

SENATE BILL NO. 390

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 Pekarsky)

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 Sudden Unexpected Death in Epilepsy Review Team established; report; penalty.

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~~ (vi) during a review of any death conducted by the

80 Sudden Unexpected Death in Epilepsy Review Team to the extent that such information is made
81 confidential pursuant by § 32.1-283.9; or (vii) during a review of any death conducted by the
82 Developmental Disabilities Mortality Review Committee to the extent that such information is made
83 confidential by § 37.2-314.1.

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

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

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

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

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

104 13. The names and addresses or other contact information of persons receiving transportation
105 services from a state or local public body or its designee under Title II of the Americans with Disabilities

106 Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created
107 under § 63.2-600.

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

110 15. Data and information specified in § 37.2-308.01 relating to proceedings provided for in Article
111 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.

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

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

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

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

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

132 such student, parents, or guardians so request in writing and such request is submitted to the presiding
133 officer of the appropriate board.

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

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

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

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

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

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

155 9. Discussion or consideration by governing boards of public institutions of higher education of
156 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
157 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
158 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and

159 accepted by a public institution of higher education in the Commonwealth shall be subject to public
160 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
161 (i) "foreign government" means any government other than the United States government or the
162 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
163 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the
164 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
165 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under
166 the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or
167 national of the United States or a trust territory or protectorate thereof.

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

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

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

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

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

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

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

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

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

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

206 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30,
207 or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
208 trustees of a trust established by one or more local public bodies to invest funds for postemployment
209 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2,
210 or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board
211 of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or
212 disposition of a security or other ownership interest in an entity, where such security or ownership interest

213 is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i)
214 concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared
215 by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings
216 Plan or provided to the retirement system, a local finance board or board of trustees, or the Virginia
217 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or
218 the future financial performance of the entity, and (ii) would have an adverse effect on the value of the
219 investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of
220 trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing
221 in this subdivision shall be construed to prevent the disclosure of information relating to the identity of
222 any investment held, the amount invested or the present value of such investment.

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

238 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern
239 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any

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

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

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

261 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
262 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by
263 or on behalf of individuals who have requested information about, applied for, or entered into prepaid
264 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
265 23.1 is discussed.

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

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

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

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

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

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

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

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

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

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

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

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

309 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
310 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
311 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
312 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory
313 Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of
314 § 2.2-3705.7.

315 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-
316 3705.6 related to economic development.

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

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

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

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

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

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

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

344 47. Discussion or consideration of grant, loan, or investment application records subject to the
345 exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-
346 2351 et seq.) of Chapter 22.

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

350 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response
351 team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses
352 involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii)
353 individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to
354 §§ 15.2-1627.5 and 63.2-1605.

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

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

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

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

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

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

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

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

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

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

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

395 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
396 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
397 officers, appointees, or employees of any public body; and evaluation of performance of departments or

398 schools of public institutions of higher education where such evaluation will necessarily involve
399 discussion of the performance of specific individuals. Any teacher shall be permitted to be present during
400 a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the
401 teacher and some student and the student involved in the matter is present, provided that the teacher makes
402 a written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision,
403 however, shall be construed to authorize a closed meeting by a local governing body or an elected school
404 board to discuss compensation matters that affect the membership of such body or board collectively.

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

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

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

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

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

422 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
423 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
424 the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable

425 litigation" means litigation that has been specifically threatened or on which the public body or its legal
426 counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this
427 subdivision shall be construed to permit the closure of a meeting merely because an attorney representing
428 the public body is in attendance or is consulted on a matter.

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

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

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

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

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

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

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

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

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

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

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

476 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
477 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement

478 or emergency service officials concerning actions taken to respond to such matters or a related threat to
479 public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2,
480 where discussion in an open meeting would jeopardize the safety of any person or the security of any
481 facility, building, structure, information technology system, or software program; or discussion of reports
482 or plans related to the security of any governmental facility, building or structure, or the safety of persons
483 using such facility, building or structure.

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

501 21. Those portions of meetings in which individual child death cases are discussed by the State
502 Child Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which
503 individual child death cases are discussed by a regional or local child fatality review team established
504 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by

505 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
506 which individual adult death cases are discussed by the state Adult Fatality Review Team established
507 pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed
508 by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of
509 meetings in which individual death cases are discussed by overdose fatality review teams established
510 pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are
511 discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, those portions of meetings
512 in which individual death cases are discussed by the Sudden Unexpected Death in Epilepsy Review Team
513 established pursuant to § 32.1-283.9, and those portions of meetings in which individual death cases of
514 persons with developmental disabilities are discussed by the Developmental Disabilities Mortality Review
515 Committee established pursuant to § 37.2-314.1.

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

528 23. Discussion or consideration by the Virginia Commonwealth University Health System
529 Authority or the board of visitors of Virginia Commonwealth University of any of the following: the
530 acquisition or disposition by the Authority of real property, equipment, or technology software or
531 hardware and related goods or services, where disclosure would adversely affect the bargaining position

532 or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities
533 of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing
534 or operational strategies plans of the Authority where disclosure of such strategies or plans would
535 adversely affect the competitive position of the Authority; and members of the Authority's medical and
536 teaching staffs and qualifications for appointments thereto.

