

*Selected Acts of the 2016  
Virginia General Assembly*



*Compiled by  
The Virginia Department of State Police*

This volume of Selected Acts contains legislation passed by the 2016 Session of the Virginia General Assembly that is relevant to criminal law and highway safety. Additional copies of this reference guide may be found at the Virginia State Police website at: <http://www.vsp.state.va.us/FormsPublications.shtm>.

#### **EXPLANATIONS WHICH MAY BE HELPFUL IN STUDYING THESE ACTS:**

1. *Italicized* words indicate new language.
2. ~~Lined through~~ words indicate language that has been removed.
3. The table of contents is divided into four categories: Traffic, Criminal, Firearms and Miscellaneous. The bills in those categories are presented in either **full text** or **summary** form. Summarized bills are less relevant, yet still important legislation, and are found at the back of each section. Although summarized bills are not discussed in the recorded Selected Acts presentation, they should be reviewed.
4. Emergency Acts - are Acts with an emergency clause and were effective the moment they were signed by the Governor. Generally, the emergency clause appears as the last sentence of the Act.
5. Effective date - All Acts, other than those containing an emergency clause or those specifying a delayed effective date, become law on July 1, 2016. Note that different portions of a bill may carry different effective dates.
6. A brief overview outlining changes, provided by the Division of Legislative Services, appears at the beginning of each full text bill. This overview is only a brief synopsis of the bill. Before taking any enforcement action, carefully read the entire bill. Also, note that the Table of Contents contains a bill description which is not necessarily the same as the short title of the bill.
7. Questions regarding Selected Acts may be directed to the Office of Legal Affairs at (804) 674-6722.
8. Additional information on legislation may be found at: <http://virginiageneralassembly.gov/> and the Virginia State Police website at [www.vsp.state.va.us](http://www.vsp.state.va.us).

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## TRAFFIC – FULL TEXT

**Smoking in motor vehicles; presence of minor under age eight; civil penalty.** Provides that any person who smokes in a motor vehicle, whether in motion or at rest, when a minor under the age of eight is in the motor vehicle is subject to a civil penalty of \$100. The offense may be charged on a uniform traffic summons form. The bill provides that such violation is a secondary offense.

### CHAPTER 515

*An Act to amend the Code of Virginia by adding a section numbered [46.2-112.1](#), relating to smoking in motor vehicles; presence of minor under age eight; civil penalty.*

[H 1348]

Approved March 25, 2016

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [46.2-112.1](#) as follows:

§ [46.2-112.1](#). *Smoking in vehicle with a minor present; civil penalty.*

*A. For the purposes of this section, "smoke" means to carry or hold any lighted pipe, cigar, or cigarette of any kind or any other lighted smoking equipment or to light or inhale or exhale smoke from a pipe, cigar, or cigarette of any kind or any other lighted smoking equipment.*

*B. It is unlawful for a person to smoke in a motor vehicle, whether in motion or at rest, when a minor under the age of eight is present in the motor vehicle. A violation of this section is punishable by a civil penalty of \$100 to be paid into the state treasury and credited to the Literary Fund. No demerit points shall be assigned under Article 19 (§ [46.2-489](#) et seq.) of Chapter 3 and no court costs shall be assessed for a violation of this section. A violation of this section may be charged on the uniform traffic summons form.*

*C. No citation for a violation of this section shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.*

**Opening and closing motor vehicle doors.** Requires drivers to wait for a reasonable opportunity to open vehicle doors on the side adjacent to moving traffic. A violation constitutes a traffic infraction punishable by a fine of not more than \$50.

## CHAPTER 607

*An Act to amend the Code of Virginia by adding a section numbered [46.2-818.1](#), relating to opening of motor vehicle doors.*

[S 117]

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [46.2-818.1](#) as follows:

§ [46.2-818.1](#). *Opening and closing motor vehicle doors; penalty.*

*No operator shall open the door of a parked motor vehicle on the side adjacent to moving vehicular traffic unless it is reasonably safe to do so.*

*A violation of this section shall constitute a traffic infraction punishable by a fine of not more than \$50. No demerit points shall be awarded by the Commissioner for a violation of this section.*

*The provisions of this section shall not apply to any law-enforcement officer, firefighter, or emergency medical services personnel engaged in the performance of his duties.*

**Motor vehicles equipped with television and video.** Provides that motor vehicles may be equipped with visual displays of moving images if the equipment is factory-installed and has an interlock device that disables the equipment when the motor vehicle operator is performing a "driving task," which is defined by the bill. Current law allows equipment with a visual display of a television broadcast or signal if the equipment's interlock disables when the motor vehicle is driven. The bill would allow the viewing of a visual display while the vehicle is being operated autonomously. The bill also provides that vehicles used by universities for vehicle technology research are not required to have government plates. This bill is identical to [SB 286](#).

## CHAPTER 707

*An Act to amend and reenact §§ [46.2-750](#) and [46.2-1077](#) of the Code of Virginia, relating to motor vehicles equipped with televisions and video; not within view of driver; license plates on vehicles owned by the Commonwealth.*

[H 454]

Approved April 6, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [46.2-750](#) and [46.2-1077](#) of the Code of Virginia are amended and reenacted as follows:

§ [46.2-750](#). Vehicles of Commonwealth, its political subdivisions, and regional jail authorities.

A. Motor vehicles, trailers, and semitrailers owned by the Commonwealth, political subdivisions of the Commonwealth, and regional jail authorities created pursuant to Article 3.1 (§ [53.1-95.2](#) et seq.) of Chapter 3 of Title 53.1 and used solely for governmental purposes shall be registered and shall display license plates as provided in this section. The fee for such license plates shall be equal to the cost incurred by the Department in the purchase or manufacture of such license plates. The fees received by the Commissioner under this section shall be paid into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department of Motor Vehicles.

License plates issued for vehicles owned by the Commonwealth, except plates issued to be used *on vehicles* (i) ~~on vehicles~~ devoted solely to police work, (ii) *used* by the Virginia Economic Development Partnership to the extent approved by the Governor, ~~or~~ (iii) *used by an institution of higher education solely for purposes of vehicle technology research*, or (iv) *used* by the Governor and the Attorney General, shall have conspicuously and legibly inscribed, stamped, or printed thereon words stating that the vehicle is for official state use only. The Commissioner shall reserve a unique series of numbers for use on such license plates and shall provide for a design and combination of colors which distinguish such license plates from those issued for vehicles owned by the political subdivisions of the Commonwealth.

License plates issued for vehicles owned by political subdivisions of the Commonwealth and regional jail authorities, except such plates issued to be used (i) on vehicles used by any local or regional economic development authority, agency, instrumentality, or organization, upon the request of the chief administrative officer of the affected locality (or, in the case of regional organizations, the chief administrative officer of any of the affected localities) or (ii) on vehicles devoted solely to police work, shall have conspicuously and legibly inscribed, stamped, or printed thereon words stating that the vehicle is for official local government use only. The Commissioner shall reserve a unique series of numbers for use on such license plates and shall provide for a design and combination of colors which distinguish such license plates from those issued for vehicles owned by the Commonwealth.

No other license plates shall be used on vehicles for which official use plates have been issued, except for vehicles used solely for police work and as provided in subsection B of this section.

B. In addition to any other license plate authorized by this section, the Commissioner may issue permanent or temporary license plates for use on vehicles owned by the Commonwealth or any of its departments, institutions, boards, or agencies and used for security or transportation purposes in conjunction with conferences, meetings, or other events involving the Governor or members of the General Assembly. No state agency shall use government

funds to cover the costs of any license plates issued under this subsection. The design of these license plates shall be at the discretion of the Commissioner. These license plates shall be issued under the following conditions:

1. For each set of permanent license plates issued, the Commissioner shall charge a fee of \$100. The Commissioner shall limit the validity of any set of license plates issued under this subdivision to no more than 30 consecutive days. The Commissioner's written authorization for use of any set of license plates issued under this subdivision shall be kept in the vehicle on which the license plates are displayed until expiration of the authorization.

2. The Commissioner shall limit the validity of each set of temporary license plates to no more than 14 consecutive days. For each set of temporary license plates, the Commissioner shall charge a fee of \$25 for the first set and \$2 for each additional set. The Commissioner's written authorization for use of any set of license plates issued under this subdivision shall be kept in the vehicle on which the license plates are displayed until expiration of the authorization.

§ 46.2-1077. Motor vehicles not to be equipped with television within view of driver; viewing motion pictures or similar displays while driving.

A. No motor vehicle registered in the Commonwealth of Virginia shall be equipped with, nor shall there be used therein, a television receiver when the moving images are visible to the driver while the vehicle is in motion. The operator of a motor vehicle that is not required to be registered in Virginia the Commonwealth shall not operate a television receiver that violates the provisions of this section while driving in the Commonwealth.

The prohibitions contained in this subsection shall not, however, include:

1. Electronic displays used in conjunction with vehicle navigation and mapping systems, or as part of a digital dispatch system;

2. Closed circuit video monitors designed to operate only in conjunction with dedicated video cameras and used in rear-view systems on trucks, motor homes, and other motor vehicles;

3. Television receivers or monitors used in government-owned vehicles by law-enforcement officers and employees of the Virginia Department of Transportation in the course of their official duties;

4. Visual displays used to enhance or supplement the driver's view forward, behind, or to the sides of a motor vehicle for the purpose of maneuvering the vehicle;

5. A vehicle information display;

6. A visual display used to enhance or supplement a driver's view of vehicle occupants;

7. Television-type receiving equipment used exclusively for safety or traffic engineering information; or

8. A television receiver, video monitor, television or video screen, or any other similar means of visually displaying a television broadcast or signal moving image, if that equipment is factory-installed and has an interlock device that, when the motor vehicle operator is driven performing one or more of the driving tasks, disables the equipment for all uses so that such moving images are not visible to the motor vehicle operator except as a visual display described in subdivisions 1 through 7. For the purposes of this subdivision, "driving task" means all of the real-time functions required to operate a vehicle in on-road traffic, excluding the selection of destinations and waypoints, and including steering, turning, lane keeping and lane changing, accelerating, and decelerating.

B. Except for displays explicitly authorized in subsection A, no driver of any motor vehicle shall view any motion picture or similar video display while driving.

**Pickup or panel truck; definitions.** Amends the definitions of "pickup or panel truck" and "truck" for purposes of Title 46.2 (Motor Vehicles) so that pickup or panel trucks registered for personal use and with a gross weight in excess of 7,500 pounds but not in excess of 10,000 pounds are not registered as trucks.

## CHAPTER 764

*An Act to amend and reenact § [46.2-100](#) of the Code of Virginia, relating to pickup or panel trucks registered for personal use.*

[S 375]

Approved April 20, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-100](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-100](#). Definitions.

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

"All-terrain vehicle" means a motor vehicle having three or more wheels that is powered by a motor and is manufactured for off-highway use. "All-terrain vehicle" does not include four-wheeled vehicles commonly known as "go-carts" that have low centers of gravity and are typically used in racing on relatively level surfaces, nor does the term include any riding lawn mower.

"Antique motor vehicle" means every motor vehicle, as defined in this section, which was actually manufactured or designated by the manufacturer as a model manufactured in a calendar year not less than 25 years prior to January 1 of each calendar year and is owned solely as a collector's item.

"Antique trailer" means every trailer or semitrailer, as defined in this section, that was actually manufactured or designated by the manufacturer as a model manufactured in a calendar year not less than 25 years prior to January 1 of each calendar year and is owned solely as a collector's item.

"Autocycle" means a three-wheeled motor vehicle that has a steering wheel and seating that does not require the operator to straddle or sit astride and is manufactured to comply with federal safety requirements for motorcycles. Except as otherwise provided, an autocycle shall not be deemed to be a motorcycle.

"Automobile or watercraft transporters" means any tractor truck, lowboy, vehicle, or combination, including vehicles or combinations that transport motor vehicles or watercraft on their power unit, designed and used exclusively for the transportation of motor vehicles or watercraft.

"Bicycle" means a device propelled solely by human power, upon which a person may ride either on or astride a regular seat attached thereto, having two or more wheels in tandem, including children's bicycles, except a toy vehicle intended for use by young children. For purposes of Chapter 8 (§ [46.2-800](#) et seq.), a bicycle shall be a vehicle while operated on the highway.

"Bicycle lane" means that portion of a roadway designated by signs and/or pavement markings for the preferential use of bicycles, electric power-assisted bicycles, and mopeds.

"Business district" means the territory contiguous to a highway where 75 percent or more of the property contiguous to a highway, on either side of the highway, for a distance of 300 feet or more along the highway, is occupied by land and buildings actually in use for business purposes.

"Camping trailer" means every vehicle that has collapsible sides and contains sleeping quarters but may or may not contain bathing and cooking facilities and is designed to be drawn by a motor vehicle.

"Cancel" or "cancellation" means that the document or privilege cancelled has been annulled or terminated because of some error, defect, or ineligibility, but the cancellation is without prejudice and reapplication may be made at any time after cancellation.

"Chauffeur" means every person employed for the principal purpose of driving a motor vehicle and every person who drives a motor vehicle while in use as a public or common carrier of persons or property.

"Circular intersection" means an intersection that has an island, generally circular in design, located in the center of the intersection, where all vehicles pass to the right of the island. Circular intersections include roundabouts, rotaries, and traffic circles.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Converted electric vehicle" means any motor vehicle, other than a motorcycle or auticycle, that has been modified subsequent to its manufacture to replace an internal combustion engine with an electric propulsion system. Such vehicles shall retain their original vehicle identification number, line-make, and model year. A converted electric vehicle shall not be deemed a "reconstructed vehicle" as defined in this section unless it has been materially altered from its original construction by the removal, addition, or substitution of new or used essential parts other than those required for the conversion to electric propulsion.

"Crosswalk" means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

"Decal" means a device to be attached to a license plate that validates the license plate for a predetermined registration period.

"Department" means the Department of Motor Vehicles of the Commonwealth.

"Disabled parking license plate" means a license plate that displays the international symbol of access in the same size as the numbers and letters on the plate and in a color that contrasts with the background.

"Disabled veteran" means a veteran who (i) has either lost, or lost the use of, a leg, arm, or hand; (ii) is blind; or (iii) is permanently and totally disabled as certified by the U.S. Department of Veterans Affairs. A veteran shall be considered blind if he has a permanent impairment of both eyes to the following extent: central visual acuity of 20/200 or less in the better eye, with corrective lenses, or central visual acuity of more than 20/200, if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees in the better eye.

"Driver's license" means any license, including a commercial driver's license as defined in the Virginia Commercial Driver's License Act (§ [46.2-341.1](#) et seq.), issued under the laws of the Commonwealth authorizing the operation of a motor vehicle.

"Electric personal assistive mobility device" means a self-balancing two-nontandem-wheeled device that is designed to transport only one person and powered by an electric propulsion system that limits the device's maximum speed to 15 miles per hour or less. For purposes of Chapter 8 (§ [46.2-800](#) et seq.), an electric personal assistive mobility device shall be a vehicle when operated on a highway.

"Electric power-assisted bicycle" means a vehicle that travels on not more than three wheels in contact with the ground and is equipped with (i) pedals that allow propulsion by human power and (ii) an electric motor with an

input of no more than 1,000 watts that reduces the pedal effort required of the rider. For the purposes of Chapter 8 (§ [46.2-800](#) et seq.), an electric power-assisted bicycle shall be a vehicle when operated on a highway.

"Essential parts" means all integral parts and body parts, the removal, alteration, or substitution of which will tend to conceal the identity of a vehicle.

"Farm tractor" means every motor vehicle designed and used as a farm, agricultural, or horticultural implement for drawing plows, mowing machines, and other farm, agricultural, or horticultural machinery and implements, including self-propelled mowers designed and used for mowing lawns.

"Farm utility vehicle" means a vehicle that is powered by a motor and is designed for off-road use and is used as a farm, agricultural, or horticultural service vehicle, generally having four or more wheels, bench seating for the operator and a passenger, a steering wheel for control, and a cargo bed. "Farm utility vehicle" does not include pickup or panel trucks, golf carts, low-speed vehicles, or riding lawn mowers.

"Federal safety requirements" means applicable provisions of 49 U.S.C. § 30101 et seq. and all administrative regulations and policies adopted pursuant thereto.

"Financial responsibility" means the ability to respond in damages for liability thereafter incurred arising out of the ownership, maintenance, use, or operation of a motor vehicle, in the amounts provided for in § [46.2-472](#).

"Foreign market vehicle" means any motor vehicle originally manufactured outside the United States, which was not manufactured in accordance with 49 U.S.C. § 30101 et seq. and the policies and regulations adopted pursuant to that Act, and for which a Virginia title or registration is sought.

"Foreign vehicle" means every motor vehicle, trailer, or semitrailer that is brought into the Commonwealth otherwise than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in the Commonwealth.

"Golf cart" means a self-propelled vehicle that is designed to transport persons playing golf and their equipment on a golf course.

"Governing body" means the board of supervisors of a county, council of a city, or council of a town, as context may require.

"Gross weight" means the aggregate weight of a vehicle or combination of vehicles and the load thereon.

"Highway" means the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys, and, for law-enforcement purposes, (i) the entire width between the boundary lines of all private roads or private streets that have been specifically designated "highways" by an ordinance adopted by the governing body of the county, city, or town in which such private roads or streets are located and (ii) the entire width between the boundary lines of every way or place used for purposes of vehicular travel on any property owned, leased, or controlled by the United States government and located in the Commonwealth.

"Intersection" means (i) the area embraced within the prolongation or connection of the lateral curblines or, if none, then the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict; (ii) where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection, in the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection; or (iii) for purposes only of authorizing installation of traffic-control devices, every crossing of a highway or street at grade by a pedestrian crosswalk.

"Lane-use control signal" means a signal face displaying indications to permit or prohibit the use of specific lanes of a roadway or to indicate the impending prohibition of such use.

"Law-enforcement officer" means any officer authorized to direct or regulate traffic or to make arrests for violations of this title or local ordinances authorized by law. For the purposes of access to law-enforcement databases regarding motor vehicle registration and ownership only, "law-enforcement officer" also includes city and county commissioners of the revenue and treasurers, together with their duly designated deputies and employees, when such officials are actually engaged in the enforcement of §§ [46.2-752](#), [46.2-753](#), and [46.2-754](#) and local ordinances enacted thereunder.

"License plate" means a device containing letters, numerals, or a combination of both, attached to a motor vehicle, trailer, or semitrailer to indicate that the vehicle is properly registered with the Department.

"Light" means a device for producing illumination or the illumination produced by the device.

"Low-speed vehicle" means any four-wheeled electrically-powered vehicle, except a motor vehicle or low-speed vehicle that is used exclusively for agricultural or horticultural purposes or a golf cart, whose maximum speed is greater than 20 miles per hour but not greater than 25 miles per hour and is manufactured to comply with safety standards contained in Title 49 of the Code of Federal Regulations, § 571.500.

"Manufactured home" means a structure subject to federal regulation, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Moped" means every vehicle that travels on not more than three wheels in contact with the ground that (i) has a seat that is no less than 24 inches in height, measured from the middle of the seat perpendicular to the ground; (ii) has a gasoline, electric, or hybrid motor that (a) displaces 50 cubic centimeters or less or (b) has an input of 1500 watts or less; (iii) is power-driven, with or without pedals that allow propulsion by human power; and (iv) is not operated at speeds in excess of 35 miles per hour. For purposes of this title, a moped shall be a motorcycle when operated at speeds in excess of 35 miles per hour. For purposes of Chapter 8 (§ [46.2-800](#) et seq.), a moped shall be a vehicle while operated on a highway.

"Motor-driven cycle" means every motorcycle that has a gasoline engine that (i) displaces less than 150 cubic centimeters; (ii) has a seat less than 24 inches in height, measured from the middle of the seat perpendicular to the ground; and (iii) has no manufacturer-issued vehicle identification number.

"Motor home" means every private motor vehicle with a normal seating capacity of not more than 10 persons, including the driver, designed primarily for use as living quarters for human beings.

"Motor vehicle" means every vehicle as defined in this section that is self-propelled or designed for self-propulsion except as otherwise provided in this title. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space shall be considered a part of a motor vehicle. Except as otherwise provided, for the purposes of this title, any device herein defined as a bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or moped shall be deemed not to be a motor vehicle.

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground and is capable of traveling at speeds in excess of 35 miles per hour. "Motorcycle" does not include any "autocycle," "electric personal assistive mobility device," "electric power-assisted bicycle," "farm tractor," "golf cart," "moped," "motorized skateboard or foot-scooter," "utility vehicle," or "wheelchair or wheelchair conveyance" as defined in this section.

"Motorized skateboard or foot-scooter" means every vehicle, regardless of the number of its wheels in contact with the ground, that (i) has no seat, but is designed to be stood upon by the operator, (ii) has no manufacturer-issued vehicle identification number, and (iii) is powered by an electric motor having an input of no more than 1,000 watts or a gasoline engine that displaces less than 36 cubic centimeters. "Motorized skateboard or foot-scooter" includes vehicles with or without handlebars but does not include "electric personal assistive mobility devices."

"Nonresident" means every person who is not domiciled in the Commonwealth, except: (i) any foreign corporation that is authorized to do business in the Commonwealth by the State Corporation Commission shall be a resident of the Commonwealth for the purpose of this title; in the case of corporations incorporated in the Commonwealth but doing business outside the Commonwealth, only such principal place of business or branches located within the Commonwealth shall be dealt with as residents of the Commonwealth; (ii) a person who becomes engaged in a gainful occupation in the Commonwealth for a period exceeding 60 days shall be a resident for the purposes of this title except for the purposes of Chapter 3 (§ [46.2-300](#) et seq.); (iii) a person, other than a nonresident student as defined in this section, who has actually resided in the Commonwealth for a period of six months, whether employed or not, or who has registered a motor vehicle, listing an address in the Commonwealth in the application for registration shall be deemed a resident for the purposes of this title, except for the purposes of the Virginia Commercial Driver's License Act (§ [46.2-341.1](#) et seq.).

"Nonresident student" means every nonresident person who is enrolled as a full-time student in an accredited institution of learning in the Commonwealth and who is not gainfully employed.

"Off-road motorcycle" means every motorcycle designed exclusively for off-road use by an individual rider with not more than two wheels in contact with the ground. Except as otherwise provided in this chapter, for the purposes of this chapter off-road motorcycles shall be deemed to be "motorcycles."

"Operation or use for rent or for hire, for the transportation of passengers, or as a property carrier for compensation," and "business of transporting persons or property" mean any owner or operator of any motor vehicle, trailer, or semitrailer operating over the highways in the Commonwealth who accepts or receives compensation for the service, directly or indirectly; but these terms do not mean a "truck lessor" as defined in this section and do not include persons or businesses that receive compensation for delivering a product that they themselves sell or produce, where a separate charge is made for delivery of the product or the cost of delivery is included in the sale price of the product, but where the person or business does not derive all or a substantial portion of its income from the transportation of persons or property except as part of a sales transaction.

"Operator" or "driver" means every person who either (i) drives or is in actual physical control of a motor vehicle on a highway or (ii) is exercising control over or steering a vehicle being towed by a motor vehicle.

"Owner" means a person who holds the legal title to a vehicle; however, if a vehicle is the subject of an agreement for its conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be the owner for the purpose of this title. In all such instances when the rent paid by the lessee includes charges for services of any nature or when the lease does not provide that title shall pass to the lessee on payment of the rent stipulated, the lessor shall be regarded as the owner of the vehicle, and the vehicle shall be subject to such requirements of this title as are applicable to vehicles operated for compensation. A "truck lessor" as defined in this section shall be regarded as the owner, and his vehicles shall be subject to such requirements of this title as are applicable to vehicles of private carriers.

"Passenger car" means every motor vehicle other than a motorcycle or auticycle designed and used primarily for the transportation of no more than 10 persons, including the driver.

"Payment device" means any credit card as defined in 15 U.S.C. § 1602 (k) or any "accepted card or other means of access" set forth in 15 U.S.C. § 1693a (1). For the purposes of this title, this definition shall also include a card that enables a person to pay for transactions through the use of value stored on the card itself.

"Pickup or panel truck" means (i) every motor vehicle designed for the transportation of property and having a registered gross weight of 7,500 pounds or less or (ii) every motor vehicle registered for personal use, designed to transport property on its own structure independent of any other vehicle, and having a registered gross weight in excess of 7,500 pounds but not in excess of 10,000 pounds.

"Private road or driveway" means every way in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

"Reconstructed vehicle" means every vehicle of a type required to be registered under this title materially altered from its original construction by the removal, addition, or substitution of new or used essential parts. Such vehicles, at the discretion of the Department, shall retain their original vehicle identification number, line-make, and model year. Except as otherwise provided in this title, this definition shall not include a "converted electric vehicle" as defined in this section.

