.7.

593 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-
594 3705.6 related to economic development.

595 40. Discussion or consideration by the Board of Education of information relating to the denial,
596 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

597 41. Those portions of meetings of the Virginia Military Advisory Council or any commission
598 created by executive order for the purpose of studying and making recommendations regarding preventing
599 closure or realignment of federal military and national security installations and facilities located in
600 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
601 appointed by a local governing body, during which there is discussion of information subject to the
602 exclusion in subdivision 8 of § 2.2-3705.2.

603 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
604 information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable
605 information of donors.

606 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
607 information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information
608 contained in grant applications.

609 44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
610 of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or
611 charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain
612 proprietary information of a private entity provided to the Authority.

613 45. Discussion or consideration of personal and proprietary information related to the resource
614 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii)
615 subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records
616 that contain information that has been certified for release by the person who is the subject of the
617 information or transformed into a statistical or aggregate form that does not allow identification of the
618 person who supplied, or is the subject of, the information.

619 46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage
620 Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to
621 investigations of applicants for licenses and permits and of licensees and permittees.

622 47. Discussion or consideration of grant, loan, or investment application records subject to the
623 exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-
624 2351 et seq.) of Chapter 22.

625 48. Discussion or development of grant proposals by a regional council established pursuant to
626 Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and
627 Opportunity Board.

628 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response
629 team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses
630 involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii)
631 individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to
632 §§ 15.2-1627.5 and 63.2-1605.

633 50. Discussion or consideration by the Board of the Virginia Economic Development Partnership
634 Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the
635 portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to
636 subdivision 33 of § 2.2-3705.7.

637 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
638 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
639 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of

640 § 60.2-114 and the Department of Workforce Development and Advancement pursuant to subsection B
641 of § 2.2-2040.

642 52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership
643 Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the
644 Authority, of information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

645 53. Deliberations of the Virginia Lottery Board conducted pursuant to § 58.1-4105 regarding the
646 denial or revocation of a license of a casino gaming operator, or the refusal to issue, suspension of, or
647 revocation of any license or permit related to casino gaming, and discussion, consideration, or review of
648 matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

649 54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007
650 regarding the denial of, revocation of, suspension of, or refusal to renew any license or permit related to
651 sports betting and any discussion, consideration, or review of matters related to investigations excluded
652 from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

653 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
654 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
655 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
656 motion that shall have its substance reasonably identified in the open meeting.

657 C. Public officers improperly selected due to the failure of the public body to comply with the
658 other provisions of this section shall be de facto officers and, as such, their official actions are valid until
659 they obtain notice of the legal defect in their election.

660 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
661 more public bodies, or their representatives, but these conferences shall be subject to the same procedures
662 for holding closed meetings as are applicable to any other public body.

663 E. This section shall not be construed to (i) require the disclosure of any contract between the
664 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
665 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
666 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered

667 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
668 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record
669 at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

670 **§ 2.2-4002. Exemptions from chapter generally.**

671 A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.),
672 the following agencies shall be exempted from the provisions of this chapter, except to the extent that they
673 are specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031:

674 1. The General Assembly.

675 2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly
676 granted any of the powers of a court of record.

677 3. The Department of Wildlife Resources in promulgating regulations regarding the management
678 of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et
679 seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of
680 Title 29.1.

681 4. The Virginia Housing Development Authority.

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

684 6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-
685 4031, such educational institutions shall be exempt from the publication requirements only with respect
686 to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion, and
687 disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and
688 disciplining of students.

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

692 8. The Virginia Resources Authority.

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

694 10. The Department of General Services in promulgating standards for the inspection of buildings
695 for asbestos pursuant to § 2.2-1164.

696 11. The State Council of Higher Education for Virginia, in developing, issuing, and revising
697 guidelines pursuant to § 23.1-207.

698 12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to
699 subsection B of § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.

700 13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and
701 Consumer Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601, subsection
702 B of § 3.2-3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206, and subsection
703 A of § 3.2-5406.

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

707 15. The Commissioner of the Department of Veterans Services in adopting regulations pursuant
708 to § 2.2-2001.3.

709 16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to §
710 22.1-203.2.

711 17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards
712 or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual
713 live horse racing at race meetings licensed by the Commission.

714 18. The Virginia Small Business Financing Authority.

715 19. The Virginia Economic Development Partnership Authority.

716 20. The Board of Agriculture and Consumer Services in adopting, amending, or repealing
717 regulations pursuant to subsection A (ii) of § 59.1-156.

718 21. The Insurance Continuing Education Board pursuant to § 38.2-1867.