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

540 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
541 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by
542 or on behalf of individuals who have requested information about, applied for, or entered into prepaid
543 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
544 23.1 is discussed.

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

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

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

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

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

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

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

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

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

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

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

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

588 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
589 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
590 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
591 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory
592 Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of
593 § 2.2-3705.7.

594 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-
595 3705.6 related to economic development.

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

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

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

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

610 44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
611 of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or

612 charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain
613 proprietary information of a private entity provided to the Authority.

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

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

623 47. Discussion or consideration of grant, loan, or investment application records subject to the
624 exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-
625 2351 et seq.) of Chapter 22.

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

629 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response
630 team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses
631 involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii)
632 individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to
633 §§ 15.2-1627.5 and 63.2-1605.

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

638 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
639 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
640 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of
641 § 60.2-114 and the Department of Workforce Development and Advancement pursuant to subsection B
642 of § 2.2-2040.

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

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

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

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

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

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

664 E. This section shall not be construed to (i) require the disclosure of any contract between the
665 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
666 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
667 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
668 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
669 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record
670 at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

671 **§ 2.2-4002. Exemptions from chapter generally.**

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

675 1. The General Assembly.

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

678 3. The Department of Wildlife Resources in promulgating regulations regarding the management
679 of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et
680 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
681 Title 29.1.

682 4. The Virginia Housing Development Authority.

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

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

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

693 8. The Virginia Resources Authority.

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

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

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

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

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

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

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

710 16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to §
711 22.1-203.2.

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

715 18. The Virginia Small Business Financing Authority.

716 19. The Virginia Economic Development Partnership Authority.

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

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

720 22. The Board of Health in promulgating the list of diseases that shall be reported to the
721 Department of Health pursuant to § 32.1-35 and in adopting, amending, or repealing regulations pursuant
722 to subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining
723 to restaurants or food service.

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

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

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

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

- 733 1. Money or damage claims against the Commonwealth or agencies thereof.
- 734 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
- 735 3. The location, design, specifications, or construction of public buildings or other facilities.
- 736 4. Grants of state or federal funds or property.
- 737 5. The chartering of corporations.
- 738 6. Customary military, militia, naval, or police functions.
- 739 7. The selection, tenure, dismissal, direction, or control of any officer or employee of an agency
740 of the Commonwealth.
- 741 8. The conduct of elections or eligibility to vote.
- 742 9. Inmates of prisons or other such facilities or parolees therefrom.

743 10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other
744 state institutions as well as the treatment, supervision, or discharge of such persons.

745 11. Traffic signs, markers, or control devices.

746 12. Instructions for application or renewal of a license, certificate, or registration required by law.

747 13. Content of, or rules for the conduct of, any examination required by law.

748 14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.).

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

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

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

763 18. The regulations for the implementation of the Health Practitioners' Monitoring Program and
764 the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-
765 2515 et seq.) of Title 54.1.

766 19. The process of reviewing and ranking grant applications submitted to the Commonwealth
767 Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title
768 51.5.

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

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

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

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

774 24. Any rules adopted by the Department of Agriculture and Consumer Services for the approval
775 and conduct of game variations for the conduct of raffles, bingo, network bingo, and instant bingo games,
776 provided that such rules are (i) consistent with Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title
777 18.2 and (ii) published and posted.

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

781 **§ 32.1-283.9. Sudden Unexpected Death in Epilepsy Review Team; duties; membership;**
782 **confidentiality; report; penalty.**

783 A. As used in this section, "Sudden Unexpected Death in Epilepsy" or "SUDEP" means the sudden
784 and unexplained death of a healthy individual with epilepsy that is not by drowning, injury, or other known
785 causes.

786 B. There is hereby created the Sudden Unexpected Death in Epilepsy Review Team (the Team),
787 which shall develop and implement procedures to ensure that cases involving a manner of death consistent
788 with SUDEP occurring in the Commonwealth are analyzed in a systematic way. The Team shall review
789 SUDEP cases, up to the amount funded by the Team, involving a manner of death consistent with SUDEP
790 in the Commonwealth through means deemed appropriate by the Team. The Team shall not initiate a
791 SUDEP review until the conclusion of any law-enforcement investigation or criminal prosecution. The
792 Team shall (i) develop and revise as necessary operating procedures for SUDEP reviews, including
793 identification of cases to be reviewed and procedures for coordinating among the agencies and
794 professionals involved; (ii) improve the identification of and data collection and recordkeeping related to
795 causes of SUDEP; (iii) recommend components of programs to increase awareness and prevention of and

796 education about SUDEP; and (iv) recommend training to improve the review of cases involving a manner
797 of death consistent with SUDEP. Such operating procedures shall be exempt from the Administrative
798 Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 17 of § 2.2-4002.