"Replica vehicle" means every vehicle of a type required to be registered under this title not fully constructed by a licensed manufacturer but either constructed or assembled from components. Such components may be from a single vehicle, multiple vehicles, a kit, parts, or fabricated components. The kit may be made up of "major components" as defined in § [46.2-1600](#), a full body, or a full chassis, or a combination of these parts. The vehicle shall resemble a vehicle of distinctive name, line-make, model, or type as produced by a licensed manufacturer or manufacturer no longer in business and is not a reconstructed or specially constructed vehicle as herein defined.

"Residence district" means the territory contiguous to a highway, not comprising a business district, where 75 percent or more of the property abutting such highway, on either side of the highway, for a distance of 300 feet or more along the highway consists of land improved for dwelling purposes, or is occupied by dwellings, or consists of land or buildings in use for business purposes, or consists of territory zoned residential or territory in residential subdivisions created under Chapter 22 (§ [15.2-2200](#) et seq.) of Title 15.2.

"Revoke" or "revocation" means that the document or privilege revoked is not subject to renewal or restoration except through reapplication after the expiration of the period of revocation.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. A highway may include two or more roadways if divided by a physical barrier or barriers or an unpaved area.

"Safety zone" means the area officially set apart within a roadway for the exclusive use of pedestrians and that is protected or is so marked or indicated by plainly visible signs.

"School bus" means any motor vehicle, other than a station wagon, automobile, truck, or commercial bus, which is: (i) designed and used primarily for the transportation of pupils to and from public, private or religious schools, or used for the transportation of the mentally or physically handicapped to and from a sheltered workshop; (ii) painted yellow and bears the words "School Bus" in black letters of a specified size on front and rear; and (iii) is equipped with warning devices prescribed in § [46.2-1090](#). A yellow school bus may have a white roof provided such vehicle is painted in accordance with regulations promulgated by the Department of Education.

"Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle.

"Shared-use path" means a bikeway that is physically separated from motorized vehicular traffic by an open space or barrier and is located either within the highway right-of-way or within a separate right-of-way. Shared-use paths may also be used by pedestrians, skaters, users of wheel chairs or wheel chair conveyances, joggers, and other nonmotorized users.

"Shoulder" means that part of a highway between the portion regularly traveled by vehicular traffic and the lateral curbline or ditch.

"Sidewalk" means the portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians.

"Snowmobile" means a self-propelled vehicle designed to travel on snow or ice, steered by skis or runners, and supported in whole or in part by one or more skis, belts, or cleats.

"Special construction and forestry equipment" means any vehicle which is designed primarily for highway construction, highway maintenance, earth moving, timber harvesting or other construction or forestry work and which is not designed for the transportation of persons or property on a public highway.

"Specially constructed vehicle" means any vehicle that was not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not a reconstructed vehicle as herein defined.

"Stinger-steered automobile or watercraft transporter" means an automobile or watercraft transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame behind and below the rearmost axle of the power unit.

"Superintendent" means the Superintendent of the Department of State Police of the Commonwealth.

"Suspend" or "suspension" means that the document or privilege suspended has been temporarily withdrawn, but may be reinstated following the period of suspension unless it has expired prior to the end of the period of suspension.

"Tow truck" means a motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight rating of at least 10,000 pounds. "Tow truck" also includes vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks." "Tow truck" does not include any "automobile or watercraft transporter," "stinger-steered automobile or watercraft transporter," or "tractor truck" as those terms are defined in this section.

"Towing and recovery operator" means a person engaged in the business of (i) removing disabled vehicles, parts of vehicles, their cargoes, and other objects to facilities for repair or safekeeping and (ii) restoring to the highway or other location where they either can be operated or removed to other locations for repair or safekeeping vehicles that have come to rest in places where they cannot be operated.

"Toy vehicle" means any motorized or propellant-driven device that has no manufacturer-issued vehicle identification number that is designed or used to carry any person or persons, on any number of wheels, bearings, glides, blades, runners, or a cushion of air. "Toy vehicle" does not include electric personal assistive mobility devices, electric power-assisted bicycles, mopeds, or motorcycles, nor does it include any nonmotorized or nonpropellant-driven devices such as bicycles, roller skates, or skateboards.

"Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Traffic control device" means a sign, signal, marking, or other device used to regulate, warn, or guide traffic placed on, over, or adjacent to a street, highway, private road open to public travel, pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or in the case of a private road open to public travel, by authority of the private owner or private official having jurisdiction.

"Traffic infraction" means a violation of law punishable as provided in § [46.2-113](#), which is neither a felony nor a misdemeanor.

"Traffic lane" or "lane" means that portion of a roadway designed or designated to accommodate the forward movement of a single line of vehicles.

"Trailer" means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including manufactured homes.

"Truck" means every motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds. *"Truck" does not include any pickup or panel truck.*

"Truck lessor" means a person who holds the legal title to any motor vehicle, trailer, or semitrailer that is the subject of a bona fide written lease for a term of one year or more to another person, provided that: (i) neither the lessor nor the lessee is a common carrier by motor vehicle or restricted common carrier by motor vehicle or contract carrier by motor vehicle as defined in § [46.2-2000](#); (ii) the leased motor vehicle, trailer, or semitrailer is used exclusively for the transportation of property of the lessee; (iii) the lessor is not employed in any capacity by the lessee; (iv) the operator of the leased motor vehicle is a bona fide employee of the lessee and is not employed in any capacity by the lessor; and (v) a true copy of the lease, verified by affidavit of the lessor, is filed with the Commissioner.

"Utility vehicle" means a motor vehicle that is (i) designed for off-road use, (ii) powered by a motor, and (iii) used for general maintenance, security, agricultural, or horticultural purposes. "Utility vehicle" does not include riding lawn mowers.

"Vehicle" means every device in, on or by which any person or property is or may be transported or drawn on a highway, except devices moved by human power or used exclusively on stationary rails or tracks. For the purposes of Chapter 8 (§ [46.2-800](#) et seq.), bicycles, electric personal assistive mobility devices, electric power-assisted bicycles, and mopeds shall be vehicles while wheeled and four-wheeled devices. So long as it is operated only as provided in § [46.2-677](#), a self-propelled wheel chair or self-propelled wheel chair conveyance shall not be considered a motor vehicle operated on a highway.

"Wheel chair or wheel chair conveyance" means a chair or seat equipped with wheels, typically used to provide mobility for persons who, by reason of physical disability, are otherwise unable to move about as pedestrians. "Wheel chair or wheel chair conveyance" includes both three-wheeled and four-wheeled devices. So long as it is operated only as provided in § [46.2-677](#), a self-propelled wheel chair or self-propelled wheel chair conveyance shall not be considered a motor vehicle. -

**Learner's permit holder; passenger limits; use of cell phone; licensure requirements for persons under 18.**

Prohibits a holder of a learner's permit from (i) using a cell phone while driving and (ii) having more than one passenger under age 21. Current law prohibits the holder of a provisional driver's license who is under the age of 19 from (a) having more than one passenger under age 21 unless a parent is present and (b) using a cellphone. The bill removes the exception that a provisional driver's license holder under age 18 may have more than one passenger under age 21 if a parent is present. The bill clarifies that the passenger limitations on all provisional driver's licenses do not include household or family members. The bill allows those who are at least 18 years old to be issued a driver's license after holding a learner's permit for 60 days instead of the current holding requirement of nine months for those under 19 years of age. The bill also requires only those driver's license applicants under 18 years of age to show proof of completion of a driver education program. Current law requires such proof of those under 19 years of age.

**CHAPTER 488**

*An Act to amend and reenact §§ [46.2-323](#), [46.2-324.1](#), [46.2-334](#), [46.2-334.01](#), [46.2-335](#), and [46.2-335.2](#) of the Code of Virginia, relating to operating a motor vehicle by a holder of a learner's permit or provisional driver's license holder.*

[S 555]

Approved March 25, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [46.2-323](#), [46.2-324.1](#), [46.2-334](#), [46.2-334.01](#), [46.2-335](#), and [46.2-335.2](#) of the Code of Virginia are amended and reenacted as follows:

§ [46.2-323](#). Application for driver's license; proof of completion of driver education program; penalty.

A. Every application for a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit shall be made on a form prescribed by the Department and the applicant shall write his usual signature in ink in the space provided on the form. The form shall include notice to the applicant of the duty to register with the Department of State Police as provided in Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, if the applicant has been convicted of an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required.

B. Every application shall state the full legal name, year, month, and date of birth, social security number, sex, and residence address of the applicant; whether or not the applicant has previously been licensed as a driver and, if so, when and by what state, and whether or not his license has ever been suspended or revoked and, if so, the date of and reason for such suspension or revocation. The Department, as a condition for the issuance of any driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit shall require the surrender of any driver's license or, in the case of a motorcycle learner's permit, a motorcycle license issued by another state and held by the applicant. The applicant shall also answer any questions on the application form or otherwise propounded by the Department incidental to the examination. The applicant may also be required to present proof of identity, residency, and social security number or non-work authorized status, if required to appear in person before the Department to apply.

The Commissioner shall require that each application include a certification statement to be signed by the applicant under penalty of perjury, certifying that the information presented on the application is true and correct.

If the applicant fails or refuses to sign the certification statement, the Department shall not issue the applicant a driver's license, temporary driver's permit, learner's permit or motorcycle learner's permit.

Any applicant who knowingly makes a false certification or supplies false or fictitious evidence shall be punished as provided in § [46.2-348](#).

C. Every application for a driver's license shall include a photograph of the applicant supplied under arrangements made by the Department. The photograph shall be processed by the Department so that the photograph can be made part of the issued license.

D. Notwithstanding the provisions of § [46.2-334](#), every applicant for a driver's license who is under~~19~~ 18 years of age shall furnish the Department with satisfactory proof of his successful completion of a driver education program approved by the State Department of Education.

E. Every application for a driver's license submitted by a person less than 18 years old and attending a public school in the Commonwealth shall be accompanied by a document, signed by the applicant's parent or legal guardian, authorizing the principal, or his designee, of the school attended by the applicant to notify the juvenile and domestic relations district court within whose jurisdiction the minor resides when the applicant has had 10 or more unexcused absences from school on consecutive school days.

F. The Department shall electronically transmit application information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of issuance of a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § [18.2-472.1](#) in the jurisdiction in which the person made application of licensure.

§ [46.2-324.1](#). Requirements for initial licensure of certain applicants.

A. No driver's license shall be issued to any applicant unless he either (i) provides written evidence of having satisfactorily completed a course of driver instruction at a driver training school licensed under Chapter 17 (§ [46.2-1700](#) et seq.) or a comparable course approved by the Department or Department of Education or (ii) has held a learner's permit issued by the Department for at least 60 days prior to his first behind-the-wheel examination by the Department when applying for a noncommercial driver's license.

The provisions of this section shall only apply to persons who are at least~~19~~ 18 years old and who either (a) have never held a driver's license issued by Virginia or any other state or territory of the United States or foreign country or (b) have never been licensed or held the license endorsement or classification required to operate the type of vehicle which they now propose to operate. Completion of a course of driver instruction approved by the Department or the Department of Education at a driver training school may include the final behind-the-wheel examination for a driver's license; however, a driver training school shall not administer the behind-the-wheel examination to any applicant who is under medical control pursuant to § [46.2-322](#). Applicants completing a course of driver instruction approved by the Department or the Department of Education at a driver training school retain the option of having the behind-the-wheel examination administered by the Department.

B. No commercial driver's license shall be issued to any applicant unless he is 18 years old or older and has complied with the requirements of subsection A of § [46.2-341.9](#). Applicants for a commercial driver's license who have never before held a commercial driver's license shall apply for a commercial learner's permit and either (i) provide written evidence of having satisfactorily completed a course of driver instruction at a driver training school licensed under Chapter 17 (§ [46.2-1700](#) et seq.) or a comparable course approved by the Department or Department of Education and hold the commercial learner's permit for a minimum of 14 days prior to taking the behind-the-wheel examination for the commercial driver's license or (ii) hold the commercial learner's permit for a minimum of 30 days before taking the behind-the-wheel examination for the commercial driver's license.

Holders of a commercial driver's license who have never held the license endorsement or classification required to operate the type of commercial motor vehicle which they now propose to operate must apply for a commercial learner's permit if the upgrade requires a skills test and hold the permit for a minimum of 14 days prior to taking the behind-the-wheel examination for the commercial driver's license.

C. Nothing in this section shall be construed to prohibit the Department from requiring any person to complete the skills examination as prescribed in § [46.2-325](#) and the written or automated examinations as prescribed in § [46.2-335](#).

D. Notwithstanding the provisions of subsection B, applicants for a commercial driver's license who have never before held a commercial driver's license who are members of the active duty military, military reserves, National Guard, active duty United States Coast Guard, or Coast Guard Auxiliary and provide written evidence of having satisfactorily completed a military commercial driver training program shall hold the commercial learner's permit for a minimum of 14 days prior to taking the behind-the-wheel examination for the commercial driver's license.

E. Notwithstanding the provisions of subsection B, applicants for a commercial driver's license who have never before held a commercial driver's license who are employed by a public school division as a bus driver and provide written evidence of having satisfactorily completed a commercial driver training program with a public school division shall hold the commercial learner's permit for a minimum of 14 days prior to taking the behind-the-wheel examination for the commercial driver's license.

§ [46.2-334](#). Conditions and requirements for licensure of persons under 18.

A. Minors at least 16 years and three months old may be issued driver's licenses under the following conditions:

1. The minor shall submit a proper application and satisfactory evidence that he (i) is a resident of the Commonwealth; (ii) has successfully completed a driver education course approved by either the State Department of Education or, in the case of a course offered by a driver training school licensed under Chapter 17 (§ [46.2-1700](#) et seq.) of this title, by the Department of Motor Vehicles; and (iii) is mentally, physically, and otherwise qualified to drive a motor vehicle safely.

2. The minor's application for a driver's license must be signed by a parent of the applicant, otherwise by the guardian having custody of him. However, in the event a minor has no parent or guardian, then a driver's license shall not be issued to him unless his application is signed by the judge of the juvenile and domestic relations district court of the city or county in which he resides. If the minor making the application is married or otherwise emancipated, in lieu of any parent's, guardian's or judge's signature, the minor may present proper evidence of the solemnization of the marriage or the order of emancipation.

3. The minor shall be required to state in his application whether or not he has been convicted of an offense triable by, or tried in, a juvenile and domestic relations district court or found by such court to be a child in need of supervision, as defined in § [16.1-228](#). If it appears that the minor has been adjudged not innocent of the offense alleged or has been found to be a child in need of supervision, the Department shall not issue a license without the written approval of the judge of the juvenile and domestic relations district court making an adjudication as to the minor or the like approval of a similar court of the county or city in which the parent or guardian, respectively, of the minor resides.

4. The application for a permanent driver's license by a minor of the age of persons required to attend school pursuant to § [22.1-254](#) shall be accompanied by evidence of compliance with the compulsory school attendance law set forth in Article 1 (§ [22.1-254](#) et seq.) of Chapter 14 of Title 22.1. This evidence shall be provided in writing by the minor's parent. If the minor is unable to provide such evidence, he shall not be granted a driver's license until he reaches the age of 18 or presents proper evidence of the solemnization of his marriage or an order of emancipation, or the parent, as defined in § [22.1-1](#), or other person standing in loco parentis has provided written authorization for the minor to obtain a driver's license.

A minor may, however, present a high school diploma or its equivalent or a certificate indicating completion of a prescribed course of study as defined by the local school board pursuant to § [22.1-253.13:4](#) as evidence of compulsory school attendance compliance.

5. The minor applicant shall certify in writing, on a form prescribed by the Commissioner, that he is a resident of the Commonwealth. The applicant's parent or guardian shall also certify that the applicant is a resident by signing the certification. Any minor providing proper evidence of the solemnization of his marriage or a certified copy of a court order of emancipation shall not be required to provide the parent's certification of residence.

B. Any custodial parent or guardian of an unmarried or unemancipated minor may, after the issuance of a permanent driver's license to such minor, file with the Department a written request that the license of the minor be canceled. When such request is filed, the Department shall cancel the license of the minor and the license shall not thereafter be reissued by the Department until a period of six months has elapsed from the date of cancellation or the minor reaches his eighteenth birthday, whichever shall occur sooner. Notwithstanding the foregoing provisions of this subsection, in the case of a minor whose parents have been awarded joint legal custody, a request that the license of the minor be cancelled must be signed by both legal custodians. In the event one parent is not reasonably available or the parents do not agree, one parent may petition the juvenile and domestic relations district court to make a determination that the license of the minor be cancelled.

C. The provisions of subsection A of this section requiring that an application for a driver's license be signed by the parent or guardian shall be waived by the Commissioner if the application is accompanied by proper evidence of the solemnization of the minor's marriage or a certified copy of a court order, issued under the provisions of Article 15 (§ [16.1-331](#) et seq.) of Chapter 11 of Title 16.1, declaring the applicant to be an emancipated minor.

D. A learner's permit accompanied by documentation verifying the minor's successful completion of an approved driver education course, signed by the minor's parent, guardian, legal custodian or other person standing in loco parentis, shall constitute a temporary driver's license for purposes of driving unaccompanied by a licensed driver as required in § [46.2-335](#), if all other requirements of this chapter have been met. The temporary license shall only be valid until the permanent license is presented as provided in § [46.2-336](#).

E. Notwithstanding the provisions of subsection A requiring the successful completion of a driver education course approved by the State Department of Education, the Commissioner, on application therefor by a person at least 16 years and three months old but less than ~~19~~ 18 years old, shall issue to the applicant a temporary driver's license valid for six months if he (i) certifies by signing, together with his parent or guardian, if applicable, on a form prescribed by the Commissioner that he is a resident of the Commonwealth; (ii) is the holder of a valid driver's license from another U.S. state, U.S. territory, Canadian province, or Canadian territory; and (iii) has not been found guilty of or otherwise responsible for an offense involving the operation of a motor vehicle. No temporary license issued under this subsection shall be renewed, nor shall any second or subsequent temporary license under this subsection be issued to the same applicant. Any such minor providing proper evidence of the solemnization of his marriage or a certified copy of a court order of emancipation shall not be required to obtain the signature of his parent or guardian for the temporary driver's license.

In order to obtain a permanent driver's license, applicants who transfer to Virginia from another U.S. state or any U.S. territory, Canadian province, or Canadian territory must have documentation of at least 30 hours of classroom instruction and six hours of in-car instruction from a government-approved program in the other U.S. state, U.S. territory, or Canadian province or Canadian territory. If a transfer applicant successfully completes a government-approved classroom and in-car driver education program from another state or any U.S. territory, Canadian province, or Canadian territory, the applicant must present the certificate of completion, specifying the number of instructional hours, to the Department.

F. For persons qualifying for a driver's license through driver education courses approved by the Department of Education or courses offered by driver training schools licensed by the Department, the application for the learner's permit shall be used as the application for the driver's license pursuant to § [46.2-335](#).

G. Driver's licenses shall be issued by the Department to students successfully completing driver education courses approved by the Department of Education (i) when the Department receives from the school proper certification that the student (a) has successfully completed such course, including a road skills examination and (b) is regularly attending school and is in good academic standing or, if not in such standing or submitting evidence thereof, whose parent or guardian, having custody of such minor, provides written authorization for the minor to obtain a driver's

license, which written authorization shall be obtained on forms provided by the Department and indicating the Commonwealth's interest in the good academic standing and regular school attendance of such minors; and (ii) upon payment of a fee of \$2.40 per year, based on the period of the license's validity. For applicants attending public schools, good academic standing may be certified by the public school principal or any of his designees. For applicants attending nonpublic schools, such certification shall be made by the private school principal or any of his designees; for students receiving home schooling, such certification shall be made by the home schooling parent or tutor. Any minor providing proper evidence of the solemnization of his marriage or a certified copy of a court order of emancipation shall not be required to provide the certification of good academic standing or any written authorization from his parent or guardian to obtain a driver's license.

H. For those home schooled students completing driver education courses approved by the Board of Education and instructed by his own parent or guardian, no driver's license shall be issued until the student has successfully completed the driver's license examination administered by the Department. Furthermore, the Commissioner shall not issue a driver's license for those home schooled students completing driver education courses approved by the Board of Education and instructed by his own parent or guardian if it is determined by the Commissioner that, at the time of such instruction, such parent or guardian had accumulated six or more driver demerit points in the most recently preceding 12 months, had been convicted within the most recent 11 preceding years of driving while intoxicated in violation of § [18.2-266](#) or a substantially similar law in another state, or had ever been convicted of voluntary or involuntary manslaughter in violation of § [18.2-35](#) or [18.2-36](#) or a substantially similar law in another state.

I. The Commissioner, on application therefor by a person from another U.S. state or any U.S. territory, Canadian province, or Canadian territory who is at least 16 years and three months old but less than ~~19~~ 18 years old, shall issue a Virginia driver's license to the applicant if the applicant (i) certifies by signing, together with his parent or guardian, if applicable, on a form prescribed by the Commissioner that he is now a resident of the Commonwealth; (ii) has completed a government-approved classroom and in-car driver education program from another U.S. state or any U.S. territory, Canadian province, or Canadian territory, which shall not be required to meet the 30 hours of classroom instruction and six hours of in-car instruction requirement in subsection E; (iii) is the holder of a valid driver's license from another U.S. state or any U.S. territory, Canadian province, or Canadian territory; (iv) has held the valid driver's license for the 12 months immediately prior to applying for a Virginia license; (v) has not been found guilty of or otherwise responsible for an offense involving the operation of a motor vehicle; and (vi) successfully completes behind-the-wheel and driver knowledge examinations administered by the Department.

The applicant must present the certificate of completion specifying the number of classroom and in-car driver education program instructional hours for the government-approved classroom and in-car driver education program from another U.S. state or any U.S. territory, Canadian province, or Canadian territory to the Department.

§ [46.2-334.01](#). Licenses issued to persons less than 19 years old subject to certain restrictions.

A. Any learner's permit or driver's license issued to any person less than 18 years old shall be subject to the following:

1. Notwithstanding the provisions of § [46.2-498](#), whenever the driving record of a person less than 19 years old shows that he has been convicted of committing, when he was less than 18 years old, (i) an offense for which demerit points have been assessed or are assessable under Article 19 (§ [46.2-489](#) et seq.) or (ii) a violation of any provision of Article 12 (§ [46.2-1091](#) et seq.) or Article 13 (§ [46.2-1095](#) et seq.) of Chapter 10, the Commissioner shall direct such person to attend a driver improvement clinic. No safe driving points shall be awarded for such clinic attendance, nor shall any safe driving points be awarded for voluntary or court-assigned clinic attendance. Such person's parent, guardian, legal custodian, or other person standing in loco parentis may attend such clinic and receive a reduction in demerit points and/or an award of safe driving points pursuant to § [46.2-498](#). The provisions of this subdivision shall not be construed to prohibit awarding of safe driving points to a person less than 18 years old who attends and successfully completes a driver improvement clinic without having been directed to do so by the Commissioner or required to do so by a court.

2. If any person less than 19 years old is convicted a second time of committing, when he was less than 18 years old, (i) an offense for which demerit points have been assessed or are assessable under Article 19 (§ [46.2-489](#) et seq.) or (ii) a violation of any provision of Article 12 (§ [46.2-1091](#) et seq.) or Article 13 (§ [46.2-1095](#) et seq.) of Chapter 10, the Commissioner shall suspend such person's driver's license or privilege to operate a motor vehicle for 90 days. Such suspension shall be consecutive to, and not concurrent with, any other period of license suspension, revocation, or denial. Any person who has had his driver's license or privilege to operate a motor vehicle suspended in accordance with this subdivision may petition the juvenile and domestic relations district court of his residence for a restricted license to authorize such person to drive a motor vehicle in the Commonwealth to and from his home, his place of employment, or an institution of higher learning where he is enrolled, provided there is no other means of transportation by which such person may travel between his home and his place of employment or the institution of higher learning where he is enrolled. On such petition the court may, in its discretion, authorize the issuance of a restricted license for a period not to exceed the term of the suspension of the person's license or privilege to operate a motor vehicle in the Commonwealth. Such restricted license shall be valid solely for operation of a motor vehicle between such person's home and his place of employment or the institution of higher learning where he is enrolled.

3. If any person is convicted a third time of committing, when he was less than 18 years old, (i) an offense for which demerit points have been assessed or are assessable under Article 19 (§ [46.2-489](#) et seq.) or (ii) a violation of any provision of Article 12 (§ [46.2-1091](#) et seq.) or Article 13 (§ [46.2-1095](#) et seq.) of Chapter 10, the Commissioner shall revoke such person's driver's license or privilege to operate a motor vehicle for one year or until such person reaches the age of 18 years, whichever is longer. Such revocation shall be consecutive to, and not concurrent with, any other period of license suspension, revocation, or denial.