719 22. The Board of Health in promulgating the list of diseases that shall be reported to the
720 Department of Health pursuant to § 32.1-35 and in adopting, amending, or repealing regulations pursuant

721 to subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining
722 to restaurants or food service.

723 23. The Board of Pharmacy when specifying special subject requirements for continuing education
724 for pharmacists pursuant to § 54.1-3314.1.

725 24. The Virginia Department of Veterans Services when promulgating rules and regulations
726 pursuant to § 58.1-3219.7 or 58.1-3219.11.

727 25. The Virginia Department of Criminal Justice Services when developing, issuing, or revising
728 any training standards established by the Criminal Justice Services Board under § 9.1-102, provided such
729 actions are authorized by the Governor in the interest of public safety.

730 B. Agency action relating to the following subjects shall be exempted from the provisions of this
731 chapter:

- 732 1. Money or damage claims against the Commonwealth or agencies thereof.
- 733 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
- 734 3. The location, design, specifications, or construction of public buildings or other facilities.
- 735 4. Grants of state or federal funds or property.
- 736 5. The chartering of corporations.
- 737 6. Customary military, militia, naval, or police functions.
- 738 7. The selection, tenure, dismissal, direction, or control of any officer or employee of an agency
739 of the Commonwealth.
- 740 8. The conduct of elections or eligibility to vote.
- 741 9. Inmates of prisons or other such facilities or parolees therefrom.
- 742 10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other
743 state institutions as well as the treatment, supervision, or discharge of such persons.
- 744 11. Traffic signs, markers, or control devices.
- 745 12. Instructions for application or renewal of a license, certificate, or registration required by law.
- 746 13. Content of, or rules for the conduct of, any examination required by law.
- 747 14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.).

748 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
749 with duly adopted regulations of the Virginia Lottery Board, and provided that such regulations are
750 published and posted.

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

754 17. Any operating procedures for review of child deaths developed by the State Child Fatality
755 Review Team pursuant to § 32.1-283.1, any operating procedures for review of adult deaths developed by
756 the Adult Fatality Review Team pursuant to § 32.1-283.5, any operating procedures for review of adult
757 deaths developed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, any operating
758 procedures for review of fetal and infant deaths developed by the Fetal and Infant Mortality Review Team
759 pursuant to § 32.1-283.9, and any operating procedures for review of the deaths of persons with a
760 developmental disability developed by the Developmental Disabilities Mortality Review Committee
761 pursuant to § 37.2-314.1.

762 18. The regulations for the implementation of the Health Practitioners' Monitoring Program and
763 the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-
764 2515 et seq.) of Title 54.1.

765 19. The process of reviewing and ranking grant applications submitted to the Commonwealth
766 Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title
767 51.5.

768 20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to
769 Article 4 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

770 21. The Virginia Breeders Fund created pursuant to § 59.1-372.

771 22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

772 23. The administration of medication or other substances foreign to the natural horse.

773 24. Any rules adopted by the Department of Agriculture and Consumer Services for the approval
774 and conduct of game variations for the conduct of raffles, bingo, network bingo, and instant bingo games,

775 provided that such rules are (i) consistent with Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title
776 18.2 and (ii) published and posted.

777 C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia
778 Register Act (§ 2.2-4100 et seq.), made by the Virginia Code Commission pursuant to § 30-150, shall be
779 exempt from the provisions of this chapter.

780 **§ 32.1-283.9. Fetal and Infant Mortality Review Team; duties; membership; confidentiality;**
781 **penalty; report.**

782 A. As used in this section:

783 "Fetal death" has the same meaning as provided in § 32.1-249.

784 "Infant" means any child under the age of 12 months.

785 "Team" means the Fetal and Infant Mortality Review Team established in this section.

786 B. This section shall not apply to the review of a fetal death that is the result of a voluntary or
787 therapeutic termination of pregnancy.

788 C. There is hereby created the Fetal and Infant Mortality Review Team, which shall develop and
789 implement procedures to ensure that certain fetal and infant deaths occurring in the Commonwealth are
790 analyzed in a systematic way. The purpose of the Team is to decrease the incidence of preventable fetal
791 and infant deaths. The Team shall coordinate with the State Child Fatality Review Team established in §
792 32.1-283.1 and the Maternal Mortality Review Team established in § 32.1-283.8 to avoid duplicative
793 work. The Team shall develop criteria for the selection and review of fetal and infant death in the
794 Commonwealth, excluding those resulting from a voluntary or therapeutic termination of pregnancy and
795 any infant death covered by the review of the State Child Fatality Review Team. The Team shall not
796 initiate a fetal or infant death review until the conclusion of any law-enforcement investigation or criminal
797 prosecution. The Team shall (i) develop and revise as necessary operating procedures for fetal and infant
798 death reviews, including identification of cases to be reviewed and procedures for coordinating among the
799 agencies and professionals involved; (ii) improve the identification of and data collection and
800 recordkeeping related to causes of fetal and natural infant deaths; (iii) recommend components of
801 programs to increase awareness and prevention of and education about fetal and infant deaths; (iv)