799 C. The Team shall consist of the following persons or their designees: the Chief Medical Examiner,
800 the State Registrar of Vital Records, the Commissioner of the Department of Behavioral Health and
801 Developmental Services, and an appointee of the Epilepsy Foundation of Virginia. In addition, the
802 Governor shall appoint one representative of each of the following: local emergency medical services
803 providers, the Medical Society of Virginia, the Virginia Hospital and Healthcare Association, the Virginia
804 College of Emergency Physicians, experts in chronic disease prevention, and the Virginia Neurological
805 Society. The Chief Medical Examiner and the appointee from the Epilepsy Foundation of Virginia shall
806 serve as co-chairmen of the Team and may appoint additional members of the Team as may be needed to
807 complete SUDEP reviews pursuant to this section.

808 After the initial staggering of terms, members other than the Chief Medical Examiner, the State
809 Registrar of Vital Records, the Commissioner of the Department of Behavioral Health and Developmental
810 Services, and the appointee of the Epilepsy Foundation of Virginia shall be appointed for a term of three
811 years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms.
812 Vacancies shall be filled in the same manner as the original appointments. All members may be
813 reappointed. The Chief Medical Examiner, the State Registrar of Vital Records, and the appointee of the
814 Epilepsy Foundation of Virginia shall serve terms coincident with their terms of office.

815 D. Subject to available allocations from the general fund and nongeneral funds, the Team shall, at
816 its discretion, alter its work to meet the available budgetary constraints.

817 E. Upon the request of the Chief Medical Examiner in his capacity as a co-chairman of the Team,
818 made after the conclusion of any law-enforcement investigation or prosecution, the Chief Medical
819 Examiner or his designee shall inspect and copy information and records regarding a case involving a
820 manner of death consistent with SUDEP, including any report of the circumstances of the case involving
821 a manner of death consistent with SUDEP maintained by any state or local law-enforcement agency or
822 medical examiner. Information, records, or reports maintained by any attorney for the Commonwealth

823 shall be made available for inspection and copying by the Chief Medical Examiner or his designee
824 pursuant to procedures that shall be developed by the Chief Medical Examiner and the Commonwealth's
825 Attorneys' Services Council established by § 2.2-2617. In addition, the Chief Medical Examiner or his
826 designee may inspect and copy from any health care provider in the Commonwealth, on behalf of the
827 Team, (i) without obtaining consent, subject to any limitations on disclosure under applicable federal and
828 state law, the health records of the decedent and (ii) upon obtaining consent, from the next of kin of the
829 decedent, the decedent's health records.

830 F. All information and records obtained or created by the Team or on behalf of the Team regarding
831 a review shall be confidential and excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et
832 seq.) pursuant to subdivision 7 of § 2.2-3705.5. All such information and records shall be used by the
833 Team only in the exercise of its proper purpose and function and shall not be disclosed. In preparing
834 information and records for review by the Team, the Department shall remove any individually
835 identifiable health information or information identifying a health care provider, as those terms are defined
836 in 45 C.F.R. § 160.103. Such information shall not be subject to subpoena, subpoena duces tecum, or
837 discovery, be admissible in any civil or criminal proceeding, or be used as evidence in any disciplinary
838 proceeding or regulatory or licensure action of the Department of Health Professions or any health
839 regulatory board. If available from other sources, however, such information and records shall not be
840 immune from subpoena, discovery, or introduction into evidence when obtained through such other
841 sources solely because the information and records were presented to the Team during a SUDEP review.
842 The findings of the Team shall be disclosed or published in statistical or other form but shall not identify
843 any individual. Upon conclusion of the SUDEP review, all information and records concerning such
844 individual shall be shredded or otherwise destroyed by the Office of the Chief Medical Examiner in order
845 to ensure confidentiality.

846 The portions of meetings in which individual cases involving a manner of death consistent with
847 SUDEP are discussed by the Team shall be closed pursuant to subdivision A 21 of § 2.2-3711. In addition
848 to the requirements of § 2.2-3712, all Team members and other persons attending closed Team meetings,
849 including any persons presenting information or records on specific cases involving a manner of death

850 consistent with SUDEP to the Team during closed meetings, shall execute a sworn statement to (i) honor
851 the confidentiality of the information, records, discussions, and opinions disclosed during meetings at
852 which the Team reviews a specific case involving a manner of death consistent with SUDEP and (ii) not
853 use any such information, records, discussions, or opinions disclosed during meetings at which the Team
854 reviews a specific case involving a manner of death consistent with SUDEP for any purpose other than
855 the exercise of the proper purpose and function of the Team. Violations of this subsection are punishable
856 as a Class 3 misdemeanor.

857 G. Upon notification of a case involving a manner of death consistent with SUDEP, any state or
858 local government agency maintaining records on the decedent that are periodically purged shall retain
859 such records for the longer of 12 months or until such time as the Team has completed its review of the
860 case.

861 H. The Team shall compile annual statistical data, which shall be made available to the Governor
862 and the General Assembly. Any statistical compilations prepared by the Team shall be public record and
863 shall not contain any personal identifying information.

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

870 **2. That the Office of the Chief Medical Examiner may hire such staff as may be necessary to assist**
871 **the Sudden Unexpected Death in Epilepsy Review Team, as created by this act, if an appropriation**
872 **effectuating the purposes of this act is included in a general appropriation act passed in 2024 by the**
873 **General Assembly.**

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