4. In no event shall any person subject to the provisions of this section be subject to the suspension or revocation provisions of subdivision 2 or 3 for multiple convictions arising out of the same transaction or occurrence.

B. The initial license issued to any person younger than 18 years of age shall be deemed a provisional driver's license. Until the holder is 18 years old, a provisional driver's license shall not authorize its holder to operate a motor vehicle with more than one passenger who is less than 21 years old, ~~unless the driver is accompanied by a parent or person acting in loco parentis provided that such person accompanying the driver is occupying the seat beside the driver and is lawfully permitted to operate a motor vehicle at the time.~~ After the first year the provisional license is issued, the holder may operate a motor vehicle with up to three passengers who are less than 21 years old ~~when~~ (i) when the holder is driving to or from a school-sponsored activity, ~~or~~ (ii) when a licensed driver who is at least 21 years old is occupying the seat beside the driver, or (iii) in cases of emergency. ~~This~~ *These* passenger ~~limitation~~ *limitations*, however, shall not apply to members of the driver's family or household. For the purposes of this subsection, "a member of the driver's family or household" means any of the following: (a) the driver's spouse, children, stepchildren, brothers, sisters, half-brothers, half-sisters, *first cousins*, and any individual who has a child in common with the driver, whether or not they reside in the same home with the driver; (b) the driver's brothers-in-law and sisters-in-law who reside in the same home with the driver; and (c) any individual who cohabits with the driver, and any children of such individual residing in the same home with the driver.

C. The holder of a provisional driver's license shall not operate a motor vehicle on the highways of the Commonwealth between the hours of midnight and 4:00 a.m. except when driving (i) to or from a place of business where he is employed; (ii) to or from an activity that is supervised by an adult and is sponsored by a school or by a civic, religious, or public organization; (iii) accompanied by a parent, a person acting in loco parentis, or by a spouse who is 18 years old or older, provided that such person accompanying the driver is actually occupying a seat beside the driver and is lawfully permitted to operate a motor vehicle at the time; or (iv) in cases of emergency, including response by volunteer firefighters and volunteer emergency medical services personnel to emergency calls.

C1. Except in a driver emergency or when the vehicle is lawfully parked or stopped, the holder of a provisional driver's license shall not operate a motor vehicle on the highways of the Commonwealth while using any cellular telephone or any other wireless telecommunications device, regardless of whether such device is or is not hand-held.

D. The provisional driver's license restrictions in subsections B, C, and C1 shall expire on the holder's eighteenth birthday. A violation of the provisional driver's license restrictions in ~~either~~ subsection B, C, or C1 shall constitute a traffic infraction. For a second or subsequent violation of the provisional driver's license restrictions in ~~either~~

subsection B, C, or C1, in addition to any other penalties that may be imposed pursuant to § [16.1-278.10](#), the court may suspend the juvenile's privilege to drive for a period not to exceed six months.

E. A violation of subsection B, C, or C1 shall not constitute negligence, be considered in mitigation of damages of whatever nature, be admissible in evidence, or be the subject of comment by counsel in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a motor vehicle, nor shall anything in this subsection change any existing law, rule, or procedure pertaining to any such civil action.

F. No citation for a violation of this section shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.

§ [46.2-335](#). Learner's permits; fees; certification required.

A. The Department, on receiving from any Virginia resident over the age of 15 years and six months an application for a learner's permit or motorcycle learner's permit, may, subject to the applicant's satisfactory documentation of meeting the requirements of this chapter and successful completion of the written or automated knowledge and vision examinations and, in the case of a motorcycle learner's permit applicant, the automated motorcycle test, issue a permit entitling the applicant, while having the permit in his immediate possession, to drive a motor vehicle or, if the application is made for a motorcycle learner's permit, a motorcycle, on the highways, when accompanied by any licensed driver 21 years of age or older or by his parent or legal guardian, or by a brother, sister, half-brother, half-sister, step-brother, or step-sister 18 years of age or older. The accompanying person shall be (i) alert, able to assist the driver, and actually occupying a seat beside the driver or, for motorcycle instruction, providing immediate supervision from a separate accompanying motor vehicle and (ii) lawfully permitted to operate the motor vehicle or accompanying motorcycle at that time.

The Department shall not, however, issue a learner's permit or motorcycle learner's permit to any minor applicant required to provide evidence of compliance with the compulsory school attendance law set forth in Article 1 (§ [22.1-254](#) et seq.) of Chapter 14 of Title 22.1, unless such applicant is in good academic standing or, if not in such standing or submitting evidence thereof, whose parent or guardian, having custody of such minor, provides written authorization for the minor to obtain a learner's permit or motorcycle learner's permit, which written authorization shall be obtained on forms provided by the Department and indicating the Commonwealth's interest in the good academic standing and regular school attendance of such minors. Any minor providing proper evidence of the solemnization of his marriage or a certified copy of a court order of emancipation shall not be required to provide the certification of good academic standing or any written authorization from his parent or guardian to obtain a learner's permit or motorcycle learner's permit.

Such permit, except a motorcycle learner's permit, shall be valid until the holder thereof either is issued a driver's license as provided for in this chapter or no longer meets the qualifications for issuance of a learner's permit as provided in this section. Motorcycle learner's permits shall be valid for 12 months. When a motorcycle learner's permit expires, the permittee may, upon submission of an application, payment of the application fee, and successful completion of the examinations, be issued another motorcycle learner's permit valid for 12 months.

Any person 25 years of age or older who is eligible to receive an operator's license in Virginia, but who is required, pursuant to § [46.2-324.1](#), to be issued a learner's permit for 60 days prior to his first behind-the-wheel exam, may be issued such learner's permit even though restrictions on his driving privilege have been ordered by a court. Any such learner's permit shall be subject to the restrictions ordered by the court.

B. No driver's license shall be issued to any such person who is less than 18 years old unless, while holding a learner's permit, he has driven a motor vehicle for at least 45 hours, at least 15 of which were after sunset, as certified by his parent, foster parent, or legal guardian unless the person is married or otherwise emancipated. Such certification shall be on a form provided by the Commissioner and shall contain the following statement:

"It is illegal for anyone to give false information in connection with obtaining a driver's license. This certification is considered part of the driver's license application, and anyone who certifies to a false statement may be prosecuted. I

certify that the statements made and the information submitted by me regarding this certification are true and correct."

Such form shall also include the driver's license or Department of Motor Vehicles-issued identification card number of the person making the certification.

C. No learner's permit shall authorize its holder to operate a motor vehicle with more than one passenger who is less than ~~18~~ 21 years old, except when participating in a driver education program approved by the Department of Education or a course offered by a driver training school licensed by the Department. This passenger limitation, however, shall not apply to the *members of the driver's family or household* as defined in subsection B of § [46.2-334.01](#).

D. No learner's permit shall authorize its holder to operate a motor vehicle between midnight and four o'clock a.m.

*E. Except in a driver emergency or when the vehicle is lawfully parked or stopped, no holder of a learner's permit shall operate a motor vehicle on the highways of the Commonwealth while using any cellular telephone or any other wireless telecommunications device, regardless of whether or not such device is handheld. No citation for a violation of this subsection shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.*

~~E-F.~~ A violation of subsection C ~~or~~ D, *or E* shall not constitute negligence, be considered in mitigation of damages of whatever nature, be admissible in evidence or be the subject of comment by counsel in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a motor vehicle, nor shall anything in this subsection change any existing law, rule, or procedure pertaining to any such civil action.

~~F-G.~~ The provisions of §§ [46.2-323](#) and [46.2-334](#) relating to evidence and certification of Virginia residence and, in the case of persons of school age, compliance with the compulsory school attendance law shall apply, mutatis mutandis, to applications for learner's permits and motorcycle learner's permits issued under this section.

~~G-H.~~ For persons qualifying for a driver's license through driver education courses approved by the Department of Education or courses offered by driver training schools licensed by the Department, the application for the learner's permit shall be used as the application for the driver's license.

~~H-I.~~ The Department shall charge a fee of \$3 for each learner's permit and motorcycle learner's permit issued under this section. Fees for issuance of learner's permits shall be paid into the driver education fund of the state treasury; fees for issuance of motorcycle learner's permits shall be paid into the state treasury and credited to the Motorcycle Rider Safety Training Program Fund created pursuant to § [46.2-1191](#). It shall be unlawful for any person, after having received a learner's permit, to drive a motor vehicle without being accompanied by a licensed driver as provided in the foregoing provisions of this section; however, a learner's permit other than a motorcycle learner's permit, accompanied by documentation verifying that the driver is at least 16 years and three months old and has successfully completed an approved driver's education course, signed by the minor's parent, guardian, legal custodian or other person standing in loco parentis, shall constitute a temporary driver's license for the purpose of driving unaccompanied by a licensed driver 18 years of age or older, if all other requirements of this chapter have been met. Such temporary driver's license shall only be valid until the driver has received his permanent license pursuant to § [46.2-336](#).

~~I-J.~~ Nothing in this section shall be construed to permit the issuance of a learner's permit entitling a person to drive a commercial motor vehicle, except as provided by the Virginia Commercial Driver's License Act (§ [46.2-341.1](#) et seq.).

~~J-K.~~ The following limitations shall apply to operation of motorcycles by all persons holding motorcycle learner's permits:

1. The operator shall wear an approved safety helmet as provided in § [46.2-910](#).
2. Operation shall be under the immediate supervision of a person licensed to operate a motorcycle who is 21 years of age or older.
3. No person other than the operator shall occupy the motorcycle.

~~K-L.~~ Any violation of this section shall be punishable as a Class 2 misdemeanor.

§ [46.2-335.2](#). Learner's permits; required before driver's license; minimum holding period.

A. No person under the age of ~~nineteen~~ 18 years shall be eligible to receive a driver's license pursuant to § [46.2-334](#) unless the Department has previously issued such person a learner's permit pursuant to § [46.2-335](#) and such person has satisfied the minimum holding period requirements set forth in subsection B, or unless such person is the holder of a valid driver's license from another state and qualifies for a temporary license under subsection E of § [46.2-334](#) ~~or subsection C of this section.~~

~~B. Effective July 1, 2002, any~~ Any person under the age of ~~nineteen~~ 18 years issued a learner's permit pursuant to § [46.2-335](#) shall hold such permit for a minimum period of nine months or until he reaches the age of ~~nineteen~~ 18 years, whichever occurs first.

~~C. Notwithstanding the provisions of subsection D of § [46.2-323](#), requiring the successful completion of a driver education course approved by the State Department of Education, the Commissioner, on application therefor by a person who is at least eighteen years old but less than nineteen years old, shall issue to the applicant a temporary driver's license valid for six months if he (i) certifies by signing on a form prescribed by the Commissioner that he is a resident of the Commonwealth; (ii) is the holder of a valid driver's license from another state; and (iii) has not been found guilty or otherwise responsible for an offense involving the operation of a motor vehicle. No temporary license issued under this subsection shall be renewed, nor shall a second or subsequent temporary license under this subsection be issued to the same applicant.~~

**Exceptions to motor vehicle inspection requirement.** Exempts from the motor vehicle safety inspection requirement vehicles that are parked on a public highway and have been submitted for inspection to an official inspection station. The bill contains technical amendments.

## CHAPTER 702

An Act to amend and reenact § [46.2-1158.01](#) of the Code of Virginia, relating to exceptions to motor vehicle inspection requirement.

[H 213]

Approved April 6, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-1158.01](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-1158.01](#). Exceptions to motor vehicle inspection requirement.

A. The following shall be exempt from inspection as required by § [46.2-1157](#):

1. Four-wheel vehicles weighing less than 500 pounds and having less than 6 horsepower;
2. Boat, utility, or travel trailers that are not equipped with brakes;
3. Antique motor vehicles or antique trailers as defined in § [46.2-100](#) and licensed pursuant to § [46.2-730](#);
4. Any motor vehicle, trailer, or semitrailer that is outside the Commonwealth at the time its inspection expires when operated by the most direct route to the owner's or operator's place of residence or the owner's legal place of business in the Commonwealth;
5. A truck, tractor truck, trailer, or semitrailer for which the period fixed for inspection has expired while the vehicle was outside the Commonwealth (i) from a point outside the Commonwealth to the place where such vehicle is kept or garaged within the Commonwealth or (ii) to a destination within the Commonwealth where such vehicle will be (a) unloaded within 24 hours of entering the Commonwealth, (b) inspected within such 24-hour period, and (c) operated, after being unloaded, only to an inspection station or to the place where it is kept or garaged within the Commonwealth;
6. New motor vehicles, new trailers, or new semitrailers ~~may be~~ operated upon the highways of ~~Virginia the Commonwealth~~ for the purpose of delivery from the place of manufacture to the dealer's or distributor's designated place of business or between places of business if such manufacturer, dealer, or distributor has more than one place of business, ~~without being inspected~~; dealers or distributors may take delivery and operate upon the highways of ~~Virginia the Commonwealth~~ new motor vehicles, new trailers, or new semitrailers from another dealer or distributor provided a motor vehicle, trailer, or semitrailer shall not be considered new if driven upon the highways for any purpose other than the delivery of the vehicle;
7. New motor vehicles, new trailers, or new semitrailers bearing a manufacturer's license ~~may be~~ operated for test purposes by the manufacturer ~~without an inspection~~;
8. Motor vehicles, trailers, or semitrailers ~~may be~~ operated for test purposes by a certified inspector ~~without an inspection sticker~~ during the performance of an official inspection;
9. New motor vehicles, new trailers, or new semitrailers ~~may be~~ operated upon the highways of ~~Virginia the Commonwealth~~ over the most direct route to a location for installation of a permanent body ~~without being inspected~~;

10. Motor vehicles, trailers, or semitrailers purchased outside the Commonwealth ~~may be driven to the purchaser's place of residence or the dealer's or distributor's designated place of business without being inspected;~~

11. Prior to purchase from auto auctions within the Commonwealth, motor vehicles, trailers, or semitrailers ~~may be operated upon the highways not to exceed a five-mile radius of such auction by prospective purchasers only for the purpose of road testing without being inspected;~~ and motor vehicles, trailers, or semitrailers purchased from auto auctions within the Commonwealth ~~also may be operated upon the highways from such auction to the purchaser's place of residence or business without being inspected;~~

12. Motor vehicles, trailers, or semitrailers, after the expiration of a period fixed for the inspection thereof, ~~may be~~ (i) operated over the most direct route between the place where such vehicle is kept or garaged and an official inspection station or (ii) parked on a highway and that have been submitted for a motor vehicle safety inspection to an official inspection station, for the purpose of having the same inspected pursuant to a prior appointment with such station;

13. Any vehicle for transporting well-drilling machinery and mobile equipment as defined in § [46.2-700](#);

14. Motor vehicles being towed in a legal manner as exempted under § [46.2-1150](#);

15. Logtrailers as exempted under § [46.2-1159](#);

16. Motor vehicles designed or altered and used exclusively for racing or other exhibition purposes as exempted under § [46.2-1160](#);

17. Any tow dolly or converter gear as defined in § [46.2-1119](#);

18. A new motor vehicle, as defined in § [46.2-1500](#), that has been inspected in accordance with an inspection requirement of the manufacturer or distributor of the new motor vehicle by an employee who customarily performs such inspection on behalf of a motor vehicle dealer licensed pursuant to § [46.2-1508](#) ~~shall be deemed to have met the safety inspection requirements of the section without a separate safety inspection by an official inspection station.~~ Such inspection shall be deemed to be the first inspection for the purpose of § [46.2-1158](#), and an inspection approval sticker furnished by the Department of State Police at the uniform price paid by all official inspection stations to the Department of State Police for an inspection approval sticker may be affixed to the vehicle as required by § [46.2-1163](#);

19. Mopeds;

20. Low-speed vehicles; and

21. Vehicles exempt from registration pursuant to Article 6 (§ [46.2-662](#) et seq.) of Chapter 6.

B. The following shall be exempt from inspection as required by § [46.2-1157](#) provided (i) the commercial motor vehicle operates in interstate commerce; (ii) the commercial motor vehicle is found to meet the federal requirements for annual inspection through a self-inspection, a third-party inspection, a Commercial Vehicle Safety Alliance inspection, or a periodic inspection performed by any state with a program; (iii) the inspection has been determined by the Federal Motor Carrier Safety Administration to be comparable to or as effective as the requirements of 49 C.F.R. Part 396 § 396.3(a); and (iv) documentation of such determination as provided for in 49 C.F.R. Part 396 § 396.3(b) is available for review by law-enforcement officials to verify that the inspection is current:

1. Any commercial motor vehicle operating in interstate commerce that is subject to the Federal Motor Carrier Safety Regulations;

2. Any trailer or semitrailer being operated in interstate commerce that is subject to the Federal Motor Carrier Safety Regulations.

**Exceptions to motor vehicle inspection requirement.** Allows the purchaser of a motor vehicle, trailer, or semitrailer from an auto auction to operate such vehicle without a safety inspection from the auction to an official safety inspection station on the same day the purchaser removes the vehicle from the auto auction if the inspection station is located between the auction and the purchaser's residence or place of business or within a five-mile radius of such residence or place of business. The bill contains technical amendments.

## CHAPTER 128

An Act to amend and reenact § [46.2-1158.01](#) of the Code of Virginia, relating to exceptions to motor vehicle inspection requirement.

[H 507]

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-1158.01](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-1158.01](#). Exceptions to motor vehicle inspection requirement.

A. The following shall be exempt from inspection as required by § [46.2-1157](#):

1. Four-wheel vehicles weighing less than 500 pounds and having less than 6 horsepower;
2. Boat, utility, or travel trailers that are not equipped with brakes;
3. Antique motor vehicles or antique trailers as defined in § [46.2-100](#) and licensed pursuant to § [46.2-730](#);
4. Any motor vehicle, trailer, or semitrailer that is outside the Commonwealth at the time its inspection expires when operated by the most direct route to the owner's or operator's place of residence or the owner's legal place of business in the Commonwealth;
5. A truck, tractor truck, trailer, or semitrailer for which the period fixed for inspection has expired while the vehicle was outside the Commonwealth (i) from a point outside the Commonwealth to the place where such vehicle is kept or garaged within the Commonwealth or (ii) to a destination within the Commonwealth where such vehicle will be (a) unloaded within 24 hours of entering the Commonwealth, (b) inspected within such 24-hour period, and (c) operated, after being unloaded, only to an inspection station or to the place where it is kept or garaged within the Commonwealth;
6. New motor vehicles, new trailers, or new semitrailers ~~may be~~ operated upon the highways of ~~Virginia the Commonwealth~~ for the purpose of delivery from the place of manufacture to the dealer's or distributor's designated place of business or between places of business if such manufacturer, dealer, or distributor has more than one place of business, ~~without being inspected~~; dealers or distributors may take delivery and operate upon the highways of ~~Virginia the Commonwealth~~ new motor vehicles, new trailers, or new semitrailers from another dealer or distributor provided a motor vehicle, trailer, or semitrailer shall not be considered new if driven upon the highways for any purpose other than the delivery of the vehicle;
7. New motor vehicles, new trailers, or new semitrailers bearing a manufacturer's license ~~may be~~ operated for test purposes by the manufacturer ~~without an inspection~~;
8. Motor vehicles, trailers, or semitrailers ~~may be~~ operated for test purposes by a certified inspector ~~without an inspection sticker~~ during the performance of an official inspection;
9. New motor vehicles, new trailers, or new semitrailers ~~may be~~ operated upon the highways of ~~Virginia the Commonwealth~~ over the most direct route to a location for installation of a permanent body ~~without being inspected~~;

10. Motor vehicles, trailers, or semitrailers purchased outside the Commonwealth ~~may be driven to the purchaser's place of residence or the dealer's or distributor's designated place of business without being inspected;~~

11. Prior to purchase from auto auctions ~~within the Commonwealth~~, motor vehicles, trailers, or semitrailers ~~may be operated upon the highways not to exceed a five-mile radius of such auction by prospective purchasers only for the purpose of road testing without being inspected;~~ and motor vehicles, trailers, or semitrailers purchased from auto auctions ~~within the Commonwealth also may be operated upon the highways from such auction to (i) an official safety inspection station provided that (a) the inspection station is located between the auto auction and the purchaser's residence or place of business or within a five-mile radius of such residence or business and (b) the vehicle is taken to the inspection station on the same day the purchaser removes the vehicle from the auto auction or (ii) the purchaser's place of residence or business without being inspected;~~

12. Motor vehicles, trailers, or semitrailers, after the expiration of a period fixed for the inspection thereof, ~~may be operated over the most direct route between the place where such vehicle is kept or garaged and an official inspection station for the purpose of having the same inspected pursuant to a prior appointment with such station;~~

13. Any vehicle for transporting well-drilling machinery and mobile equipment as defined in § [46.2-700](#);

14. Motor vehicles being towed in a legal manner as exempted under § [46.2-1150](#);

15. Logtrailers as exempted under § [46.2-1159](#);

16. Motor vehicles designed or altered and used exclusively for racing or other exhibition purposes as exempted under § [46.2-1160](#);

17. Any tow dolly or converter gear as defined in § [46.2-1119](#);

18. A new motor vehicle, as defined in § [46.2-1500](#), that has been inspected in accordance with an inspection requirement of the manufacturer or distributor of the new motor vehicle by an employee who customarily performs such inspection on behalf of a motor vehicle dealer licensed pursuant to § [46.2-1508](#) ~~shall be deemed to have met the safety inspection requirements of the section without a separate safety inspection by an official inspection station.~~ Such inspection shall be deemed to be the first inspection for the purpose of § [46.2-1158](#), and an inspection approval sticker furnished by the Department of State Police at the uniform price paid by all official inspection stations to the Department of State Police for an inspection app

19. Mopeds;

20. Low-speed vehicles; and

21. Vehicles exempt from registration pursuant to Article 6 (§ [46.2-662](#) et seq.) of Chapter 6.

B. The following shall be exempt from inspection as required by § [46.2-1157](#) provided (i) the commercial motor vehicle operates in interstate commerce; (ii) the commercial motor vehicle is found to meet the federal requirements for annual inspection through a self-inspection, a third-party inspection, a Commercial Vehicle Safety Alliance inspection, or a periodic inspection performed by any state with a program; (iii) the inspection has been determined by the Federal Motor Carrier Safety Administration to be comparable to or as effective as the requirements of 49 C.F.R. Part 396 § 396.3(a); and (iv) documentation of such determination as provided for in 49 C.F.R. Part 396 § 396.3(b) is available for review by law-enforcement officials to verify that the inspection is current:

1. Any commercial motor vehicle operating in interstate commerce that is subject to the Federal Motor Carrier Safety Regulations;

2. Any trailer or semitrailer being operated in interstate commerce that is subject to the Federal Motor Carrier Safety Regulations.

**General illumination lights; motorcycles.** Increases from four to five the maximum number of lights allowed on a motorcycle and used for general illumination ahead of the motorcycle. Current law restricts all motor vehicles to no more than four lights, including headlights, fog lights, etc., to provide general illumination ahead of the vehicle. This bill is identical to [SB 25](#).

## CHAPTER 195

An Act to amend and reenact § [46.2-1030](#) of the Code of Virginia, relating to general illumination lights on motorcycles.

[H 10]

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-1030](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-1030](#). When lights to be lighted; number of lights to be lighted at any time; use of warning lights.

A. Every vehicle in operation on a highway in the Commonwealth shall display lighted headlights and illuminating devices as required by this article (i) from sunset to sunrise; (ii) during any other time when, because of rain, smoke, fog, snow, sleet, insufficient light, or other unfavorable atmospheric conditions, visibility is reduced to a degree whereby persons or vehicles on the highway are not clearly discernible at a distance of 500 feet; and (iii) whenever windshield wipers are in use as a result of fog, rain, sleet, or snow. The provisions of this subsection, however, shall not apply to instances when windshield wipers are used intermittently in misting rain, sleet, or snow.

B. Not more than four lights used to provide general illumination ahead of the vehicle, including at least two headlights and any other combination of fog lights or other auxiliary lights approved by the Superintendent, shall be lighted at any time. However, ~~this limitation~~ *motorcycles may be equipped with and use not more than five approved lights in order to provide general illumination ahead of the motorcycle. These limitations shall not preclude the display of warning lights authorized in §§ [46.2-1020](#) through [46.2-1027](#), or other lights as may be authorized by the Superintendent.*

C. Vehicles equipped with warning lights authorized in §§ [46.2-1020](#) through [46.2-1027](#) shall display lighted warning lights as authorized in such sections at all times when responding to emergency calls, towing disabled vehicles, or constructing, repairing, and maintaining public highways or utilities on or along public highways, except that amber lights on vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks," need not be lit while the vehicle is in motion unless it is actually towing a vehicle.