802 recommend training to improve the review of fetal and infant deaths; (v) develop recommendations to
803 assess the service systems and community resources that support and promote the health and well-being
804 of women, infants, and families; (vi) develop and recommend plans for implementing changes to existing
805 state services, state programs, and organizations that serve families, children, and pregnant women; (vii)
806 select a number of cases for in-depth review and interviews of parents, families, and medical personnel to
807 develop a full picture of the causes of fetal or infant death, evaluate gaps in services or access that may
808 have played a part in such death, and evaluate the supports available to families before and after such
809 death; and (viii) provide aggregate data, trends, and patterns regarding fetal and infant deaths to
810 stakeholders as requested. The Team shall also provide evidence-based policy recommendations to both
811 prevent preventable fetal and infant deaths and ensure that families receive necessary support pre-fetal or
812 infant death and post-fetal or infant death. In cases where the team conducts in-depth interviews and
813 reviews of specific cases, the Team will ensure that such families have access to grief counseling and
814 other necessary resources to be determined by the team. Such operating procedures shall be exempt from
815 the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 17 of § 2.2-4002.

816 D. The Team shall consist of the following persons or their designees: the Chief Medical Examiner,
817 the Director of the Office of Family Health of the Department of Health, the State Registrar of Vital
818 Records, the Commissioner of Behavioral Health and Developmental Services, and the Director of the
819 Department of Criminal Justice Services shall serve ex officio with voting privileges. In addition, the
820 Governor shall appoint one representative of each of the following entities: local law enforcement, local
821 fire departments, local emergency medical services providers, local departments of social services,
822 community services boards, attorneys for the Commonwealth, the Medical Society of Virginia, the
823 Virginia Hospital and Healthcare Association, the Virginia College of Emergency Physicians, the Virginia
824 Section of the American College of Obstetricians and Gynecologists, the Virginia Affiliate of the
825 American College of Nurse-Midwives, the Virginia Chapter of the Association of Women's Health,
826 Obstetric and Neonatal Nurses, the Virginia Neonatal Perinatal Collaborative, the Virginia Midwives
827 Alliance, and the Virginia Academy of Nutrition and Dietetics, and, in a number to make up no less than
828 one-third of the total Team, representatives of community organizations who work directly with the

829 community on issues of fetal and infant mortality, including doulas, midwives, members of local
830 nonprofits, individuals from geographically representative areas of the Commonwealth, experts as
831 determined by the Team, and other stakeholders, to rotate every four years. The Chief Medical Examiner
832 and a co-chair to be determined by the Chair shall serve as co-chairs of the Team and may invite additional
833 individuals to serve on the Team.

834 Ex officio members shall serve terms coincident with their terms of office. After the initial
835 staggering of terms, other members shall be appointed for a term of four years. Appointments to fill
836 vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in
837 the same manner as the original appointments. All members except the eight community representatives
838 may be reappointed.

839 E. Upon the request of the Chief Medical Examiner in his capacity as a co-chair of the Team, made
840 after the conclusion of any law-enforcement investigation or prosecution, the Chief Medical Examiner or
841 his designee may inspect and copy information and records regarding a fetal or infant death, including (i)
842 any report of the circumstances of the death maintained by any state or local law-enforcement agency or
843 medical examiner and (ii) information or records about the mother and family maintained by any social
844 services agency or court. Information, records, or reports maintained by any attorney for the
845 Commonwealth shall be made available for inspection and copying by the Chief Medical Examiner or his
846 designee pursuant to procedures that shall be developed by the Chief Medical Examiner and the
847 Commonwealth's Attorneys' Services Council established by § 2.2-2617. Any presentence report prepared
848 pursuant to § 19.2-299 for any person convicted of a crime that led to the death of a fetus or infant shall
849 be made available for inspection and copying by the Chief Medical Examiner or his designee. In addition,
850 the Chief Medical Examiner or his designee may inspect and copy from any health care provider in the
851 Commonwealth, on behalf of the Team, (a) without obtaining consent, subject to any limitations on
852 disclosure under applicable federal and state law, the health and mental health records of the fetus or infant
853 and mother and those prenatal medical records regarding the infant or fetus and (b) upon obtaining
854 consent, from each adult regarding his records. With the consent of the mother, father, or other legal
855 guardian, when deemed appropriate, trained interviewers on behalf of the Team may conduct interviews

856 of any person if the interview is deemed necessary to the work of the Team. The Team shall develop
857 trauma-informed protocols for (1) the conduct of such interviews and (2) ensuring that the interviewer has
858 a list of resources that may be made available to the interviewee, including resources related to
859 bereavement and mental health services. Any record of the interview or interviews shall be treated the
860 same as any other record related to the work of the team under subsection F.