D. The failure to display lighted headlights and illuminating devices under the conditions set forth in clause (iii) of subsection A ~~of this section~~ shall not constitute negligence per se, nor shall violation of clause (iii) of subsection A ~~of this section~~ constitute a defense to any claim for personal injury or recovery of medical expenses for injuries sustained in a motor vehicle accident.

E. No demerit points shall be assessed for failure to display lighted headlights and illuminating devices during periods of fog, rain, sleet, or snow in violation of clause (iii) of subsection A ~~of this section~~.

F. No citation for a violation of clause (iii) of subsection A ~~of this section~~ shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.

**State Police; guidelines for approval of auxiliary lighting on motorcycles.** Directs the Superintendent of State Police to establish guidelines by January 1, 2017, that set forth a procedure for the submission and approval of auxiliary lights for motorcycles. The bill requires any approved lights or equipment to be posted on the Department of State Police website and for the Department of State Police to notify inspection stations of approved lights or equipment.

## CHAPTER 701

*An Act to provide for auxiliary lights on motorcycles.*

[H 939]

Approved April 6, 2016

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The Superintendent of State Police shall establish guidelines setting forth a procedure pursuant to § [46.2-1005](#) to allow for the submission and approval of auxiliary lights on motorcycles that are not approved by the Society of Automotive Engineers and shall publish such procedure on the Department of State Police's website by January 1, 2017. The approval of any lights or equipment shall also be published on the Department's website and the Department shall notify official safety inspection stations of such approved equipment.*

**Length of vehicle combinations.** Clarifies that the provision limiting vehicles coupled with another vehicle to a maximum combined length of 65 feet applies to motor homes and buses. The bill is declarative of existing law.

## CHAPTER 122

An Act to amend and reenact § [46.2-1112](#) of the Code of Virginia, relating to length of vehicles.

[H 267]

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-1112](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-1112](#). Length of vehicles, generally; special permits; vehicle combinations, etc., operating on certain highways; penalty.

~~Except for buses and motor homes, no~~ No motor vehicle longer than 40 feet shall be operated on any highway in the Commonwealth *except for buses and motor homes*. The actual length of any combination of vehicles, *including motor homes and buses*, coupled together including any load thereon shall not exceed a total of 65 feet. However, the length of a tractor truck semitrailer combination may exceed 65 feet in length, provided the semitrailer does not exceed 53 feet in length and the distance between the kingpin of the semitrailer and the rearmost axle or a point midway between the rear tandem axles does not exceed 41 feet. The Commissioner of Highways may impose restrictions on the operation of vehicles exceeding 65 feet in length on certain roads, based on a safety and engineering analysis. No bus or motor home longer than 45 feet shall be operated on any highway in the Commonwealth. No tolerance shall be allowed that exceeds 12 inches.

The Commissioner, however, when good cause is shown, may issue a special permit for combinations either in excess of 65 feet, including any load thereon, or where the object or objects to be carried cannot be moved otherwise. Such permits may also be issued by the Department when the total number of otherwise overdimensional loads of modular housing of no more than two units may be reduced by permitting the use of an overlength trailer not exceeding 54 feet. No permit shall be issued by the Commissioner until an engineering analysis of a proposed routing has been conducted by the Commissioner of Highways to assess the ability of the roadway to be traversed to sustain the vehicle's size.

No overall length restrictions, however, shall be imposed on any tractor truck semitrailer combinations drawing one trailer or any tractor truck semitrailer combinations when operated on any interstate highway or on any highway as designated by the Commonwealth Transportation Board. No such designation shall be made, however, until notice of any proposed designation has been provided by the Commissioner of Highways to the governing body of every locality wherein any highway affected by the proposed designation is located.

No individual semitrailer or trailer being drawn in a tractor truck semitrailer trailer combination, however, shall exceed 28 1/2 feet in length, and no semitrailer being operated in a tractor truck semitrailer combination shall exceed 48 feet in length, except when semitrailers have a distance of not more than 41 feet between the kingpin of the semitrailer and the rearmost axle or a point midway between the rear tandem axles, such semitrailer shall be allowed not more than 53 feet in length.

The length limitations on semitrailers and trailers in the foregoing provisions of this section shall be exclusive of safety and energy conservation devices, steps and handholds for entry and egress, rubber dock guards, flexible fender extensions, mudflaps, refrigeration units, and air compressors. The Commissioner of Highways shall designate reasonable access to terminals, facilities for food, fuel, repairs and rest. Household goods carriers and any tractor truck semitrailer combination in which the semitrailer has a length of no more than 28 1/2 feet shall not be denied reasonable access to points of loading and unloading, except as designated, based on safety considerations, by the Commissioner of Highways.

Any person operating a vehicle whose length is not in conformity with the provisions of this chapter on a two-lane highway where passing is permitted shall be guilty of a traffic infraction and fined \$250.

2. That the provisions of this act are declaratory of existing law.

**Amber lights on public transit buses.** Allows publicly owned or operated transit buses to use flashing amber lights. This bill is identical to [SB 299](#).

## CHAPTER 198

*An Act to amend and reenact § [46.2-1025](#) of the Code of Virginia, relating to flashing amber lights on public transit buses.*

[H 329]

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-1025](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-1025](#). Flashing amber, purple, or green warning lights.

A. The following vehicles may be equipped with flashing, blinking, or alternating amber warning lights of types approved by the Superintendent:

1. Vehicles used for the principal purpose of towing or servicing disabled vehicles;
2. Vehicles used in constructing, maintaining, and repairing highways or utilities on or along public highways, or in assisting with the management of roadside and traffic incidents, or performing traffic management services along public highways;
3. Vehicles used for the principal purpose of removing hazardous or polluting substances from state waters and drainage areas on or along public highways, or state vehicles used to perform other state-required environmental activities, provided that the amber lights are not lit while the vehicle is in motion;
4. Vehicles used for servicing automatic teller machines, provided the amber lights are not lit while the vehicle is in motion;
5. Vehicles used in refuse collection, provided the amber lights are lit only when the vehicles are engaged in refuse collection operations;
6. Vehicles used by individuals for emergency snow-removal purposes;
7. Hi-rail vehicles, provided the amber lights are lit only when the vehicles are operated on railroad rails;
8. Fire apparatus and emergency medical services vehicles, provided the amber lights are used in addition to lights permitted under § [46.2-1023](#) and are so mounted or installed as to be visible from behind the vehicle;
9. Vehicles owned and used by businesses providing security services, provided the amber lights are not lit while the vehicle is being operated on a public highway;
10. Vehicles used to collect and deliver the United States mail, provided the amber lights are lit only when the vehicle is actually engaged in such collection or delivery;
11. Vehicles used to transport petroleum or propane products, provided the amber light is mounted on the rear of the vehicle and is lit when parked while making a delivery of petroleum or propane products, or when the vehicle's back-up lights are lit and its device producing an audible signal when the vehicle is operated in reverse gear, as provided for in § [46.2-1175.1](#), is in operation;

12. Vehicles used by law-enforcement agency personnel in the enforcement of laws governing motor vehicle parking;
13. Government-owned law-enforcement vehicles, provided the lights are used for the purpose of giving directional warning to vehicular traffic to move one direction or another and are not lit while the vehicle is in motion;
14. Chase vehicles when used to unload a hot air balloon or used to load a hot air balloon after landing, provided the amber lights are not lit while the vehicle is in motion;
15. Vehicles used for farm, agricultural, or horticultural purposes, or any farm tractor;
16. Vehicles owned and used by construction companies operating under Virginia contractors licenses;
17. Vehicles used to lead or provide escorts for bicycle races authorized by the Department of Transportation or the locality in which the race is being conducted;
18. Vehicles used by radio or television stations for remote broadcasts, provided that the amber lights are not lit while the vehicle is in motion;
19. Vehicles used by municipal safety officers in the performance of their official duties. For the purpose of this subdivision, "municipal safety officers" means municipal employees responsible for managing municipal safety programs and ensuring municipal compliance with safety and environmental regulatory mandates;
20. Vehicles used as pace cars, security vehicles, or firefighting vehicles by any speedway or motor vehicle race track, provided that the amber lights are not lit while the vehicle is being operated on a public highway;
21. Vehicles used in patrol work by members of neighborhood watch groups approved by the chief law-enforcement officer of the locality in their assigned neighborhood watch program area, provided that the vehicles are clearly identified as neighborhood watch vehicles, and the amber lights are not lit while the vehicle is in motion;~~and~~
22. Vehicles that are not tow trucks as defined in § [46.2-100](#), but are owned or controlled by a towing and recovery business, provided that the amber lights are lit only when the vehicle is being used at a towing and recovery site;  
*and*

*23. Publicly owned or operated transit buses.*

B. Except as otherwise provided in this section, such amber lights shall be lit only when performing the functions which qualify them to be equipped with such lights.

C. Vehicles used to lead or provide escorts for funeral processions may use either amber warning lights or purple warning lights, but amber warning lights and purple warning lights shall not simultaneously be used on the same vehicle. The Superintendent of State Police shall develop standards and specifications for purple lights authorized in this subsection.

D. Vehicles used by police, firefighting, or emergency medical services personnel as command centers at the scene of incidents may be equipped with and use green warning lights of a type approved by the Superintendent. Such

**Commuter parking lot signage.** Requires that signage in commuter parking lots owned by the Virginia Department of Transportation in Planning District 8 clearly indicate that parking in such lots is only for commuters using mass transit or who are car pool or bicycle riders.

## CHAPTER 708

An Act to amend and reenact § [46.2-1219.2](#) of the Code of Virginia, relating to commuter parking lot signs in Planning District 8.

[H 730]

Approved April 6, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-1219.2](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-1219.2](#). Parking of vehicles in commuter parking lots owned by the Virginia Department of Transportation.

A. It shall constitute a traffic infraction for any person to park any vehicle in any commuter parking lot owned by the Virginia Department of Transportation in any manner not in conformance with posted signs and pavement markings. *In Planning District 8, such signs shall clearly indicate that before 10:00 a.m. Monday through Friday except holidays parking is only for commuters using mass transit or who are car pool or bicycle riders.*

B. In the prosecution of an offense established under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was parked in violation of this section, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation. A violation of this section may be charged on the uniform traffic summons form.

C. Notwithstanding the provisions of § [19.2-76](#), whenever a summons for a violation of this section is served in any county, city, or town, it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § [19.2-76.3](#).

Enforcement of the provisions of this section may be enforced by any law-enforcement officer as defined in § [9.1-101](#).

**Vehicles owned or leased by maritime cargo terminal owners or operators.** Creates an exemption from registration for vehicles owned or leased by a maritime cargo terminal owner or operator that transport seagoing containers and are driven on a route of no more than one mile approved by the Department of Motor Vehicles.

### CHAPTER 379

*An Act to amend the Code of Virginia by adding a section numbered [46.2-670.1](#), relating to vehicles owned or leased by maritime cargo terminal owners or operators.*

[H 1269]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [46.2-670.1](#) as follows:

§ [46.2-670.1](#). *Vehicles owned by maritime cargo terminal operators.*

*No person shall be required to obtain the registration certificate, certificate of title, license plates, or decals for or to pay a registration fee for any motor vehicle owned or leased by a maritime cargo terminal owner or operator and used to transport a seagoing container and operated along a highway on a route of no more than one mile approved by the Department.*

## TRAFFIC – SUMMARY ONLY

**HB374 and SB91 - §§ 46.2-649.1:1 and 46.2-711 - Registration of vehicles owned or used by emergency medical services agencies.** Requires, upon application, the issuance of permanent license plates for emergency medical services vehicles owned by or under the exclusive control of a commercial or privately owned emergency medical services agency. This bill is identical to [SB 91](#).

**HB1032 - § 46.2-662 –Board of Pharmacy; automatic review of certain case decisions.** Provides that, in cases in which a monetary fine may be imposed for a violation of the Drug Control Act relating to the practice of pharmacy and the pharmacy subject to the fine is affiliated with a free clinic that receives state or local funds, the Board of Pharmacy shall ascertain the factual basis of the case through informal conference or consultation proceedings, unless the named party and the Board agree to resolve the matter through a consent order or the named party consents to waive such conference or proceeding to go directly to a formal hearing.

**HB1190 and SB666 - §§ 46.2-725 and 46.2-726 - Individual income tax credit; return of budget surplus.** Establishes beginning with taxable year 2014 a refundable individual income tax credit that is a portion of the general fund surplus for the corresponding fiscal year. If more than \$50 million in general fund surplus remains after assignments of the surplus for the Revenue Stabilization Fund, the Virginia Water Quality Improvement Fund, the Transportation Trust Fund, and other mandatory assignments, then a refundable income tax credit would be allowed for the corresponding taxable year equal to the remaining surplus divided by the number of individual income tax returns filed for the most recent taxable year. In such case, an amount equal to the surplus that is to be returned to individual taxpayers would be held in reserve for appropriation by the General Assembly and not further assigned by the Comptroller. If less than \$50 million in general fund surplus remains after such mandatory assignments, no tax credit would be available for the corresponding taxable year and the remaining surplus would be assigned by the Comptroller for nonrecurring expenditures. The credit could be claimed only by those individuals who were required under Virginia law to file an individual income tax return and filed such return.

**HB1182 and SB266 - § 15.2-1610 - Sheriffs; standard vehicle markings.** Allows sheriffs' offices to use marked motor vehicles painted in any solid color. Current law requires the sheriff to obtain the concurrence of the local governing body to use any color other than dark brown. This bill is identical to [SB 266](#).

**SB163 - § 46.2-800.3 – Local regulation of driving in flooded areas; penalty.** Allows localities to by ordinance prohibit any person from operating a motor vehicle or watercraft on a flooded street in such a manner as to increase the level of floodwaters to a level that causes or could reasonably be expected to cause damage to any real or personal property and creates a Class 4 misdemeanor for a violation of such ordinance. The bill requires a locality to post signs warning of the prohibition and penalties. This prohibition does not apply to law-enforcement officers, firefighters, emergency medical services personnel, or operators of Department of Transportation or utility vehicles in the performance of their official duties.

**HB1276 - § 46.2-1188 - Motorcycle rider safety training courses.** Provides that "motorcycle rider safety training courses" means courses of instruction in the operation of motorcycles for the purposes of obtaining a waiver from the examination or road test for (i) both two-wheeled and three-wheeled motorcycles, (ii) two-wheeled motorcycles, or (iii) three-wheeled motorcycles.

**HB1287 - § 46.2-325 - Behind-the-wheel and knowledge examinations.** Allows a person less than 19 years of age who has failed the behind-the-wheel examination for a driver's license three times to take a course of instruction based on the Virginia Driver's Manual before taking the examination a fourth time if such person has previously completed the classroom component of driver instruction at a driver training school.

**SB464 - § 46.2-100 - Gas-powered low-speed vehicles.** Includes in the definition of "low-speed vehicle" gas-powered vehicles that have a maximum speed of more than 20 miles per hour but not more than 25 miles per hour and are manufactured to comply with safety standards contained in Title 49 of the Code of Federal Regulations, § 571.500. The current definition of "low-speed vehicle" only includes electrically powered vehicles that meet these criteria.

**SB9 - § 3.2-6504.1 - Civil immunity; first responders; forcible entry of motor vehicle to remove unattended companion animal.** Provides that first responders who forcibly enter a motor vehicle to remove an unattended companion animal that is at risk of serious bodily injury or death are immune from liability for property damage to the vehicle or injury to the animal resulting from the forcible entry and removal of the animal.

**HB407 - § 33.2-501 - Designation of HOV lanes.** Prohibits HOV-2 lanes of Interstate 66 from being converted to HOV-3 lanes or a more restrictive designation. The bill has a delayed effective date of July 1, 2017, and an expiration date of January 1, 2020.

**HB1069 - §§ 33.2-500, 33.2-503, 33.2-504, 46.2-208, 46.2-819, 46.2-819.1, 46.2-819.3, 46.2-819.3:1 and 46.2-819.6 and adding section 33.2-615 and sections 46.2-819.8, 46.2-819.9, and 46.2-819.10. - Toll collection procedures, fees, and penalties; period of nonpayment; notice of unpaid tolls; reciprocity agreements and enforcement.** Requires the Department of Transportation to allow E-ZPass account holders to provide an email or phone number and to electronically notify account holders of a toll violation and further requires toll operators to notify the Department of such toll violations. The bill amends the definition of high-occupancy toll (HOT) lanes to ensure that mass transit vehicles and commuter buses meet the high-occupancy requirement. The bill lengthens, from 30 to 60 days, the time period before the administrative fee increases from \$25 to \$100 for all toll violations. The bill decreases the civil penalties for an unpaid toll violation on the HOT lanes, making them equal to civil penalties for other toll violations, and allows the HOT lanes operator to offer reduced civil penalties if the owner of the vehicle pays within 14 days prior to the hearing date, which is also permitted for other toll operators. For violations on any toll road, the bill provides that for a first conviction there is a cap of \$2,200 on civil penalties and administrative fees. The bill also provides for a 10-day grace period for unpaid tolls and requires toll operators to attempt to process and collect unpaid tolls twice during such period. The bill allows the Governor to enter into agreements on behalf of the Commonwealth with other states to provide for the enforcement of tolling violations occurring in Virginia on out-of-state residents and to enforce tolling violations in other states on Virginia residents. Reciprocity agreements with other states would provide for notification of the Commissioner of the Department of Motor Vehicles (DMV) or other similar entity in another state so that violators who have not paid would have their registration suspended in accordance with the agreement. The bill allows for agreements between toll operators or high-occupancy toll (HOT) lanes operators and DMV to include necessary information to enforce reciprocity agreements. The bill states that a toll violation on the HOT lanes is a traffic infraction and that a HOT lanes operator shall mail the statutorily required invoice for unpaid tolls, as is the case for other toll violations. The bill clarifies references to the issuance of summonses for toll violations and requires toll operators to attempt to collect tolls through a debt collector before mailing a summons. The bill provides for a two-year statute of limitations for all toll violations. The bill contains technical amendments. This bill incorporates [HB 169](#) and [HB 1070](#).

**SB515 - § 33.2-118 - Mobile food vending in commuter lots in Planning District 8; fees; security.** Allows mobile food vending units to apply for a permit and pay a fee to the Department of Transportation that would allow them to sell food in commuter lots in Planning District 8. The bill requires the Department to establish criteria for the program and a fee for the permit and to publish the permit application form and the established fee for the permit on its website.

**SB658 - §§ 46.2-663 through 46.2-680 - Technical changes; registration exemptions.** Clarifies that a person with a registration exemption is not required to obtain a registration certificate, license plates, or decals and makes the corresponding grammatical clarification throughout Article 6 (§ 46.2-662 et seq.) of Chapter 6 of Title 46.2.

## CRIMINAL – FULL TEXT

**Protective orders; possession of firearms; penalty.** Provides that it is a Class 6 felony for a person who is subject to a permanent protective order (i.e., a protective order with a maximum duration of two years) for family abuse to possess a firearm while the order is in effect. The bill also provides that such person may continue to possess and transport a firearm for 24 hours after being served with the order for the purposes of selling or transferring the firearm to another person. Under current law, it is a Class 1 misdemeanor for a person subject to a protective order to purchase or transport a firearm. This bill is identical to [SB 49](#).

### CHAPTER 48

*An Act to amend and reenact §§ [18.2-308.09](#), [18.2-308.1:4](#), and [18.2-308.2:3](#) of the Code of Virginia, relating to protective orders; possession of firearms.*

[H 1391]

Approved February 26, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [18.2-308.09](#), [18.2-308.1:4](#), and [18.2-308.2:3](#) of the Code of Virginia are amended and reenacted as follows:

§ [18.2-308.09](#). Disqualifications for a concealed handgun permit.

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § [18.2-308.1:1](#), [18.2-308.1:2](#), or [18.2-308.1:3](#) or the substantially similar law of any other state or of the United States.
2. An individual who was ineligible to possess a firearm pursuant to § [18.2-308.1:1](#) and who was discharged from the custody of the Commissioner pursuant to § [19.2-182.7](#) less than five years before the date of his application for a concealed handgun permit.
3. An individual who was ineligible to possess a firearm pursuant to § [18.2-308.1:2](#) and whose competency or capacity was restored pursuant to § [64.2-2012](#) less than five years before the date of his application for a concealed handgun permit.
4. An individual who was ineligible to possess a firearm under § [18.2-308.1:3](#) and who was released from commitment less than five years before the date of this application for a concealed handgun permit.
5. An individual who is subject to a restraining order, or to a protective order and prohibited by § [18.2-308.1:4](#) from purchasing, *possessing*, or transporting a firearm.
6. An individual who is prohibited by § [18.2-308.2](#) from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.
7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.
8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.

9. An individual who has been convicted of a violation of § [18.2-266](#) or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § [4.1-333](#).

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § [18.2-280](#) or [18.2-286.1](#) or brandishing of a firearm in violation of § [18.2-282](#) within the three-year period immediately preceding the application.

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense that would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within 16 years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions."

17. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15.

18. An individual who has received mental health treatment or substance abuse treatment in a residential setting within five years prior to the date of his application for a concealed handgun permit.

19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (§ [18.2-247](#) et seq.) or former § [18.2-248.1:1](#) or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Article 1 (§ [18.2-247](#) et seq.) or former § [18.2-248.1:1](#) or upon a charge of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § [18.2-251](#) or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

§ [18.2-308.1:4](#). Purchase or transportation of firearm by persons subject to protective orders; penalties.

- A. It is unlawful for any person who is subject to (i) a protective order entered pursuant to § [16.1-253.1](#), [16.1-253.4](#), [16.1-278.2](#), [16.1-279.1](#), [19.2-152.8](#), [19.2-152.9](#), or [19.2-152.10](#); (ii) an order issued pursuant to subsection B of § [20-103](#); (iii) an order entered pursuant to subsection E of § [18.2-60.3](#); (iv) a preliminary protective order entered pursuant to subsection F of § [16.1-253](#) where a petition alleging abuse or neglect has been filed; or (v) an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), (iii), or (iv) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this ~~section~~ subsection is a Class 1 misdemeanor.

*B. In addition to the prohibition set forth in subsection A, it is unlawful for any person who is subject to a protective order entered pursuant to § [16.1-279.1](#) or an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to § [16.1-279.1](#) to knowingly possess any firearm while the order is in effect, provided that for a period of 24 hours after being served with a protective order in accordance with subsection C of § [16.1-279.1](#) such person may continue to possess and, notwithstanding the provisions of subsection A, transport any firearm possessed by such person at the time of service for the purposes of selling or transferring any such firearm to any person who is not otherwise prohibited by law from possessing such firearm. A violation of this subsection is a Class 6 felony.*

§ [18.2-308.2:3](#). Criminal background check required for employees of a gun dealer to transfer firearms; exemptions; penalties.

A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C. § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent, temporary, paid or unpaid, for the transfer of firearms under § [18.2-308.2:2](#), if such employee would be prohibited from possessing a firearm under §§ [18.2-308.1:1](#), [18.2-308.1:2](#), or [18.2-308.1:3](#), subsection B of § [18.2-308.1:4](#), or § [18.2-308.2](#), or § [18.2-308.2:01](#) or is an illegal alien, or is prohibited from purchasing or transporting a firearm pursuant to subsection A of § [18.2-308.1:4](#) or § [18.2-308.1:5](#).

B. Prior to permitting an applicant to begin employment, the dealer shall obtain a written statement or affirmation from the applicant that he is not disqualified from possessing a firearm and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant.

C. Prior to August 1, 2000, the dealer shall obtain written statements or affirmations from persons employed before July 1, 2000, to act as a seller under § [18.2-308.2:2](#) that they are not disqualified from possessing a firearm. Within five working days of the employee's next birthday, after August 1, 2000, the dealer shall submit the employee's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the request.

C1. In lieu of submitting fingerprints pursuant to this section, any dealer holding a valid federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn and notarized affidavit to the Department of State Police on a form provided by the Department, stating that the dealer has been subjected to a record check prior to the issuance and that the FFL was issued by the ATF. The affidavit may also contain the names of any employees that have been subjected to a record check and approved by the ATF. This exemption shall apply regardless of whether the FFL was issued in the name of the dealer or in the name of the business. The affidavit shall contain the valid FFL number, state the name of each person requesting the exemption, together with each person's identifying information, including their social security number and the following statement: "I hereby swear, under the penalty of perjury, that as a condition of obtaining a federal firearms license, each person requesting an exemption in this affidavit has been subjected to a fingerprint identification check by the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Alcohol, Tobacco and Firearms subsequently determined that each person satisfied the requirements of 18 U.S.C. § 921 et seq. I understand that any person convicted of making a false

statement in this affidavit is guilty of a Class 5 felony and that in addition to any other penalties imposed by law, a conviction under this section shall result in the forfeiture of my federal firearms license."

D. The Department of State Police, upon receipt of an individual's record or notification that no record exists, shall submit an eligibility report to the requesting dealer within 30 days of the applicant beginning his duties for new employees or within 30 days of the applicant's birthday for a person employed prior to July 1, 2000.

E. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the dealer shall not be disseminated except as provided in this section.

F. The applicant shall bear the cost of obtaining the criminal history record unless the dealer, at his option, decides to pay such cost.

G. Upon receipt of the request for a criminal history record information check, the State Police shall establish a unique number for that firearm seller. Beginning September 1, 2001, the firearm seller's signature, firearm seller's number and the dealer's identification number shall be on all firearm transaction forms. The State Police shall void the firearm seller's number when a disqualifying record is discovered. The State Police may suspend a firearm seller's identification number upon the arrest of the firearm seller for a potentially disqualifying crime.

H. This section shall not restrict the transfer of a firearm at any place other than at a dealership or at any event required to be registered as a gun show.

I. Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized by this section and § [18.2-308.2:2](#), shall be guilty of a Class 2 misdemeanor.

J. Any person willfully and intentionally making a materially false statement on the personal descriptive information required in this section shall be guilty of a Class 5 felony. Any person who offers for transfer any firearm in violation of this section shall be guilty of a Class 1 misdemeanor. Any dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of this section shall be guilty of a Class 1 misdemeanor.

K. There is no civil liability for any seller for the actions of any purchaser or subsequent transferee of a firearm lawfully transferred pursuant to this section.

L. The provisions of this section requiring a seller's background check shall not apply to a licensed dealer.

M. Any person who willfully and intentionally makes a false statement in the affidavit as set out in subdivision C 1 shall be guilty of a Class 5 felony.

N. For purposes of this section:

"Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Place of business" means any place or premises where a dealer may lawfully transfer firearms.

"Seller" means for the purpose of any single sale of a firearm any person who is a dealer or an agent of a dealer, who may lawfully transfer firearms and who actually performs the criminal background check in accordance with the provisions of § [18.2-308.2:2](#).

"Transfer" means any act performed with intent to sell, rent, barter, trade or otherwise transfer ownership or permanent possession of a firearm at the place of business of a dealer.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the Acts of Assembly of 2015 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

**Protective orders; contacts.** Provides that an emergency protective order may prohibit the respondent from being in the physical presence of the petitioner or the petitioner's family or household members. The bill provides that the term "physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or (ii) unreasonably being within 100 feet of the petitioner's residence or place of employment.

## CHAPTER 455

An Act to amend and reenact §§ [16.1-253.4](#) and [19.2-152.8](#) of the Code of Virginia, relating to protective orders; contacts; physical presence.

[H 588]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [16.1-253.4](#) and [19.2-152.8](#) of the Code of Virginia are amended and reenacted as follows:

§ [16.1-253.4](#). Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate (i) finds that a warrant for a violation of § [18.2-57.2](#) has been issued or issues a warrant for violation of § [18.2-57.2](#) and finds that there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) finds that reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;

2. Prohibiting such contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person, *including prohibiting the respondent from being in the physical presence of the allegedly abused person or family or household members of the allegedly abused person*, as the judge or magistrate deems necessary to protect the safety of such persons;

3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property; and

4. Granting the petitioner the possession of any companion animal as defined in § [3.2-6500](#) if such petitioner meets the definition of owner in § [3.2-6500](#).

When the judge or magistrate considers the issuance of an emergency protective order pursuant to clause (i), he shall presume that there is probable danger of further acts of family abuse against a family or household member by the respondent unless the presumption is rebutted by the allegedly abused person.

C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59 p.m. on the next day that the juvenile and domestic relations district court is in session. When issuing an emergency protective order under this section, the judge or magistrate shall provide the protected person or the law-enforcement officer seeking the emergency protective order with the form for use in filing petitions pursuant to § [16.1-253.1](#) and written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme

Court. If these forms are provided to a law-enforcement officer, the officer may provide these forms to the protected person when giving the emergency protective order to the protected person. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. The hearing on the motion shall be given precedence on the docket of the court.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § [16.1-253.1](#) or [16.1-279.1](#), may request the extension of an emergency protective order for an additional period of time not to exceed three days after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the allegedly abused person.

E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court or magistrate. A copy of an emergency protective order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith on the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by subsection D of § [19.2-81.3](#). The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

G. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

H. As used in this section, "law-enforcement officer" means (i) any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision

thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth; (ii) any member of an auxiliary police force established pursuant to § [15.2-1731](#); and (iii) any special conservator of the peace who meets the certification requirements for a law-enforcement officer as set forth in § [15.2-1706](#). Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

J. As used in this section, ~~"copy"~~:

"Copy" includes a facsimile copy.

*"Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or (ii) unreasonably being within 100 feet from the petitioner's residence or place of employment.*

K. No fee shall be charged for filing or serving any petition or order pursuant to this section.

L. Except as provided in § [16.1-253.2](#), a violation of a protective order issued under this section shall constitute contempt of court.

§ [19.2-152.8](#). Emergency protective orders authorized.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to an act of violence, force, or threat and on that assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further such act being committed by the respondent against the alleged victim or (ii) a petition or warrant for the arrest of the respondent has been issued for any criminal offense resulting from the commission of an act of violence, force, or threat, the judge or magistrate shall issue an ex parte emergency protective order imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of violence, force, or threat or criminal offenses resulting in injury to person or property;

2. Prohibiting such contacts by the respondent with the alleged victim or the alleged victim's family or household members, *including prohibiting the respondent from being in the physical presence of the alleged victim or the alleged victim's family or household members*, as the judge or magistrate deems necessary to protect the safety of such persons;

3. Such other conditions as the judge or magistrate deems necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses resulting in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and

4. Granting the petitioner the possession of any companion animal as defined in § [3.2-6500](#) if such petitioner meets the definition of owner in § [3.2-6500](#).

C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59 p.m. on the next day that the court which issued the order is in session. The respondent

may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § [19.2-152.9](#) or [19.2-152.10](#), may request the extension of an emergency protective order for an additional period of time not to exceed three days after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate, on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the alleged victim of such crime.

E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court or magistrate. A copy of an emergency protective order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith upon the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required into the Virginia Criminal Information Network and make due return to the court. One copy of the order shall be given to the alleged victim of such crime. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the appropriate district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court. Upon request, the clerk shall provide the alleged victim of such crime with information regarding the date and time of service.

F. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

G. As used in this section, a "law-enforcement officer" means any (i) person who is a full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to § [15.2-1731](#). Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

H. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

I. As used in this section, ~~"copy"~~:

"Copy" includes a facsimile copy.

*"Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or (ii) unreasonably being within 100 feet from the petitioner's residence or place of employment.*

J. No fee shall be charged for filing or serving any petition pursuant to this section.

K. No emergency protective order shall be issued pursuant to this section against a law-enforcement officer for any action arising out of the lawful performance of his duties.

**Violation of protective order; firearm or other deadly weapon; penalty.** Provides that any person who violates a protective order with which he has been served while knowingly armed with a firearm or other deadly weapon is guilty of a Class 6 felony. This bill is identical to [SB 323](#).

## CHAPTER 585

*An Act to amend and reenact §§ [16.1-253.2](#) and [18.2-60.4](#) of the Code of Virginia, relating to violation of protective order; possession of a firearm or other deadly weapon; penalty.*

[H 1087]

Approved March 29, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [16.1-253.2](#) and [18.2-60.4](#) of the Code of Virginia are amended and reenacted as follows:

§ [16.1-253.2](#). Violation of provisions of protective orders; penalty.

A. In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to § [16.1-253](#), [16.1-253.1](#), [16.1-253.4](#), [16.1-278.14](#), or [16.1-279.1](#) or subsection B of § [20-103](#), when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1 misdemeanor. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

*B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § [16.1-253](#), [16.1-253.1](#), [16.1-253.4](#), [16.1-278.14](#), or [16.1-279.1](#) or subsection B of § [20-103](#) is guilty of a Class 6 felony.*

C. If the respondent commits an assault and battery upon any party protected by the protective order, resulting in serious bodily injury to the party, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § [16.1-279.1](#) for a specified period not exceeding two years from the date of conviction.

§ [18.2-60.4](#). Violation of protective orders; penalty.

A. Any person who violates any provision of a protective order issued pursuant to § [19.2-152.8](#), [19.2-152.9](#), or [19.2-152.10](#) is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of

a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence, is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

*B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § [19.2-152.8](#), [19.2-152.9](#), or [19.2-152.10](#) is guilty of a Class 6 felony.*

*C. If the respondent commits an assault and battery upon any party protected by the protective order resulting in serious bodily injury to the party, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.*

*D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.*

*E. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § [19.2-152.10](#) for a specified period not exceeding two years from the date of conviction.*

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation cannot be determined; therefore, Chapter 665 of the Acts of Assembly of 2015 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

**Possession of controlled paraphernalia.** Provides that possession of controlled paraphernalia and distribution of controlled paraphernalia, both of which are punishable as Class 1 misdemeanors, are distinct offenses.

## CHAPTER 229

*An Act to amend and reenact § [54.1-3466](#) of the Code of Virginia, relating to possession of controlled paraphernalia.*

[H 170]

Approved March 4, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [54.1-3466](#) of the Code of Virginia is amended and reenacted as follows:

§ [54.1-3466](#). Possession or distribution of controlled paraphernalia; meaning of controlled paraphernalia; evidence; exceptions.

~~Except as authorized in this chapter, it shall be a misdemeanor for any person to possess or distribute controlled paraphernalia which shall mean~~ A. For purposes of this chapter, "controlled paraphernalia" means (i) a hypodermic syringe, needle, or other instrument or implement or combination thereof adapted for the administration of controlled dangerous substances by hypodermic injections under circumstances ~~which~~ that reasonably indicate an intention to use such controlled paraphernalia for purposes of illegally administering any controlled drug or (ii) gelatin capsules, glassine envelopes, or any other container suitable for the packaging of individual quantities of controlled drugs in sufficient quantity to and under circumstances ~~which~~ that reasonably indicate an intention to use any such item for the illegal manufacture, distribution, or dispensing of any such controlled drug. Evidence of such circumstances shall include, but not be limited to, close proximity of any such controlled paraphernalia to any adulterants or equipment commonly used in the illegal manufacture and distribution of controlled drugs including, but not limited to, scales, sieves, strainers, measuring spoons, staples and staplers, or procaine hydrochloride, mannitol, lactose, quinine, or any controlled drug, or any machine, equipment, instrument, implement, device, or combination thereof ~~which~~ that is adapted for the production of controlled drugs under circumstances ~~which~~ that reasonably indicate an intention to use such item or combination thereof to produce, sell, or dispense any controlled drug in violation of the provisions of this chapter.

*B. Except as authorized in this chapter, it is unlawful for any person to possess controlled paraphernalia.*

*C. Except as authorized in this chapter, it is unlawful for any person to distribute controlled paraphernalia.*

*D. A violation of this section is a Class 1 misdemeanor.*

*E. The provisions of this section shall not apply to persons who have acquired possession and control of controlled paraphernalia in accordance with the provisions of this article or to any person who owns or is engaged in breeding or raising livestock, poultry, or other animals to which hypodermic injections are customarily given in the interest of health, safety, or good husbandry; or to hospitals, physicians, pharmacists, dentists, podiatrists, veterinarians, funeral directors and embalmers, persons to whom a permit has been issued, manufacturers, wholesalers, or their authorized agents or employees when in the usual course of their business, if the controlled paraphernalia lawfully obtained ~~continues~~ continue to be used for the legitimate purposes for which they were obtained.*

**Statute of limitations; sexual crimes against minors.** Extends the statute of limitations to one year after the victim reaches 18 years of age for misdemeanor violations of the following crimes: carnal knowledge of offender by employee of bail bond company, sexual battery, infected sexual battery, sexual abuse of a child age 13 or 14 by an adult, attempted sexual battery, and tongue penetration by adult of mouth of child under age 13. Under existing law, there is a one-year statute of limitations on most misdemeanors. This bill is a recommendation of the Virginia State Crime Commission and is identical to [SB 354](#).

## CHAPTER 233

*An Act to amend and reenact § [19.2-8](#) of the Code of Virginia, relating to limitation of prosecutions; certain sexual crimes.*

[H 510]

Approved March 4, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [19.2-8](#) of the Code of Virginia is amended and reenacted as follows:

§ [19.2-8](#). Limitation of prosecutions.

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for any misdemeanor violation of § [54.1-3904](#) shall be commenced within two years of the discovery of the offense.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § [63.2-1701](#) shall be commenced within one year from the date of the filing of the petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act (§ [60.2-100](#) et seq.) shall be commenced within three years next after the commission of the offense.

A prosecution for any violation of § [10.1-1320](#), [62.1-44.32](#) (b), [62.1-194.1](#), or Article 11 (§ [62.1-44.34:14](#) et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission of any toxic substance as defined in § [32.1-239](#) shall be commenced within three years next after the commission of the offense.

Prosecution of Building Code violations under § [36-106](#) shall commence within one year of discovery of the offense by the building official, provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions under § [36-106](#) relating to the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code shall commence within one year of the issuance of a notice of violation for the offense by the building official.

Prosecution of any misdemeanor violation of § [54.1-111](#) shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of any misdemeanor violation of any professional licensure requirement imposed by a locality shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense.

Prosecution of any violation of § [55-79.87](#), [55-79.88](#), [55-79.89](#), [55-79.90](#), [55-79.93](#), [55-79.94](#), [55-79.95](#), [55-79.103](#), or any rule adopted under or order issued pursuant to § [55-79.98](#), shall commence within three years next after the commission of the offense.

Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § [29.1-553](#) shall commence within three years after commission of the offense.

Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to make any return at the time or times required by law or regulations shall commence within three years next after the commission of the offense, unless a longer period is otherwise prescribed.

Prosecution of violations of subsection A or B of § [3.2-6570](#) shall commence within five years of the commission of the offense, except violations regarding agricultural animals shall commence within one year of the commission of the offense.

A prosecution for a violation of § [18.2-386.1](#) shall be commenced within five years of the commission of the offense.

A prosecution for any violation of the Campaign Finance Disclosure Act, Chapter 9.3 (§ [24.2-945](#) et seq.) of Title 24.2, shall commence within one year of the discovery of the offense but in no case more than three years after the date of the commission of the offense.

A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer Crimes Act (§ [18.2-152.1](#) et seq.) or pursuant to § [18.2-186.3](#) for identity theft shall be commenced before the earlier of (i) five years after the commission of the last act in the course of conduct constituting a violation of the article or (ii) one year after the existence of the illegal act and the identity of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged by such violation.

*A prosecution of a misdemeanor under § [18.2-64.2](#), [18.2-67.4](#), [18.2-67.4:1](#), [18.2-67.4:2](#), [18.2-67.5](#), or [18.2-370.6](#) where the victim is a minor at the time of the offense shall be commenced no later than one year after the victim reaches majority.*

A prosecution for a violation of § [18.2-260.1](#) shall be commenced within three years of the commission of the offense.

Nothing in this section shall be construed to apply to any person fleeing from justice or concealing himself within or without the Commonwealth to avoid arrest or be construed to limit the time within which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or failure to provide for the support and maintenance of a spouse or child.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the Acts of Assembly of 2015 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

**Sex Offender and Crimes Against Minors Registry Act; penalty.** Adds to the offenses for which registration is required on the Sex Offender and Crimes Against Minors Registry the crimes of (i) procuring a person for prostitution and receiving money from the earnings of a person engaged in prostitution if the crime involves a minor and (ii) aggravated malicious wounding if the perpetrator of the crime was an adult and the victim was under the age of 13. The bill also provides that only persons who committed such crimes on or after July 1, 2016, are required to register. This bill incorporates [HB 604](#) and [HB 672](#).

## CHAPTER 586

*An Act to amend and reenact § 9.1-902 of the Code of Virginia, relating to the Sex Offender and Crimes Against Minors Registry; receiving money from earnings of a prostitute; procuring; aggravated malicious wounding.*

[H 177]

Approved March 30, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [9.1-902](#) of the Code of Virginia is amended and reenacted as follows:

§ [9.1-902](#). Offenses requiring registration.

A. For purposes of this chapter:

"Offense for which registration is required" includes:

1. Any offense listed in subsection B;
2. Criminal homicide;
3. Murder;
4. A sexually violent offense;
5. Any offense similar to those listed in subdivisions 1 through 4 under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof; and
6. Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

B. The offenses included under this subsection include any violation of, attempted violation of, or conspiracy to violate:

1. § [18.2-63](#) unless registration is required pursuant to subdivision E 1; § [18.2-64.1](#); former § [18.2-67.2:1](#); § [18.2-90](#) with the intent to commit rape; former § [18.1-88](#) with the intent to commit rape; any felony violation of § [18.2-346](#); any violation of subdivision (4) of § [18.2-355](#); any violation of subsection C of § [18.2-357.1](#); subsection B or C of § [18.2-374.1:1](#); former subsection D of § [18.2-374.1:1](#) as it was in effect from July 1, 1994, through June 30, 2007; former clause (iv) of subsection B of § [18.2-374.3](#) as it was in effect on June 30, 2007; subsection B, C, or D of § [18.2-374.3](#); or a third or subsequent conviction of (i) § [18.2-67.4](#), (ii) § [18.2-67.4:2](#), (iii) subsection C of § [18.2-67.5](#), or (iv) § [18.2-386.1](#).

If the offense was committed on or after July 1, 2006, § [18.2-91](#) with the intent to commit any felony offense listed in this section; subsection A of § [18.2-374.1:1](#); or a felony under § [18.2-67.5:1](#).

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § [18.2-67.10](#), subsection A of § [18.2-47](#), clause (i) of § [18.2-48](#), § [18.2-67.4](#), subsection C of § [18.2-67.5](#), § [18.2-361](#), § [18.2-366](#), or a felony violation of former § [18.1-191](#).

3. § [18.2-370.6](#).

4. *If the offense was committed on or after July 1, 2016, and where the perpetrator is 18 years of age or older and the victim is under the age of 13, any violation of § [18.2-51.2](#).*

5. *If the offense was committed on or after July 1, 2016, any violation of § [18.2-356](#) punishable as a Class 3 felony or any violation of § [18.2-357](#) punishable as a Class 3 felony.*

C. "Criminal homicide" means a homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § [18.2-371](#) or § [18.2-371.1](#), when the offenses arise out of the same incident.

D. "Murder" means a violation of, attempted violation of, or conspiracy to violate § [18.2-31](#) or § [18.2-32](#) where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section or a violation of former § [18.1-21](#) where the victim is (a) under 15 years of age or (b) at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

E. "Sexually violent offense" means a violation of, attempted violation of, or conspiracy to violate:

1. Clause (ii) and (iii) of § [18.2-48](#), former § [18.1-38](#) with the intent to defile or, for the purpose of concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § [18.1-39](#) that involves assisting or aiding in such an abduction, § [18.2-61](#), former § [18.1-44](#) when such act is accomplished against the complaining witness's will, by force, or through the use of the complaining witness's mental incapacity or physical helplessness, or if the victim is under 13 years of age, subsection A of § [18.2-63](#) where the perpetrator is more than five years older than the victim, § [18.2-67.1](#), § [18.2-67.2](#), § [18.2-67.3](#), former § [18.1-215](#) when the complaining witness is under 13 years of age, § [18.2-67.4](#) where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of § [18.2-67.5](#), § [18.2-370](#), subdivision (1), (2), or (4) of former § [18.1-213](#), former § [18.1-214](#), § [18.2-370.1](#), or § [18.2-374.1](#); or

2. § [18.2-63](#), § [18.2-64.1](#), former § [18.2-67.2:1](#), § [18.2-90](#) with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § [18.2-67.10](#), subsection A of § [18.2-47](#), § [18.2-67.4](#), subsection C of § [18.2-67.5](#), clause (i) of § [18.2-48](#), § [18.2-361](#), § [18.2-366](#), or subsection C of § [18.2-374.1:1](#). An offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that person had been at liberty between such convictions or adjudications;

3. If the offense was committed on or after July 1, 2006, § [18.2-91](#) with the intent to commit any felony offense listed in this section. An offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that the person had been at liberty between such convictions or adjudications; or

4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as described in § 1591 of Title 18, U.S.C.).

F. "Any offense listed in subsection B," "criminal homicide" as defined in this section, "murder" as defined in this section, and "sexually violent offense" as defined in this section includes (i) any similar offense under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof or (ii) any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

G. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require offender registration. In making its determination, the court shall consider all of the following factors that are relevant to the case: (i) the degree to which the delinquent act was committed with the use of force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the case. The attorney for the Commonwealth may file such a motion at any time during which the offender is within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any hearing on such motion, the court shall appoint a qualified and competent attorney-at-law to represent the offender unless an attorney has been retained and appears on behalf of the offender or counsel has already been appointed.

H. Prior to entering judgment of conviction of an offense for which registration is required if the victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment, warrant, or information does not allege that the victim of the offense was a minor, physically helpless, or mentally incapacitated, the court shall determine by a preponderance of the evidence whether the victim of the offense was a minor, physically helpless, or mentally incapacitated, as defined in § [18.2-67.10](#), and shall also determine the age of the victim at the time of the offense if it determines the victim to be a minor. When such a determination is required, the court shall advise the defendant of its determination and of the defendant's right to make a motion to withdraw a plea of guilty or nolo contendere pursuant to § [19.2-296](#). If the court grants the defendant's motion to withdraw his plea of guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise. Failure to make such determination or so advise the defendant does not otherwise invalidate the underlying conviction.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the Acts of Assembly of 2015 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

**Asset forfeiture.** Prohibits a law-enforcement agency from requesting, requiring, or otherwise inducing a person who asserts a lawful right to property seized for the purpose of forfeiture to waive his interest in or rights to the property until an information is filed. The bill allows attorneys for the Commonwealth to electronically notify the Department of Motor Vehicles, in a manner approved by the Commissioner, that a vehicle has been seized. A provision is added allowing a forfeiture proceeding to be stayed if it is also related to a warrant. The Department of Criminal Justice Services will be required to prepare an annual report to the Governor and General Assembly regarding information on all drug and nondrug asset seizures and forfeitures. The report shall be available to the public. This bill is a recommendation of the Virginia State Crime Commission. This bill is identical to [SB 423](#).

## CHAPTER 203

An Act to amend and reenact §§ [19.2-386.2](#), [19.2-386.2:1](#), [19.2-386.10](#), and [19.2-386.14](#) of the Code of Virginia, relating to asset forfeiture.

[H 771]

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [19.2-386.2](#), [19.2-386.2:1](#), [19.2-386.10](#), and [19.2-386.14](#) of the Code of Virginia are amended and reenacted as follows:

§ [19.2-386.2](#). Seizure of named property.

A. When any property subject to seizure under Chapter 22.2 (§ [19.2-386.15](#) et seq.) or other provision under the Code has not been seized at the time an information naming that property is filed, the clerk of the circuit court or a judge of the circuit court, upon motion of the attorney for the Commonwealth wherein the information is filed, shall issue a warrant to the sheriff or other state or local law-enforcement officer authorized to serve criminal process in the jurisdiction where the property is located, describing the property named in the complaint and authorizing its immediate seizure.

B. In all cases of seizure of real property, a notice of lis pendens shall be filed with the clerk of the circuit court of the county or city wherein the property is located and shall be indexed in the land records in the name or names of those persons whose interests appear to be affected thereby.

C. When any property is seized for the purposes of forfeiture under Chapter 22.2 (§ [19.2-386.15](#) et seq.) or other forfeiture provision under the Code, the agency seizing the property shall, as soon as practicable after the seizure, conduct an inventory of the seized property and shall, as soon as practicable, provide a copy of the inventory to the owner. An agency's failure to provide a copy of an inventory pursuant to this subsection shall not invalidate any forfeiture.

*D. When any property is seized for the purposes of forfeiture under Chapter 22.2 (§ [19.2-386.15](#) et seq.) or other forfeiture provision under the Code, and an information naming that property has not been filed, neither the agency seizing the property nor any other law-enforcement agency may request, require, or in any manner induce any person who asserts ownership, lawful possession, or any lawful right to the property to waive his interest in or rights to the property until an information has been filed.*

§ [19.2-386.2:1](#). Notice to Commissioner of Department of Motor Vehicles; duties of Commissioner.

If the property seized is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the attorney for the Commonwealth shall forthwith notify the Commissioner of the Department of Motor Vehicles, by certified mail, or electronically in a format prescribed by the Commissioner, of such seizure and the motor number of the vehicle so seized, and the Commissioner shall promptly certify to such attorney for the Commonwealth the name and address of the person in whose name such vehicle is registered, together with the name and address of any person holding a lien thereon, and the amount thereof. The Commissioner shall also forthwith notify such registered owner and lienor, in writing, of the reported seizure and the county or city wherein such seizure was made.