861 F. All information and records obtained or created by the Team or on behalf of the Team regarding
862 a review shall be confidential and excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et
863 seq.) pursuant to subdivision 7 of § 2.2-3705.5. All such information and records shall be used by the
864 Team only in the exercise of its proper purpose and function and shall not be disclosed. In preparing
865 information and records for review by the Team, the Department shall remove any individually
866 identifiable information or information identifying a health care provider, as those terms are defined in 45
867 C.F.R. § 160.103. Such information shall not be subject to subpoena, subpoena duces tecum, or discovery,
868 be admissible in any civil or criminal proceeding, or be used as evidence in any disciplinary proceeding
869 or regulatory or licensure action of the Department of Health Professions or any health regulatory board.
870 If available from other sources, however, such information and records shall not be immune from
871 subpoena, discovery, or introduction into evidence when obtained through such other sources solely
872 because the information and records were presented to the Team during a fetal or infant death review. The
873 findings of the Team may be disclosed or published in statistical or other form, but shall not identify any
874 individual. Upon conclusion of the fetal or infant death review, all information and records concerning
875 the family shall be shredded or otherwise destroyed by the Office of the Chief Medical Examiner in order
876 to ensure confidentiality.

877 The portions of meetings in which individual fetal or infant deaths are discussed by the Team shall
878 be closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the requirements of § 2.2-3712, all
879 Team members and other persons attending closed Team meetings, including any persons presenting
880 information or records on specific fetal or infant deaths to the Team during closed meetings, shall execute
881 a sworn statement to (i) honor the confidentiality of the information, records, discussions, and opinions
882 disclosed during meetings at which the Team reviews a specific fetal or infant death and (ii) not use any

883 such information, records, discussions, or opinions disclosed during meetings at which the Team reviews
884 a specific fetal or infant death for any purpose other than the exercise of the proper purpose and function
885 of the Team. Violations of this subsection are punishable as a Class 3 misdemeanor.

886 G. Upon notification of a fetal or infant death, any state or local government agency maintaining
887 records on the fetus or infant or the fetus or infant's family that are periodically purged shall retain such
888 records for the longer of 12 months or until such time as the Team has completed its review of the case.

889 H. The Team shall compile triennial statistical data, which shall be made available to the Governor,
890 the General Assembly, and the Department. Any statistical compilations prepared by the Team shall be
891 public record and shall contain no personal identifying information. The Team shall include policy
892 recommendations where appropriate consistent with the purpose of the team as specified in subsection C.

893 I. Members of the Team, as well as their agents and employees, shall be immune from civil liability
894 for any act or omission made in connection with participation in a review by the Team, unless such act or
895 omission was the result of gross negligence or willful misconduct. Any organization, institution, or person
896 furnishing information, data, testimony, reports, or records to the Team as part of such review shall be
897 immune from civil liability for any act or omission in furnishing such information, unless such act or
898 omission was the result of gross negligence or willful misconduct.

899 J. The co-chairs are authorized to name qualified persons to fetal and infant mortality advisory
900 panels to discuss data trends, recommendations, and other items related to fetal and natural infant death.
901 Panels shall be convened at a minimum of one time per fiscal year. Panels shall consist of grassroots
902 organizations, community members, parents who have experienced fetal or natural infant death, agencies
903 of the Commonwealth not involved with the Team in any other manner, emergency medical services
904 personnel, mental health professionals, and other professionals with knowledge and vested interest in fetal
905 and infant deaths. The recommendations of such advisory panels may be included in the triannual report
906 provided by the Team to the General Assembly.

907 **2. That continued work of the Fetal and Infant Mortality Review Team (the Team) established**
908 **pursuant to § 32.1-283.9 of the Code of Virginia, as created by this act, shall be contingent on**
909 **ongoing funding, and the Team may, at its discretion, alter its work to meet budgetary constraints.**

910 **The Office of the Chief Medical Examiner may hire such staff as may be necessary to assist the**
911 **Team if an appropriation effectuating the purposes of this act is included in a general appropriation**
912 **act passed in 2024 by the General Assembly that becomes law.**

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