The certificate of the Commissioner, concerning such registration and lien, shall be received in evidence in any proceeding, either civil or criminal, under any provision of this chapter, in which such facts may be material to the issue involved.

§ [19.2-386.10](#). Trial.

A. A party defendant who fails to appear as provided in § [19.2-386.9](#) shall be in default. The forfeiture shall be deemed established as to the interest of any party in default upon entry of judgment as provided in § [19.2-386.11](#). Within ~~twenty-one~~ 21 days after entry of judgment, any party defendant against whom judgment has been so entered may petition the Department of Criminal Justice Services for remission of his interest in the forfeited property. For good cause shown and upon proof that the party defendant's interest in the property is exempt under subdivision 2, 3 or 4 of § [19.2-386.8](#), the Department of Criminal Justice Services shall grant the petition and direct the state treasury to either (i) remit to the party defendant an amount not exceeding the party defendant's interest in the proceeds of sale of the forfeited property after deducting expenses incurred and payable pursuant to subsection B of § [19.2-386.12](#) or (ii) convey clear and absolute title to the forfeited property in extinguishment of such interest.

If any party defendant appears in accordance with § [19.2-386.9](#), the court shall proceed to trial of the case, unless trial by jury is demanded by the Commonwealth or any party defendant. At trial, the Commonwealth has the burden of proving that the property is subject to forfeiture under this chapter. Upon such a showing by the Commonwealth, the claimant has the burden of proving that the claimant's interest in the property is exempt under subdivision 2, 3 or 4 of § [19.2-386.8](#). The proof of all issues shall be by a preponderance of the evidence.

B. The information and trial thereon shall be independent of any criminal proceeding against any party or other person for violation of law. However, upon motion and for good cause shown, the court may stay a forfeiture proceeding that is related to any *warrant*, indictment, or information.

§ [19.2-386.14](#). Sharing of forfeited assets.

A. All cash, negotiable instruments, and proceeds from a sale conducted pursuant to § [19.2-386.7](#) or [19.2-386.12](#), after deduction of expenses, fees, and costs as provided in § [19.2-386.12](#), shall, as soon after entry of the forfeiture as is practicable, be distributed in a manner consistent with this chapter and Article VIII, Section 8 of the Constitution of Virginia.

A1. All cash, negotiable instruments and proceeds from a sale conducted pursuant to § [19.2-386.7](#) or [19.2-386.12](#), after deduction of expenses, fees and costs as provided in § [19.2-386.12](#), shall, as soon after entry of the forfeiture as is practicable, be paid over to the state treasury into a special fund of the Department of Criminal Justice Services for distribution in accordance with this section. The forfeited property and proceeds, less 10 percent, shall be made available to federal, state and local agencies to promote law enforcement in accordance with this section and regulations adopted by the Criminal Justice Services Board to implement the asset-sharing program.

The 10 percent retained by the Department shall be held in a nonreverting fund, known as the Asset Sharing Administrative Fund. Administrative costs incurred by the Department to manage and operate the asset-sharing program shall be paid from the Fund. Any amounts remaining in the Fund after payment of these costs shall be used to promote state or local law-enforcement activities. Distributions from the Fund for these activities shall be based upon need and shall be made from time to time in accordance with regulations promulgated by the Board.

B. Any federal, state or local agency or office that directly participated in the investigation or other law-enforcement activity which led, directly or indirectly, to the seizure and forfeiture shall be eligible for, and may petition the Department for, return of the forfeited asset or an equitable share of the net proceeds, based upon the degree of participation in the law-enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law-enforcement effort with respect to the violation of law on which the forfeiture is based. Upon finding that the petitioning agency is eligible for distribution and that all participating agencies agree on the equitable share of each, the Department shall distribute each share directly to the appropriate treasury of the participating agency.

If all eligible participating agencies cannot agree on the equitable shares of the net proceeds, the shares shall be determined by the Criminal Justice Services Board in accordance with regulations which shall specify the criteria to be used by the Board in assessing the degree of participation in the law-enforcement effort resulting in the forfeiture.

C. After the order of forfeiture is entered concerning any motor vehicle, boat, aircraft, or other tangible personal property, any seizing agency may (i) petition the Department for return of the property that is not subject to a grant or pending petition for remission or (ii) request the circuit court to order the property destroyed. Where all the participating agencies agree upon the equitable distribution of the tangible personal property, the Department shall return the property to those agencies upon finding that (a) the agency meets the criteria for distribution as set forth in subsection B and (b) the agency has a clear and reasonable law-enforcement need for the forfeited property.

If all eligible participating agencies cannot agree on the distribution of the property, distribution shall be determined by the Criminal Justice Services Board as in subsection B, taking into consideration the clear and reasonable law-enforcement needs for the property which the agencies may have. In order to equitably distribute tangible personal property, the Criminal Justice Services Board may require the agency receiving the property to reimburse the Department in cash for the difference between the fair market value of the forfeited property and the agency's equitable share as determined by the Criminal Justice Services Board.

If a seizing agency has received property for its use pursuant to this section, when the agency disposes of the property (1) by sale, the proceeds shall be distributed as set forth in this section; or (2) by destruction pursuant to a court order, the agency shall do so in a manner consistent with this section.

D. All forfeited property, including its proceeds or cash equivalent, received by a participating state or local agency pursuant to this section shall be used to promote law enforcement but shall not be used to supplant existing programs or funds. The Board shall promulgate regulations establishing an audit procedure to ensure compliance with this section.

E. On or after July 1, 2012, but before July 1, 2014, local seizing agencies may contribute cash funds and proceeds from forfeited property to the Virginia Public Safety Foundation to support the construction of the Commonwealth Public Safety Memorial. Any funds contributed by seizing agencies shall be contributed only after an internal analysis to determine that such contributions will not negatively impact law-enforcement training or operations.

*F. The Department shall report annually on or before December 31 to the Governor and the General Assembly the amount of all cash, negotiable instruments, and proceeds from sales conducted pursuant to § [19.2-386.7](#) or [19.2-386.12](#) that were forfeited to the Commonwealth, including the amount of all forfeitures distributed to the Literary Fund. Such report shall also detail the amount distributed by the Department to each federal, state, or local agency or office pursuant to this section, and the amount each state or local agency or office received from federal asset forfeiture proceedings. The Department shall ensure that such report is available to the public.*

**Stalking; penalty.** Provides that contacting or following or attempting to contact or follow the person at whom stalking conduct is directed after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the person intended to place the other person, or reasonably should have known that the other person was placed, in reasonable fear of death, criminal sexual assault, or bodily injury to himself or a family or household member. This bill is a recommendation of the Virginia State Crime Commission and is identical to [SB 339](#).

## CHAPTER 745

An Act to amend and reenact § [18.2-60.3](#) of the Code of Virginia, relating to stalking; penalty.

[H 752]

Approved April 20, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [18.2-60.3](#) of the Code of Virginia is amended and reenacted as follows:

§ [18.2-60.3](#). Stalking; penalty.

A. Any person, except a law-enforcement officer, as defined in § [9.1-101](#), and acting in the performance of his official duties, and a registered private investigator, as defined in § [9.1-138](#), who is regulated in accordance with § [9.1-139](#) and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor. *If the person contacts or follows or attempts to contact or follow the person at whom the conduct is directed after being given actual notice that the person does not want to be contacted or followed, such actions shall be prima facie evidence that the person intended to place that other person, or reasonably should have known that the other person was placed, in reasonable fear of death, criminal sexual assault, or bodily injury to himself or a family or household member.*

B. Any person who is convicted of a second offense of subsection A occurring within five years of a prior conviction of such an offense when the person was also convicted within the five-year period prior to the instant offense of a violation of (i) § [18.2-51](#), [18.2-51.2](#), [18.2-51.6](#), [18.2-52](#), or [18.2-57](#) and the victim of that crime was the same person who is the victim of the stalking activity in the instant conviction, (ii) § [18.2-57.2](#), or (iii) a protective order, is guilty of a Class 6 felony.

C. Any person convicted of a third or subsequent conviction of subsection A occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction is guilty of a Class 6 felony.

D. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.

E. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.

F. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least 15 days prior to release of a person sentenced to a term of incarceration of more than 30 days or, if the person was sentenced to a term of incarceration of at least 48 hours but no more than 30 days, 24 hours prior to release. If the person escapes, notice shall be given as soon as practicable following the

escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, "release" includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

G. For purposes of this section:

"Family or household member" has the same meaning as provided in § [16.1-228](#).

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

**Stalking; penalty.** Provides that a second offense of stalking committed within five years of a prior stalking conviction is punishable as a Class 6 felony. Under current law, a second offense of stalking only qualifies for the Class 6 penalty if the person convicted had also been convicted of certain offenses involving assaults or bodily woundings or of violating a protective order.

## CHAPTER 696

An Act to amend and reenact § [18.2-60.3](#) of the Code of Virginia, relating to stalking; penalty.

[H 886]

Approved April 4, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [18.2-60.3](#) of the Code of Virginia is amended and reenacted as follows:

§ [18.2-60.3](#). Stalking; penalty.

A. Any person, except a law-enforcement officer, as defined in § [9.1-101](#), and acting in the performance of his official duties, and a registered private investigator, as defined in § [9.1-138](#), who is regulated in accordance with § [9.1-139](#) and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.

B. Any person who is convicted of a second offense of subsection A occurring within five years of a prior conviction of such an offense ~~when the person was also convicted within the five year period prior to the instant offense of a violation of (i) § [18.2-51](#), [18.2-51.2](#), [18.2-51.6](#), [18.2-52](#), or [18.2-57](#) and the victim of that crime was the same person who is the victim of the stalking activity in the instant conviction, (ii) § [18.2-57.2](#), or (iii) a protective order, under this section or for a substantially similar offense under the law of any other jurisdiction~~ is guilty of a Class 6 felony.

~~C. Any person convicted of a third or subsequent conviction of subsection A occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction is guilty of a Class 6 felony.~~

~~D. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.~~

~~E. D. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.~~

~~F. E. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least 15 days prior to release of a person sentenced to a term of incarceration of more than 30 days or, if the person was sentenced to a term of incarceration of at least 48 hours but no more than 30 days, 24 hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.~~

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, "release" includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

~~G-F.~~ For purposes of this section:

"Family or household member" has the same meaning as provided in § [16.1-228](#).

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation is \$81,914 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

**Installation of pen register or trap and trace device; jurisdiction.** Allows a court in the jurisdiction where an ongoing criminal investigation is being conducted or where there is probable cause to believe an offense was committed, is being committed, or will be committed to issue an order approving the installation and use of a pen register or trap and trace device. Currently, only a court in the jurisdiction where the person who will be the subject of the pen register or trap and trace device lives, works, or maintains an address or a post office box may order its installation.

## CHAPTER 231

*An Act to amend and reenact § 19.2-70.2 of the Code of Virginia, relating to installation of pen register or trap and trace device; jurisdiction.*

[H 176]

Approved March 4, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [19.2-70.2](#) of the Code of Virginia is amended and reenacted as follows:

§ [19.2-70.2](#). Application for and issuance of order for a pen register or trap and trace device; assistance in installation and use.

A. An investigative or law-enforcement officer may make application for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device, in writing under oath or equivalent affirmation, to a court of competent jurisdiction. The application shall include:

1. The identity of the officer making the application and the identity of the law-enforcement agency conducting the investigation; and
2. A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

The application may include a request that the order require information, facilities and technical assistance necessary to accomplish the installation be furnished.

B. An application for an ex parte order authorizing the installation and use of a pen register or trap and trace device may be filed in the jurisdiction *where the ongoing criminal investigation is being conducted; where there is probable cause to believe that an offense was committed, is being committed, or will be committed; or* where the person or persons who subscribe to the wire or electronic communication system live, work, or maintain an address or a post office box. For the purposes of an order entered pursuant to this section for the installation and use of a pen register or trap and trace device, such installation shall be deemed to occur in the jurisdiction where the order is entered, regardless of the physical location or the method by which the information is captured or routed to the law-enforcement officer that made the application. Upon application, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device if the court finds that the investigative or law-enforcement officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

The order shall specify:

1. The identity, if known, of the person in whose name the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied is listed or to whom the line or other facility is leased;
2. The identity, if known, of the person who is the subject of the criminal investigation;

3. The attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied; and

4. A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

C. Installation and use of a pen register or a trap and trace device shall be authorized for a period not to exceed 60 days. Extensions of the order may be granted, but only upon application made and order issued in accordance with this section. The period of an extension shall not exceed 60 days.

D. An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

1. The order and application be sealed until otherwise ordered by the court;

2. Information, facilities and technical assistance necessary to accomplish the installation be furnished if requested in the application; and

3. The person owning or leasing the line or other facility to which the pen register or trap and trace device is attached or applied, or who is obligated by the order to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

E. Upon request of an investigative or a law-enforcement officer authorized by the court to install and use a pen register, a provider of wire or electronic communication service, a landlord, custodian or any other person so ordered by the court shall, as soon as practicable, furnish the officer with all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place.

F. Upon request of an investigative or law-enforcement officer authorized by the court to receive the results of a trap and trace device under this section, a provider of wire or electronic communication service, a landlord, custodian or any other person so ordered by the court shall, as soon as practicable, install the device on the appropriate line and furnish the officer with all additional information, facilities and technical assistance, including installation and operation of the device, unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the investigative or law-enforcement officer designated by the court at reasonable intervals during regular business hours for the duration of the order. Where the law-enforcement agency implementing an ex parte order under this subsection seeks to do so by installing and using its own pen register or trap and trace device on a packet-switched data network of a provider of electronic communication service to the public, the agency shall ensure that a record will be maintained that will identify (i) any officer or officers who installed the device and any officer or officers who accessed the device to obtain information from the network; (ii) the date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information; (iii) the configuration of the device at the time of its installation and any subsequent modification thereof; and (iv) any information that has been collected by the device. To the extent that the pen register or trap and trace device can be set automatically to record this information electronically, the record shall be maintained electronically throughout the installation and use of such device. The record maintained hereunder shall be provided ex parte and under seal of the court that entered the ex parte order authorizing the installation and use of the device within 30 days after termination of the order, including any extensions thereof.

G. A provider of a wire or electronic communication service, a landlord, custodian or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for reasonable and actual expenses incurred in providing such facilities and assistance. The expenses shall be paid out of the criminal fund.

H. No cause of action shall lie in any court against a provider of a wire or electronic communication service, its officers, employees, agents or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order issued pursuant to this section. Good faith reliance on a court order, a legislative authorization or a statutory authorization is a complete defense against any civil or criminal action based upon a violation of this chapter.

**Obtaining electronic communication service or remote computing service records.** Provides that any subpoena issued by a court or grand jury, search warrant, or court order directing a provider of electronic communication service or remote computing service to disclose certain information related to a customer may require that the service provider not disclose the existence of the subpoena, search warrant, or order, except to an attorney to obtain legal advice, for a period of 90 days, subject to renewal for additional 90-day periods, if the victim is under 18 and disclosure of the existence of the subpoena, search warrant, or order will endanger the life or physical safety of an individual, or lead to flight from prosecution, the destruction of or tampering with evidence, the intimidation of potential witnesses, or otherwise seriously jeopardize an investigation. The bill also provides that only a circuit court can issue an order for disclosure from a service provider when such disclosure is relevant and material to an ongoing criminal investigation or the investigation of certain missing persons.

## CHAPTER 616

*An Act to amend and reenact § 19.2-70.3 of the Code of Virginia, relating to obtaining electronic communication service or remote computing service records.*

[H 326]

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [19.2-70.3](#) of the Code of Virginia is amended and reenacted as follows:

§ [19.2-70.3](#). Obtaining records concerning electronic communication service or remote computing service.

A. A provider of electronic communication service or remote computing service, which, for purposes of subdivisions 2 through 4, includes a foreign corporation that provides such services, shall disclose a record or other information pertaining to a subscriber to or customer of such service, excluding the contents of electronic communications and real-time location data, to an investigative or law-enforcement officer only pursuant to:

1. A subpoena issued by a grand jury of a court of the Commonwealth;
2. A search warrant issued by a magistrate, general district court, or circuit court;
3. A court order *issued by a circuit court* for such disclosure issued as provided in subsection B; or
4. The consent of the subscriber or customer to such disclosure.

B. A court shall issue an order for disclosure under this section only if the investigative or law-enforcement officer shows that there is reason to believe the records or other information sought are relevant and material to an ongoing criminal investigation, or the investigation of any missing child as defined in § [52-32](#), missing senior adult as defined in § [52-34.4](#), or an incapacitated person as defined in § [64.2-2000](#) who meets the definition of a missing senior adult except for the age requirement. Upon issuance of an order for disclosure under this section, the order and any written application or statement of facts may be sealed by the court for 90 days for good cause shown upon application of the attorney for the Commonwealth in an ex parte proceeding. The order and any written application or statement of facts may be sealed for additional 90-day periods for good cause shown upon subsequent application of the attorney for the Commonwealth in an ex parte proceeding. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify the order, if the information or records requested are unusually voluminous in nature or compliance with such order would otherwise cause an undue burden on such provider.

C. Except as provided in subsection D, a provider of electronic communication service or remote computing service, including a foreign corporation that provides such services, shall disclose the contents of electronic communications or real-time location data to an investigative or law-enforcement officer only pursuant to a search warrant issued by

a magistrate, a juvenile and domestic relations district court, a general district court, or a circuit court, based upon complaint on oath supported by an affidavit as required in § [19.2-54](#), or judicial officer or court of any of the several states of the United States or its territories, or the District of Columbia when the warrant issued by such officer or such court complies with the provisions of subsection G. In the case of a search warrant directed to a foreign corporation, the affidavit shall state that the complainant believes that the records requested are actually or constructively possessed by a foreign corporation that provides electronic communication service or remote computing service within the Commonwealth of Virginia. If satisfied that probable cause has been established for such belief and as required by Chapter 5 (§ [19.2-52](#) et seq.), the magistrate, the juvenile and domestic relations district court, the general district court, or the circuit court shall issue a warrant identifying those records to be searched for and commanding the person seeking such warrant to properly serve the warrant upon the foreign corporation. A search warrant for real-time location data shall be issued if the magistrate, the juvenile and domestic relations district court, the general district court, or the circuit court is satisfied that probable cause has been established that the real-time location data sought is relevant to a crime that is being committed or has been committed or that an arrest warrant exists for the person whose real-time location data is sought.

D. A provider of electronic communication service or remote computing service, including a foreign corporation that provides such services, shall disclose a record or other information pertaining to a subscriber to or customer of such service, including real-time location data but excluding the contents of electronic communications, to an investigative or law-enforcement officer pursuant to an administrative subpoena issued pursuant to § [19.2-10.2](#) concerning a violation of § [18.2-374.1](#) or [18.2-374.1:1](#), former § [18.2-374.1:2](#), or § [18.2-374.3](#) when the information sought is relevant and material to an ongoing criminal investigation.

E. When disclosure of real-time location data is not prohibited by federal law, an investigative or law-enforcement officer may obtain real-time location data without a warrant in the following circumstances:

1. To respond to the user's call for emergency services;

2. With the informed, affirmative consent of the owner or user of the electronic device concerned if (i) the device is in his possession; (ii) the owner or user knows or believes that the device is in the possession of an employee or agent of the owner or user with the owner's or user's consent; or (iii) the owner or user knows or believes that the device has been taken by a third party without the consent of the owner or user;

3. With the informed, affirmative consent of the legal guardian or next of kin of the owner or user, if reasonably available, if the owner or user is reasonably believed to be deceased, is reported missing, or is unable to be contacted; or

4. If the investigative or law-enforcement officer reasonably believes that an emergency involving the immediate danger to a person requires the disclosure, without delay, of real-time location data concerning a specific person and that a warrant cannot be obtained in time to prevent the identified danger, and the possessor of the real-time location data believes, in good faith, that an emergency involving danger to a person requires disclosure without delay.

No later than three business days after seeking disclosure of real-time location data pursuant to this subsection, the investigative or law-enforcement officer seeking the information shall file with the appropriate court a written statement setting forth the facts giving rise to the emergency and the facts as to why the person whose real-time location data was sought is believed to be important in addressing the emergency.

F. In order to comply with the requirements of § [19.2-54](#), any search of the records of a foreign corporation shall be deemed to have been made in the same place wherein the search warrant was issued.

G. A Virginia corporation or other entity that provides electronic communication services or remote computing services to the general public, when properly served with a search warrant and affidavit in support of the warrant, issued by a judicial officer or court of any of the several states of the United States or its territories, or the District of Columbia with jurisdiction over the matter, to produce a record or other information pertaining to a subscriber to or customer of such service, including real-time location data, or the contents of electronic communications, or both, shall produce the record or other information, including real-time location data, or the contents of electronic

communications as if that warrant had been issued by a Virginia court. The provisions of this subsection shall only apply to a record or other information, including real-time location data, or contents of electronic communications relating to the commission of a criminal offense that is substantially similar to (i) a violent felony as defined in § [17.1-805](#), (ii) an act of violence as defined in § [19.2-297.1](#), (iii) any offense for which registration is required pursuant to § [9.1-902](#), (iv) computer fraud pursuant to § [18.2-152.3](#), or (v) identity theft pursuant to § [18.2-186.3](#). The search warrant shall be enforced and executed in the Commonwealth as if it were a search warrant described in subsection C.

H. The provider of electronic communication service or remote computing service may verify the authenticity of the written reports or records that it discloses pursuant to this section, excluding the contents of electronic communications, by providing an affidavit from the custodian of those written reports or records or from a person to whom said custodian reports certifying that they are true and complete and that they are prepared in the regular course of business. When so authenticated, the written reports and records are admissible in evidence as a business records exception to the hearsay rule.

I. No cause of action shall lie in any court against a provider of a wire or electronic communication service or remote computing service or such provider's officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, administrative subpoena, or subpoena under this section or the provisions of subsection E.

J. A search warrant or administrative subpoena for the disclosure of real-time location data pursuant to this section shall require the provider to provide ongoing disclosure of such data for a reasonable period of time, not to exceed 30 days. A court may, for good cause shown, grant one or more extensions, not to exceed 30 days each.

K. An investigative or law-enforcement officer shall not use any device to obtain electronic communications or collect real-time location data from an electronic device without first obtaining a search warrant authorizing the use of the device if, in order to obtain the contents of such electronic communications or such real-time location data from the provider of electronic communication service or remote computing service, such officer would be required to obtain a search warrant pursuant to this section. However, an investigative or law-enforcement officer may use such a device without first obtaining a search warrant under the circumstances set forth in subsection E. For purposes of subdivision E 4, the investigative or law-enforcement officer using such a device shall be considered to be the possessor of the real-time location data.

*L. Upon issuance of any subpoena, search warrant, or order for disclosure issued under this section, upon written certification by the attorney for the Commonwealth that there is a reason to believe that the victim is under the age of 18 and that notification or disclosure of the existence of the subpoena, search warrant, or order will endanger the life or physical safety of an individual, or lead to flight from prosecution, the destruction of or tampering with evidence, the intimidation of potential witnesses, or otherwise seriously jeopardize an investigation, the court may in an ex parte proceeding order a provider of electronic communication service or remote computing service not to disclose for a period of 90 days the existence of the subpoena, search warrant, or order and written application or statement of facts to another person, other than an attorney to obtain legal advice. The nondisclosure order may be renewed for additional 90-day periods for good cause shown upon subsequent application of the attorney for the Commonwealth in an ex parte proceeding. A court issuing an order for disclosure pursuant to this section, on a motion made promptly by the service provider, may quash or modify the order if the information or records requested are unusually voluminous in nature or compliance with such order would otherwise cause an undue burden on such provider.*

M. For the purposes of this section:

"Electronic device" means a device that enables access to, or use of, an electronic communication service, remote computing service, or location information service, including a global positioning service or other mapping, locational, or directional information service.

"Foreign corporation" means any corporation or other entity, whose primary place of business is located outside of the boundaries of the Commonwealth, that makes a contract or engages in a terms of service agreement with a

resident of the Commonwealth to be performed in whole or in part by either party in the Commonwealth, or a corporation that has been issued a certificate of authority pursuant to § [13.1-759](#) to transact business in the Commonwealth. The making of the contract or terms of service agreement or the issuance of a certificate of authority shall be considered to be the agreement of the foreign corporation or entity that a search warrant or subpoena, which has been properly served on it, has the same legal force and effect as if served personally within the Commonwealth.

"Properly served" means delivery of a search warrant or subpoena by hand, by United States mail, by commercial delivery service, by facsimile or by any other manner to any officer of a corporation or its general manager in the Commonwealth, to any natural person designated by it as agent for the service of process, or if such corporation has designated a corporate agent, to any person named in the latest annual report filed pursuant to § [13.1-775](#).

"Real-time location data" means any data or information concerning the current location of an electronic device that, in whole or in part, is generated, derived from, or obtained by the operation of the device.

## CRIMINAL – SUMMARY ONLY

**HB699 and SB691 - §§ 3.2-4113 and 3.2-4117 - Production of industrial hemp.** Clarifies that it is lawful for a person with a license to manufacture industrial hemp products or engage in scientific, agricultural, or other research involving the applications of industrial hemp and that no person shall be prosecuted for the possession, cultivation, or manufacture of industrial hemp plant material or products. The current law authorizes the Board of Agriculture and Consumer Services to adopt regulations necessary to license persons to grow industrial hemp or administer a research program. The bill requires the Commissioner of Agriculture and Consumer Services to establish a licensure program, with a maximum license fee of \$250. This bill is identical to [SB 691](#).

**HB1077 and SB480 - § 54.1-3446 - Drug Control Act; Schedule I.** Adds certain chemical substances to Schedule I of the Drug Control Act. The Board of Pharmacy has added these substances to Schedule I in an expedited regulatory process. A substance added via this process is removed from the schedule after 18 months unless a general law is enacted adding the substance to the schedule. This bill is identical to [SB 480](#).

**HB248 and SB249 - § 63.2-1605 - Financial exploitation of adults.** Provides that upon receipt of a report or during an adult protective services investigation of suspected financial exploitation of an adult who is 60 years old or older or incapacitated in which financial losses to such adult resulting from the exploitation are suspected to be greater than \$50,000, the local department of social services or adult protective services hotline shall immediately refer the matter to the local law-enforcement agency for investigation. This bill is identical to [SB 249](#).

**HB172 - §§ 46.2-360 and 46.2-391 - Habitual offenders; restoration of driving privileges.** Clarifies that the recommendations from the Virginia Alcohol Safety Action Program (VASAP) evaluation that must be conducted when a habitual offender petitions for the restoration of his driving privileges or for the issuance of a restricted license shall be given such weight as the court deems appropriate.

**HB1319 - § 18.2-177.1 - False representation of military status; penalty.** Provides that any person who, with the intent to obtain any services, falsely represents himself to be a member or veteran of the military, or the recipient of any decoration or medal created by federal or state law to honor members or veterans of the military, and obtains such services is guilty of a Class 1 misdemeanor. This bill incorporates [HB 54](#) and [HB 950](#).

**HB628 - § 9.1-913 - Sex Offender and Crimes Against Minors Registry Act; public dissemination.** Adds the current work address and the name of any institution of higher education at which he is currently enrolled to the information that must be made publicly available by means of the Internet for a person convicted of an offense for which registration on the Sex Offender and Crimes Against Minors Registry is required.

**HB1329 - § 18.2-132.1 - Trespass by hunters using dogs; penalty.** Punishes as a Class 3 misdemeanor the intentional release by a person of hunting dogs on the lands of another to hunt without the consent of the landowner. The bill punishes a second or subsequent offense committed within three years as a Class 1 misdemeanor and provides for the revocation of the person's hunting license for a period of one year upon conviction.

**HB1226 - § 18.2-57 - Assault and battery of Department of Corrections investigators; penalty.** Adds employees of the Department of Corrections who have been designated by the Department to conduct internal investigations to the definition of law-enforcement officer for purposes of the crimes of assault and battery. The current punishment for assault and battery against a law-enforcement officer engaged in the performance of his public duties is a Class 6 felony with a six-month mandatory minimum sentence.

**HB1101 - § 9.1-914 - Automatic notification of registration of sex offenders; common interest communities.** Provides that the association for a common interest community may request and receive from the State Police notice of the registration or reregistration of sex offenders whose registered address is in the same or a contiguous zip code as that of the common interest community.

**HB920 - §§ 37.2-408.1, 63.2-1719 and 63.2-1726 - Barrier crimes.** Adds conviction or a finding that a person is not guilty by reason of insanity of any offense that results in the offender's requirement to register with the Sex Offender and Crimes Against Minors Registry to the list of crimes that constitute a barrier to licensure as a child welfare agency or assisted living facility, approval as a foster or adoptive parent by a child-placing agency, approval

as a family day home by a family day system, or employment or serving as a volunteer at a children's residential facility, assisted living facility, adult day care center, or child welfare agency.

**HB610 - §§ 16.1-253.2 and 18.2-60.4 - Violations of protective orders; penalty.** Provides that it is a Class 6 felony to stalk a party protected by a protective order or to commit an assault and battery upon a party protected by a protective order if such assault and battery results in bodily injury. Currently, the Class 6 felony is only applicable if the person commits an assault and battery that results in serious bodily injury to the protected party.

**HB1056 - § 16.1-279.1 - Family abuse protective orders; extensions.** Corrects a reference to a member of the respondent's family or household to be consistent with the defined term "family or household member," relating to petitioners in proceedings for extensions of protective orders in cases of family abuse.

**HB711 - §§ 55-225.5 and 55-248.18.1 - Protective orders in cases of family abuse; possession of premises.** Provides that in a protective order in the case of family abuse, a person who is not a tenant or authorized occupant of the dwelling unit and who has obtained a protective order from a court of competent jurisdiction granting such person possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide a copy of such order to the landlord and submit a rental application to become a tenant in such dwelling unit within 10 days of the entry of such order. If such person's rental application meets the landlord's tenant selection criteria, such person may become a tenant in such dwelling unit under a written rental agreement. If such person submits a rental application and does not meet the landlord's tenant selection criteria, such person shall vacate the dwelling unit no later than 30 days after the date the landlord gives such person written notice that his rental application has been rejected. If such person does not provide a copy of the protective order to the landlord and submit a rental application to the landlord within 10 days as required, such person shall vacate the dwelling unit no later than 30 days after the date of the entry of such order. Such person shall be liable to the landlord for failure to vacate the dwelling unit. The bill provides that any tenant obligated on a rental agreement shall pay the rent and otherwise comply with any and all requirements of the rental agreement and any applicable laws and regulations. The landlord may pursue all of its remedies under the rental agreement and applicable laws and regulations, including filing an unlawful detainer action to obtain a money judgment and to evict any persons residing in such dwelling unit. The bill contains a technical amendment.

**HB1334 - § 18.2-57.3 - Assault and battery against a family or household member; first offense; education and treatment programs.** Requires a court to order that a person placed on first offender status for assault and battery against a family or household member (i) be placed with a local community-based probation services agency and complete all education and treatment programs required by the agency or (ii) complete any education or treatment program that the court determines is best suited to the needs of the person. Under current law, the court may order that the person complete such education or treatment programs, but is not required to do so.

**HB485 - § 18.2-57.3 - Assault; family or household member.** Provides that a first offense of simple assault against a family or household member may be subject to deferral and dismissal. Under current law, first offender status is only available to a person who commits assault and battery against a family or household member.

**HB875 - § 19.2-70.3 - Disclosure of real-time location data in emergencies.** Provides that an investigative or law-enforcement officer may obtain real-time location data from an electronic communication service or remote computing service provider when the officer believes that an emergency involving immediate danger to a person requires such disclosure and a warrant for such disclosure cannot be obtained in time to prevent the identified danger, regardless of whether the service provider believes that such disclosure is required by the emergency.

## FIREARMS – FULL TEXT

**Firearms shows; voluntary background checks; penalties.** Requires the Department of State Police to be available to perform background checks for non-dealer sales at firearms shows if requested by a party involved in a transaction. The promoter of the firearms show shall furnish the Department of State Police sufficient facilities to perform the background checks. In order for the bill to become effective, the U.S. Department of Justice must approve the policies and procedures that the Department of State Police will use to implement the provisions of the bill. This bill is identical to [SB 715](#).

### CHAPTER 45

*An Act to amend the Code of Virginia by adding a section numbered [54.1-4201.2](#), relating to firearms shows; voluntary background checks; penalties.*

[H 1386]

Approved February 26, 2016

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [54.1-4201.2](#) as follows:

§ [54.1-4201.2](#). *Firearm transactions by persons other than dealers; voluntary background checks.*

*A. The Department of State Police shall be available at every firearms show held in the Commonwealth to make determinations in accordance with the procedures set out in § [18.2-308.2:2](#) of whether a prospective purchaser or transferee is prohibited under state or federal law from possessing a firearm. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police.*

*Unless otherwise required by state or federal law, any party involved in the transaction may decide whether or not to have such a determination made.*

*The Department of State Police may charge a reasonable fee for the determination.*

*B. The promoter, as defined in § [54.1-4201.1](#), shall give the Department of State Police notice of the time and location of a firearms show at least 30 days prior to the show. The promoter shall provide the Department of State Police with adequate space, at no charge, to conduct such prohibition determinations. The promoter shall ensure that a notice that such determinations are available is prominently displayed at the show.*

*C. No person who sells or transfers a firearm at a firearms show after receiving a determination from the Department of State Police that the purchaser or transferee is not prohibited by state or federal law from possessing a firearm shall be liable for selling or transferring a firearm to such person.*

*D. The provisions of § [18.2-308.2:2](#), including definitions, procedures, and prohibitions, shall apply, mutatis mutandis, to the provisions of this section.*

2. That the provisions of this act shall become effective only if approval is received from the U.S. Department of Justice for the Department of State Police to implement the policies and procedures set out in this act.

3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the Acts of Assembly of 2015 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § [30-19.1:4](#), the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

**Recognition of out-of-state concealed handgun permits; photo identification.** Provides that the holder of an out-of-state concealed handgun permit who is at least 21 years of age is authorized to carry a concealed handgun in Virginia if (i) the other state has a 24-hour-a-day means of verification of the validity of the permits issued in that state, if available; (ii) the person carries a government-issued photo identification and displays it upon demand of a law-enforcement officer; and (iii) the person has not previously had a Virginia concealed handgun permit revoked. The bill requires the Superintendent of State Police (Superintendent) to enter into agreements for reciprocal recognition with other states that require an agreement to be in place before the state will recognize a Virginia concealed handgun permit as valid in the state. The bill provides that if the Superintendent determines that another state requires the Attorney General to execute or formally approve such agreement, the Attorney General will execute or approve such agreement within 30 days of written notification by the Superintendent that the Attorney General is required to execute or approve such agreement. Current law recognizes concealed handgun permits issued by states that (a) provide a 24-hour-a-day means of verification of the validity of the permits issued in that state and (b) have requirements and qualifications that are adequate to prevent possession of a permit by persons who would be denied a permit in Virginia. In addition, the bill requires the Superintendent, within 60 days of the effective date of the bill, to enter into agreements for reciprocal recognition of concealed handgun permits or licenses with other states where agreements were in existence on December 1, 2015. This bill incorporates [HB 12](#) and is identical to [SB 610](#).

## CHAPTER 47

*An Act to amend and reenact § [18.2-308.014](#) of the Code of Virginia, relating to out-of-state concealed handgun permits; photo identification.*

[H 1163]

Approved February 26, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [18.2-308.014](#) of the Code of Virginia is amended and reenacted as follows:

§ [18.2-308.014](#). Reciprocity.

A. A valid concealed handgun or concealed weapon permit or license issued by another state shall authorize the holder of such permit or license who is at least 21 years of age to carry a concealed handgun in the Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible 24 hours a day, ~~and if available;~~ (ii) ~~except for the age of the permit or license holder and the type of weapon authorized to be carried, the requirements and qualifications of that state's law are adequate to prevent possession of a permit or license by persons who would be denied a permit in the Commonwealth under this article. The Superintendent of State Police shall (a) in consultation with the Office of the Attorney General determine whether states meet the requirements and qualifications of this subsection, (b) maintain a registry of such states on the Virginia Criminal Information Network (VCIN), and (c) make the registry available to law enforcement officers for investigative purposes~~ *the permit or license holder carries a photo identification issued by a government agency of any state or by the U.S. Department of Defense or U.S. Department of State and displays the permit or license and such identification upon demand by a law-enforcement officer; and (iii) the permit or license holder has not previously had a Virginia concealed handgun permit revoked.* The Superintendent of ~~the~~ State Police, ~~in consultation with the Attorney General, may also~~ *shall* enter into agreements for reciprocal recognition with ~~any state qualifying for recognition under this subsection~~ *such other states that require an agreement to be in place before such state will recognize a Virginia concealed handgun permit as valid in such state. The Attorney General shall provide the Superintendent with any legal assistance or advice necessary for the Superintendent to perform his duties set forth in this subsection. If the Superintendent determines that another state requires that an agreement for reciprocal recognition be executed by the Attorney General or otherwise formally approved by the Attorney General as a condition of such other state's entering into an agreement for reciprocal recognition, the Attorney General shall (a) execute such agreement or otherwise formally approve such agreement and (b) return to the Superintendent the executed agreement or, in a form deemed acceptable by such other state, documentation of his formal approval of such agreement within 30 days after the Superintendent notifies the Attorney General, in writing, that he is required to execute or otherwise formally approve such agreement.*

~~B. A valid concealed handgun permit issued by Maryland shall be valid in the Commonwealth, provided (i) the holder of the permit is licensed in Maryland to perform duties substantially similar to those performed by Virginia branch pilots licensed pursuant to Chapter 9 (§ [54.1-900](#) et seq.) of Title 54.1 and is performing such duties while in the Commonwealth, and (ii) the holder of the permit is 21 years of age or older.~~

~~€.~~ For the purposes of participation in concealed handgun reciprocity agreements with other jurisdictions, the official government-issued law-enforcement identification card issued to an active-duty law-enforcement officer in the Commonwealth who is exempt from obtaining a concealed handgun permit under this article shall be deemed a concealed handgun permit.

2. That within 60 days of the effective date of this act, the Superintendent of State Police shall enter into agreements for reciprocal recognition of concealed handgun permits or licenses with states where such agreements were in existence as of December 1, 2015, as required by the provisions of this act.

**Retired law-enforcement officers; concealed handguns.** Clarifies provisions relating to the authority of retired law-enforcement officers, special agents of the State Corporation Commission and Virginia Alcoholic Beverage Control Board, members of the enforcement division of the Department of Motor Vehicles, and investigators of the security division of the Virginia Lottery to carry concealed handguns. Such officers, agents, members, and investigators who resigned after 20 years of service to accept a position covered by a retirement system authorized under Title 51.1 of the Code of Virginia fall under the same provisions as retired law-enforcement officers, agents, members, and investigators. Such retired officers, agents, members, and investigators who annually meet the training and qualification standards for active law-enforcement officers are authorized to carry concealed handguns in airports and schools and are deemed to have been issued a concealed handgun permit.

## CHAPTER 257

*An Act to amend and reenact §§ [18.2-287.01](#), [18.2-287.4](#), [18.2-308](#), as it is currently effective and as it shall become effective, [18.2-308.1](#), and [22.1-277.07](#) of the Code of Virginia and to amend the Code of Virginia by adding in Article 6.1 of Chapter 7 of Title 18.2 a section numbered [18.2-308.016](#), relating to retired law-enforcement officers; concealed handguns.*

[S 479]

Approved March 7, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [18.2-287.01](#), [18.2-287.4](#), [18.2-308](#), as it is currently effective and as it shall become effective, [18.2-308.1](#), and [22.1-277.07](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6.1 of Chapter 7 of Title 18.2 a section numbered [18.2-308.016](#) as follows:

§ [18.2-287.01](#). Carrying weapon in air carrier airport terminal.

It shall be unlawful for any person to possess or transport into any air carrier airport terminal in the Commonwealth any (i) gun or other weapon designed or intended to propel a missile or projectile of any kind, (ii) frame, receiver, muffler, silencer, missile, projectile or ammunition designed for use with a dangerous weapon, and (iii) any other dangerous weapon, including explosives, stun weapons as defined in § [18.2-308.1](#), and those weapons specified in subsection A of § [18.2-308](#). Any such weapon shall be subject to seizure by a law-enforcement officer. A violation of this section is punishable as a Class 1 misdemeanor. Any weapon possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § [19.2-386.28](#).

The provisions of this section shall not apply to any police officer, sheriff, law-enforcement agent or official, ~~or~~ conservation police officer, ~~or~~ conservator of the peace employed by the air carrier airport, *or retired law-enforcement officer qualified pursuant to subsection C of § [18.2-308.016](#)*, nor shall the provisions of this section apply to any passenger of an airline who, to the extent otherwise permitted by law, transports a lawful firearm, weapon, or ammunition into or out of an air carrier airport terminal for the sole purposes, respectively, of (i) presenting such firearm, weapon, or ammunition to U.S. Customs agents in advance of an international flight, in order to comply with federal law, (ii) checking such firearm, weapon, or ammunition with his luggage, or (iii) retrieving such firearm, weapon, or ammunition from the baggage claim area.

Any other statute, rule, regulation, or ordinance specifically addressing the possession or transportation of weapons in any airport in the Commonwealth shall be invalid, and this section shall control.

§ [18.2-287.4](#). Carrying loaded firearms in public areas prohibited; penalty.

It shall be unlawful for any person to carry a loaded (a) semi-automatic center-fire rifle or pistol that expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine that will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (b) shotgun with a magazine that will hold more than seven rounds of the longest ammunition for which it is chambered on or about his person on any public street, road, alley, sidewalk, public right-of-way, or in any public park or any other place of whatever nature that is open to the

public in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Newport News, Norfolk, Richmond, or Virginia Beach or in the Counties of Arlington, Fairfax, Henrico, Loudoun, or Prince William.

The provisions of this section shall not apply to law-enforcement officers, licensed security guards, military personnel in the performance of their lawful duties, or any person having a valid concealed handgun permit or to any person actually engaged in lawful hunting or lawful recreational shooting activities at an established shooting range or shooting contest. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

The exemptions set forth in §§ [18.2-308](#) and [18.2-308.016](#) shall apply, mutatis mutandis, to the provisions of this section.

§ [18.2-308](#). (Effective until July 1, 2018) Carrying concealed weapons; exceptions; penalty.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § [18.2-308.012](#), this section shall not apply to:

1. Any person while in his own place of business;
2. Any law-enforcement officer, *or retired law-enforcement officer pursuant to § [18.2-308.016](#)*, wherever such law-enforcement officer may travel in the Commonwealth;
3. Any person who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;
7. ~~Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation~~

~~Commission or the Alcoholic Beverage Control Board, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service related disability; (ii) following at least 15 years of service with any such law enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long term leave from such law enforcement agency or board due to a service related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law enforcement officer shall not without cause withhold such written proof if the retired law enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation. A retired law enforcement officer who receives proof of consultation and favorable review pursuant to this subdivision is authorized to carry a concealed handgun in the same manner as a law enforcement officer authorized to carry a concealed handgun pursuant to subdivision 2;~~

~~7a. Any person who is eligible for retirement with at least 20 years of service with a law enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from such law enforcement agency or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law enforcement officer shall not without cause withhold such written proof if the law enforcement officer otherwise meets the requirements of this section.~~

~~For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.~~

~~For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law enforcement officer who receives proof of consultation and review pursuant to subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or resigned law enforcement officer's expense, in the same training and testing to carry firearms as is required of active law enforcement officers in the Commonwealth. If such retired or resigned law enforcement officer meets the training and qualification standards, the chief law enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;~~

~~8. Any State Police officer who is a member of the organized reserve forces of any of the armed services of the United States or National Guard, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law enforcement duty.~~

~~For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit;~~

~~9-~~Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;

~~10-~~8. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel; and

~~11-~~9. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported.

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for the Commonwealth may carry a concealed handgun pursuant to subdivision C-9 7. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § [53.1-29](#); and

5. Harbormaster of the City of Hopewell.

§ [18.2-308](#). (Effective July 1, 2018) Carrying concealed weapons; exceptions; penalty.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § [18.2-308.012](#), this section shall not apply to:

1. Any person while in his own place of business;

2. Any law-enforcement officer, *or retired law-enforcement officer pursuant to § 18.2-308.016*, wherever such law-enforcement officer may travel in the Commonwealth;

3. Any person who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;

4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;

5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;

6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;

~~7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service related disability; (ii) following at least 15 years of service with any such law enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long term leave from such law enforcement agency or board due to a service related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law enforcement officer shall not without cause withhold such written proof if the retired law enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation. A retired law enforcement officer who receives proof of consultation and favorable review pursuant to this subdivision is authorized to carry a concealed handgun in the same manner as a law enforcement officer authorized to carry a concealed handgun pursuant to subdivision 2;~~

~~7a. Any person who is eligible for retirement with at least 20 years of service with a law enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from such law enforcement agency or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law enforcement officer shall not without cause withhold such written proof if the law enforcement officer otherwise meets the requirements of this section.~~

~~For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.~~

~~For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law enforcement officer who receives proof of consultation and review pursuant to subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or resigned law enforcement officer's expense, in the same training and testing to carry firearms as is required of active law enforcement officers in the Commonwealth. If such retired or resigned law enforcement officer meets the training and qualification standards, the chief law enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;~~

~~8. Any State Police officer who is a member of the organized reserve forces of any of the armed services of the United States or National Guard, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law enforcement duty.~~

~~For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit;~~

~~9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;~~

~~10-8. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel; and~~

~~11-9. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported.~~

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;
2. Officers or guards of any state correctional institution;
3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for the Commonwealth may carry a concealed handgun pursuant to subdivision C 9. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;
4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § [53.1-29](#); and
5. Harbormaster of the City of Hopewell.

*§ [18.2-308.016](#). Retired law-enforcement officers; carrying a concealed handgun.*

A. Except as provided in subsection A of § [18.2-308.012](#), § [18.2-308](#) shall not apply to:

1. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Virginia Alcoholic Beverage Control Board, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#), and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 15 years of service with any such law-enforcement agency, commission, board, or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation.

2. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency, commission, or board mentioned in subdivision 1 who has resigned in good standing from such law-enforcement agency, commission, or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

3. Any State Police officer who is a member of the organized reserve forces of any of the Armed Services of the United States or National Guard, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

B. For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to this section shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm.

C. A retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to this section may annually participate and meet the training and qualification standards to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the Commonwealth to carry a firearm. A copy of the certification indicating that the retired or resigned officer has met the standards of the Commonwealth to carry a firearm shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network.

D. For all purposes, including for the purpose of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to this section, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

§ [18.2-308.1](#). Possession of firearm, stun weapon, or other weapon on school property prohibited; penalty.

A. If any person knowingly possesses any (i) stun weapon as defined in this section; (ii) knife, except a pocket knife having a folding metal blade of less than three inches; or (iii) weapon, including a weapon of like kind, designated in subsection A of § [18.2-308](#), other than a firearm; upon (a) the property of any public, private or religious elementary, middle or high school, including buildings and grounds; (b) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (c) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

B. If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material while such person is upon (i) any public, private or religious elementary, middle or high school, including buildings and grounds; (ii) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony.

C. If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material within a public, private or religious elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall be guilty of a Class 6 felony and sentenced to a mandatory minimum term of imprisonment of five years to be served consecutively with any other sentence.

The exemptions set out in §§ [18.2-308](#) and [18.2-308.016](#) shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities; (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose; (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises; (iv) any law-enforcement officer, or retired law-enforcement officer qualified pursuant to subsection C of § [18.2-308.016](#); (v) any person who possesses a knife or blade which he uses customarily in his trade; (vi) a person who possesses an unloaded firearm that is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle; (vii) a person who has a valid concealed handgun permit and possesses a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to the school; or (viii) an armed security officer, licensed pursuant to Article 4 (§ [9.1-138](#) et seq.) of Chapter 1 of Title 9.1, hired by a private or religious school for the protection of students and employees as authorized by such school. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three inches or longer and "closed container" includes a locked vehicle trunk.

As used in this section:

"Stun weapon" means any device that emits a momentary or pulsed output, which is electrical, audible, optical or electromagnetic in nature and which is designed to temporarily incapacitate a person.

§ [22.1-277.07](#). Expulsion of students under certain circumstances; exceptions.

A. In compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in this article, to have possessed a firearm on school property or at a school-sponsored activity as prohibited by § [18.2-308.1](#) or to have possessed a firearm or destructive device as defined in subsection E, a firearm muffler or firearm silencer, or a pneumatic gun as defined in subsection E of § [15.2-915.4](#) on school property or at a school-sponsored activity. A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation, that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may promulgate guidelines for determining what constitutes special circumstances. In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article. Nothing in this section shall be construed to require a student's expulsion regardless of the facts of the particular situation.

B. The Board of Education is designated as the state education agency to carry out the provisions of the federal Improving America's Schools Act of 1994 and shall administer the funds to be appropriated to the Commonwealth under this act.

C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal Improving America's Schools Act of 1994 shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:

1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section; and
2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.

D. No school operating a Junior Reserve Officers Training Corps (JROTC) program shall prohibit the JROTC program from conducting marksmanship training when such training is a normal element of such programs. Such programs may include training in the use of pneumatic guns. The administration of a school operating a JROTC program shall cooperate with the JROTC staff in implementing such marksmanship training.

E. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known that will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and that has any barrel with a bore of more than one-half inch in diameter that is homemade or was not made by a duly licensed weapon manufacturer, any fully automatic firearm, any sawed-off shotgun or sawed-off rifle as defined in § [18.2-299](#) or any firearm prohibited from civilian ownership by federal law; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" does not include any device that is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and that is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device, nor shall it include any antique firearm as defined in subsection G of § [18.2-308.2:2](#).

"Firearm" means any weapon, including a starter gun, that will, or is designed or may readily be converted to, expel single or multiple projectiles by the action of an explosion of a combustible material or the frame or receiver of any such weapon. "Firearm" does not include any pneumatic gun, as defined in subsection E of § [15.2-915.4](#).

"One year" means 365 calendar days as required in federal regulations.

"School property" means any real property owned or leased by the school board or any vehicle owned or leased by the school board or operated by or on behalf of the school board.

F. The exemptions set out in ~~§§~~ [18.2-308](#) and [18.2-308.016](#) regarding concealed weapons shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms or pneumatic guns as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such.

G. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

**Carrying concealed weapons; exception for certain retired officers.** Decreases from 15 to 10 the number of years of service required for certain retired officers to be exempt from the prohibition on carrying a concealed weapon.

## CHAPTER 421

*An Act to amend and reenact § 18.2-308, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to carrying concealed weapons; exception for certain retired officers.*

[H 1281]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [18.2-308](#), as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ [18.2-308](#). (Effective until July 1, 2018) Carrying concealed weapons; exceptions; penalty.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § [18.2-308.012](#), this section shall not apply to:

1. Any person while in his own place of business;
2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the Commonwealth;
3. Any person who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;

7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Alcoholic Beverage Control Board, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#), and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least ~~15~~ 10 years of service with any such law-enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation. A retired law-enforcement officer who receives proof of consultation and favorable review pursuant to this subdivision is authorized to carry a concealed handgun in the same manner as a law-enforcement officer authorized to carry a concealed handgun pursuant to subdivision 2;

7a. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from such law-enforcement agency or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

8. Any State Police officer who is a member of the organized reserve forces of any of the armed services of the United States or National Guard, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information

Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit;

9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;

10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel; and

11. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported.

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for the Commonwealth may carry a concealed handgun pursuant to subdivision C 9. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § [53.1-29](#); and

5. Harbormaster of the City of Hopewell.

§ [18.2-308](#). (Effective July 1, 2018) Carrying concealed weapons; exceptions; penalty.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § [18.2-308.012](#), this section shall not apply to:

1. Any person while in his own place of business;
2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the Commonwealth;
3. Any person who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;
7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#), and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least ~~15~~ 10 years of service with any such law-enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation. A retired law-enforcement officer who receives proof of consultation and favorable review pursuant to this subdivision is authorized to carry a concealed handgun in the same manner as a law-enforcement officer authorized to carry a concealed handgun pursuant to subdivision 2;
- 7a. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from such law-enforcement agency or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not

without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

8. Any State Police officer who is a member of the organized reserve forces of any of the armed services of the United States or National Guard, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit;

9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;

10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel; and

11. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported.

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for the Commonwealth may carry a concealed handgun pursuant to subdivision C 9. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § [53.1-29](#); and

5. Harbormaster of the City of Hopewell.

**Possession of firearms by persons adjudicated delinquent; military service exception.** Provides that an individual who was adjudicated delinquent when 14 years of age or older of a delinquent act that would be a felony if committed by an adult and has completed a term of enlistment of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge is not disqualified from obtaining a concealed handgun permit and may possess or transport any firearm or ammunition for a firearm, any stun weapon, or any explosive material. Under current law, such an individual would be eligible to apply for a concealed handgun permit and to possess a firearm at age 29. The bill does not apply to individuals adjudicated delinquent of certain serious felonies.

### CHAPTER 337

*An Act to amend and reenact §§ [18.2-308.09](#) and [18.2-308.2](#) of the Code of Virginia, relating to possession of firearms by persons adjudicated delinquent; military service exception.*

[H 784]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [18.2-308.09](#) and [18.2-308.2](#) of the Code of Virginia are amended and reenacted as follows:

§ [18.2-308.09](#). Disqualifications for a concealed handgun permit.

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § [18.2-308.1:1](#), [18.2-308.1:2](#), or [18.2-308.1:3](#) or the substantially similar law of any other state or of the United States.
2. An individual who was ineligible to possess a firearm pursuant to § [18.2-308.1:1](#) and who was discharged from the custody of the Commissioner pursuant to § [19.2-182.7](#) less than five years before the date of his application for a concealed handgun permit.
3. An individual who was ineligible to possess a firearm pursuant to § [18.2-308.1:2](#) and whose competency or capacity was restored pursuant to § [64.2-2012](#) less than five years before the date of his application for a concealed handgun permit.
4. An individual who was ineligible to possess a firearm under § [18.2-308.1:3](#) and who was released from commitment less than five years before the date of this application for a concealed handgun permit.
5. An individual who is subject to a restraining order, or to a protective order and prohibited by § [18.2-308.1:4](#) from purchasing or transporting a firearm.
6. An individual who is prohibited by § [18.2-308.2](#) from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.
7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.
8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.
9. An individual who has been convicted of a violation of § [18.2-266](#) or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia,

the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § [4.1-333](#).

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § [18.2-280](#) or [18.2-286.1](#) or brandishing of a firearm in violation of § [18.2-282](#) within the three-year period immediately preceding the application.

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense that would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within 16 years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions." *Disqualification under this subdivision shall not apply to an individual with previous adjudications of delinquency who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge.*

17. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15.

18. An individual who has received mental health treatment or substance abuse treatment in a residential setting within five years prior to the date of his application for a concealed handgun permit.

19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (§ [18.2-247](#) et seq.) or former § [18.2-248.1:1](#) or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Article 1 (§ [18.2-247](#) et seq.) or former § [18.2-248.1:1](#) or upon a charge of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § [18.2-251](#) or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

§ [18.2-308.2](#). Possession or transportation of firearms, firearms ammunition, stun weapons, explosives or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of murder in violation of § [18.2-31](#) or [18.2-32](#), kidnapping in violation of § [18.2-47](#), robbery by the threat or presentation of firearms in violation of § [18.2-58](#), or rape in violation of § [18.2-61](#); or (iii) any person under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, other than those felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun weapon as defined by § [18.2-308.1](#), or any explosive material, or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § [18.2-308](#). However, such person may possess in his residence or the curtilage thereof a stun weapon as defined by § [18.2-308.1](#). Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § [17.1-805](#) shall be sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm, ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms, ~~or~~ (iv) any person whose right to possess firearms or ammunition has been restored under the law of another state subject to conditions placed upon the reinstatement of the person's right to ship, transport, possess, or receive firearms by such state, or (v) *any person adjudicated delinquent as a juvenile who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge and who is not otherwise prohibited under clause (i) or (ii) of subsection A.*

C. Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which he resides or, if the person is not a resident of the Commonwealth, the circuit court of any county or city where such person was last convicted of a felony or adjudicated delinquent of a disqualifying offense pursuant to subsection A, for a permit to possess or carry a firearm, ammunition for a firearm, or a stun weapon; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section relating to firearms, ammunition for a firearm, and stun weapons shall not apply to any person who has been granted a permit pursuant to this subsection.

C1. Any person who was prohibited from possessing, transporting or carrying explosive material under subsection A may possess, transport or carry such explosive material if his right to possess, transport or carry explosive material has been restored pursuant to federal law.

D. For the purpose of this section:

"Ammunition for a firearm" means the combination of a cartridge, projectile, primer, or propellant designed for use in a firearm other than an antique firearm as defined in § [18.2-308.2:2](#).

"Explosive material" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, smokeless gun powder, detonators, blasting caps and detonating cord but shall not include fireworks or permissible fireworks as defined in § [27-95](#).

**Concealed handgun permit; judges exempt.** Provides that a judge or justice of the Commonwealth may carry a concealed handgun throughout the Commonwealth without a permit. This bill is identical to [SB 544](#).

## CHAPTER 672

*An Act to amend and reenact § 18.2-308, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to concealed handgun permits; exemption; judges and justices.*

[H 332]

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [18.2-308](#), as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ [18.2-308](#). (Effective until July 1, 2018) Carrying concealed weapons; exceptions; penalty.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § [18.2-308.012](#), this section shall not apply to:

1. Any person while in his own place of business;
2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the Commonwealth;
3. Any person who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;

7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Alcoholic Beverage Control Board, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#), and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 15 years of service with any such law-enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation. A retired law-enforcement officer who receives proof of consultation and favorable review pursuant to this subdivision is authorized to carry a concealed handgun in the same manner as a law-enforcement officer authorized to carry a concealed handgun pursuant to subdivision 2;

7a. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from such law-enforcement agency or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

8. Any State Police officer who is a member of the organized reserve forces of any of the armed services of the United States or National Guard, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information

Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit;

9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;

10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel; ~~and~~

11. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported; *and*

*12. Any judge or justice of the Commonwealth, wherever such judge or justice may travel in the Commonwealth.*

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. Conservators of the peace, except that *a judge or justice of the Commonwealth*, an attorney for the Commonwealth, or *an* assistant attorney for the Commonwealth may carry a concealed handgun pursuant to ~~subdivision~~ *subdivisions C 9 and 12*. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators, or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § [53.1-29](#); and

5. Harbormaster of the City of Hopewell.

§ [18.2-308](#). (Effective July 1, 2018) Carrying concealed weapons; exceptions; penalty.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § [18.2-308.012](#), this section shall not apply to:

1. Any person while in his own place of business;
2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the Commonwealth;
3. Any person who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;
7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#), and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 15 years of service with any such law-enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation. A retired law-enforcement officer who receives proof of consultation and favorable review pursuant to this subdivision is authorized to carry a concealed handgun in the same manner as a law-enforcement officer authorized to carry a concealed handgun pursuant to subdivision 2;
- 7a. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from such law-enforcement agency or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he resigned or, in the case of special agents, issued by

the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

8. Any State Police officer who is a member of the organized reserve forces of any of the armed services of the United States or National Guard, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit;

9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;

10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel;~~and~~

11. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported; *and*

*12. Any judge or justice of the Commonwealth, wherever such judge or justice may travel in the Commonwealth.*

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. Conservators of the peace, except that *a judge or justice of the Commonwealth*, an attorney for the Commonwealth, or *an* assistant attorney for the Commonwealth may carry a concealed handgun pursuant to ~~subdivision~~ *subdivisions C 9 and 12*. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars;

(iii) drivers, operators, or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § [53.1-29](#); and

5. Harbormaster of the City of Hopewell.

**Confiscation, reporting, and return of firearms by law enforcement.** Replaces current requirements that law-enforcement agencies report information regarding confiscated firearms to the Department of State Police with a requirement that such information be reported to a firearms tracing system maintained by the U.S. Department of Justice. The bill requires law-enforcement agencies to return stolen firearms to the rightful owner unless the person is prohibited from possessing the firearm or it is needed in a criminal prosecution.

#### CHAPTER 214

*An Act to amend and reenact § [52-25.1](#) of the Code of Virginia, relating to firearms confiscated by law-enforcement agencies.*

[S 608]

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [52-25.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [52-25.1](#). Reporting and return of firearms confiscated or recovered by law-enforcement agencies.

*A. Whenever a law-enforcement agency confiscates a firearm in connection with a criminal investigation or otherwise recovers a firearm, such agency shall immediately take all appropriate steps to identify and trace the history of such firearm.*

*B. The Superintendent shall establish ~~and maintain a procedure~~ within the Department of State Police ~~a Criminal Firearms Clearinghouse as a central repository of~~ to obtain information regarding all firearms seized, forfeited, found, or otherwise coming into the possession of any state or local law-enforcement agency of the Commonwealth ~~which are believed to have been used in the commission of a crime~~. All law-enforcement agencies of the Commonwealth and of political subdivisions of the Commonwealth shall share with other Virginia law-enforcement agencies all information regarding firearms seized, forfeited, found, or otherwise coming into the agency's possession that are believed to have been used in the commission of a crime and shall enter such information into a firearms tracing system maintained by the U.S. Department of Justice. The Superintendent shall adopt ~~and promulgate~~ regulations prescribing the ~~form-method~~ for reporting this information and the time and manner of submission of the ~~form~~ information to a firearms tracing system maintained by the U.S. Department of Justice. ~~In addition to any other information which the Superintendent may require, the form shall require (i) the serial number or other identifying information on the firearm, if available, (ii) a brief description of the circumstances under which the firearm came into the possession of the law enforcement agency, including the crime which was or may have been committed with the firearm, (iii) the name of or other identifying information on the person from whom the firearm was taken, (iv) the original place of sale and, if known, the chain of possession of the firearm, and (v) the disposition of the firearm.~~*

*C. Except as provided in § [19.2-386.29](#), whenever a firearm is identified as stolen, the law-enforcement agency shall return such firearm to the rightful owner thereof, if known, provided the owner is not prohibited from possessing the firearm and the agency does not need to retain the firearm as evidence in a criminal prosecution. HB51 and SB615 - §591-148.3.*

## FIREARMS – SUMMARY ONLY

**HB51 and SB615 - § 59.1-148.3 - Purchase of weapons other than handguns by certain officers.** Allows officers of certain agencies to purchase, at a fair market price and with approval of the agency head, weapons other than handguns that are issued for personal use of an officer so long as the weapon is a type and configuration that can be purchased at a regular hardware or sporting goods store by a private citizen without restrictions other than the instant background check. Current law allows this type of purchase only for the Department of State Police. This bill is identical to [SB 615](#).

**SB205 - § 59.1-148.3 – Purchase of handguns by certain officers.** Adds employees of the Department of Corrections with internal investigations authority to the list of retired law-enforcement officers who may purchase their service handguns for \$1.

**HB810 - § 18.2-308.2;2 - Transfer of assault weapon; proof of citizenship.** Makes consistent the type of identification and other documentation that a purchaser of a firearm must present when purchasing any type of firearm from a licensed dealer by removing the additional requirement for the purchase of an assault weapon that a person who purchases such a weapon must present proof of citizenship. The bill does not alter the provisions prohibiting the sale of assault firearms to noncitizens or persons who have not been lawfully admitted for permanent residence.

**HB206 - § 18.2-308.2:2 -Transfer of certain firearms; identification requirement.** Allows Virginia residents to purchase a firearm by presenting only one photo-identification form issued by a governmental agency of the Commonwealth or by the U.S. Department of Defense that demonstrates that the prospective purchaser resides in Virginia. The bill provides that a member of the armed forces whose photo identification issued by the Department of Defense does not have a Virginia address may establish his Virginia residency with such photo identification and permanent orders assigning the purchaser to a duty post, including the Pentagon, in Virginia or his Leave and Earnings Statement. Current law requires photo identification and another document that establishes residency, such as a lease or utility bill, and that includes an address that matches the photo identification.

**HB90 - § 44-39.1 - Possession of handguns by members of the Virginia National Guard.** Allows a member of the Virginia National Guard to possess a concealed handgun owned by him at National Guard facilities and facilities under contract with the National Guard if such member has a valid concealed handgun permit. The bill also provides that the member's commanding officer may prohibit the member from possessing a concealed handgun while participating in any training or other exercises where the commanding officer reasonably determines that (i) such possession would interfere with the conduct of such training or other exercises, (ii) such possession may result in mission impairment, or (iii) the member is unfit to carry a handgun. This bill incorporates [HB 119](#).

## MISCELLANEOUS – FULL TEXT

**Law-enforcement records concerning juveniles; disclosure.** Allows the disclosure of law-enforcement records concerning a juvenile who is referred to a court services unit-authorized diversion program. The bill prohibits further disclosure of such records by the diversion program or participants in the program. Law-enforcement officers may prohibit disclosure to protect a criminal investigation or intelligence information.

### CHAPTER 234

*An Act to amend and reenact § [16.1-301](#) of the Code of Virginia, relating to confidentiality of juvenile law-enforcement records; disclosure.*

[H 541]

Approved March 4, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [16.1-301](#) of the Code of Virginia is amended and reenacted as follows:

§ [16.1-301](#). Confidentiality of juvenile law-enforcement records; disclosures to school principal and others.

A. The court shall require all law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a juvenile are protected against disclosure to any unauthorized person. The police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties, as the case may be, shall keep separate records as to violations of law other than violations of motor vehicle laws committed by juveniles. Such records with respect to such juvenile shall not be open to public inspection nor their contents disclosed to the public unless a juvenile 14 years of age or older is charged with a violent juvenile felony as specified in subsections B and C of § [16.1-269.1](#).

B. Notwithstanding any other provision of law, the chief of police or sheriff of a jurisdiction or his designee may disclose, for the protection of the juvenile, his fellow students and school personnel, to the school principal that a juvenile is a suspect in or has been charged with (i) a violent juvenile felony, as specified in subsections B and C of § [16.1-269.1](#); (ii) a violation of any of the provisions of Article 1 (§ [18.2-77](#) et seq.) of Chapter 5 of Title 18.2; or (iii) a violation of law involving any weapon as described in subsection A of § [18.2-308](#). If a chief of police, sheriff or a designee has disclosed to a school principal pursuant to this section that a juvenile is a suspect in or has been charged with a crime listed above, upon a court disposition of a proceeding regarding such crime in which a juvenile is adjudicated delinquent, convicted, found not guilty or the charges are reduced, the chief of police, sheriff or a designee shall, within 15 days of the expiration of the appeal period, if there is no notice of appeal, provide notice of the disposition ordered by the court to the school principal to whom disclosure was made. If the court defers disposition or if charges are withdrawn, dismissed or nolle prosequi, the chief of police, sheriff or a designee shall, within 15 days of such action provide notice of such action to the school principal to whom disclosure was made. If charges are withdrawn in intake or handled informally without a court disposition or if charges are not filed within 90 days of the initial disclosure, the chief of police, sheriff or a designee shall so notify the school principal to whom disclosure was made. In addition to any other disclosure that is permitted by this subsection, the principal in his discretion may provide such information to a threat assessment team established by the local school division. No member of a threat assessment team shall (a) disclose any juvenile record information obtained pursuant to this section or (b) use such information for any purpose other than evaluating threats to students and school personnel. For the purposes of this subsection, "principal" also refers to the chief administrator of any private primary or secondary school.

C. Inspection of law-enforcement records concerning juveniles shall be permitted only by the following:

1. A court having the juvenile currently before it in any proceeding;

2. The officers of public and nongovernmental institutions or agencies to which the juvenile is currently committed, and those responsible for his supervision after release;

3. Any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency;

4. Law-enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties;

5. The probation and other professional staff of a court in which the juvenile is subsequently convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;

6. The juvenile, parent, guardian or other custodian and counsel for the juvenile by order of the court; and

7. As provided in §§ [19.2-389.1](#) and [19.2-390](#).

D. The police departments of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, and to law-enforcement agencies in other states, current information on juvenile arrests. The information exchanged shall be used by the receiving agency for current investigation purposes only and shall not result in the creation of new files or records on individual juveniles on the part of the receiving agency.

E. Upon request, the police departments of the cities and towns and the police departments or sheriffs of the counties may release current information on juvenile arrests or juvenile victims to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose than provided in § [19.2-368.3](#).

F. Nothing in this section shall prohibit the exchange of other criminal investigative or intelligence information among law-enforcement agencies.

*G. Nothing in this section shall prohibit the disclosure of law-enforcement records concerning a juvenile to a court services unit-authorized diversion program in accordance with this chapter, which includes programs authorized by subdivision 1 of § [16.1-227](#) and § [16.1-260](#). Such records shall not be further disclosed by the authorized diversion program or any participants therein. Law-enforcement officers may prohibit a disclosure to such a program to protect a criminal investigation or intelligence information.*

**Physical evidence recovery kit examination; minors.** Provides that if a parent or guardian of a minor refuses to consent to a physical evidence recovery kit examination of the minor, the minor may consent.

## CHAPTER 251

*An Act to amend and reenact § [54.1-2970.1](#) of the Code of Virginia, relating to authority to consent to physical evidence recovery kit examination; minors.*

[S 248]

Approved March 7, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [54.1-2970.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [54.1-2970.1](#). Individual incapable of making informed decision; procedure for physical evidence recovery kit examination; consent by minors.

A. A licensed physician, physician assistant, nurse practitioner, or registered nurse may perform a physical evidence recovery kit examination for a person who is believed to be the victim of a sexual assault and who is incapable of making an informed decision regarding consent to such examination when:

1. There is a need to conduct the examination before the victim is likely to be able to make an informed decision in order to preserve physical evidence of the alleged sexual assault from degradation;

2. No legally authorized representative or other person authorized to consent to medical treatment on the individual's behalf is reasonably available to provide consent within the time necessary to preserve physical evidence of the alleged sexual assault; and

3. A capacity reviewer, as defined in § [54.1-2982](#), provides written certification that, based upon a personal examination of the individual, the individual is incapable of making an informed decision regarding the physical evidence recovery kit examination and that, given the totality of the circumstances, the examination should be performed. The capacity reviewer who provides such written certification shall not be otherwise currently involved in the treatment of the person assessed, unless an independent capacity reviewer is not reasonably available.

*A1. For purposes of this section, if a parent or guardian of a minor refuses to consent to a physical evidence recovery kit examination of the minor, the minor may consent.*

B. Any physical evidence recovery kit examination performed pursuant to this section shall be performed in accordance with the requirements of §§ [19.2-11.2](#) and [19.2-165.1](#) and shall protect the alleged victim's identity.

C. A licensed physician, physician assistant, nurse practitioner, or registered nurse who exercises due care under the provisions of this act shall not be liable for any act or omission related to performance of an examination in accordance with this section.

**Officer-involved shootings; reporting requirement.** Requires the Department of State Police to include any officer-involved shooting and whether such shooting was determined to be justified in the annual Crime in Virginia report. The bill requires that any law-enforcement or public safety officer required to make such report receive training concerning such reporting requirement.

### CHAPTER 333

*An Act to amend the Code of Virginia by adding a section numbered [52-28.2](#), relating to officer-involved shootings; reporting requirement.*

[H 301]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [52-28.2](#) as follows:

*§ [52-28.2](#). Reporting of officer-involved shootings; inclusion in annual Crime in Virginia report.*

*The Department of State Police shall include any officer-involved shooting and whether such shooting was determined to be justified in the annual Crime in Virginia report. Any law-enforcement or public safety officer required to make such report shall receive training concerning such reporting requirement.*

*For the purposes of this section, "officer-involved shooting" means the discharge of a firearm by a law-enforcement officer, as defined in § [9.1-101](#), that results in the death or serious bodily injury of another.*

**Temporary detention; notice of recommendation; communication with magistrate.** Provides that the magistrate conducting a temporary detention hearing shall consider, if available, information provided by the person who initiated emergency custody. The bill also requires the community services board evaluating a person for temporary detention, if the evaluator recommends that the person not be subject to temporary detention, (i) to notify, if present, the person who initiated emergency custody of such recommendation in addition to the current obligation to notify the petitioner and an onsite treating physician; (ii) to promptly inform the person who initiated emergency custody that the community services board will facilitate communication between such person and the magistrate if such person disagrees with the recommendation of the community services board; and (iii) to arrange for the person who initiated emergency custody to communicate, upon request, with the magistrate as soon as practicable prior to the expiration of the period of emergency custody. Finally, the bill imposes a duty on health care providers providing services to a person subject to emergency custody, temporary detention, or involuntary admission proceedings to make a reasonable attempt to notify the person's family member or personal representative and clarifies that such representative includes an agent named in an advance directive; currently, such health care provider has discretion as to whether to make such notification.

## CHAPTER 569

An Act to amend and reenact §§ [16.1-337](#), [37.2-804.2](#), and [37.2-809](#) of the Code of Virginia, relating to temporary detention; notice of recommendation; communication with magistrate.

[H 1110]

Approved March 29, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [16.1-337](#), [37.2-804.2](#), and [37.2-809](#) of the Code of Virginia are amended and reenacted as follows:

§ [16.1-337](#). Inpatient treatment of minors; general applicability; disclosure of records.

A. A minor may be admitted to a mental health facility for inpatient treatment only pursuant to § [16.1-338](#), [16.1-339](#), or [16.1-340.1](#) or in accordance with an order of involuntary commitment entered pursuant to §§ [16.1-341](#) through [16.1-345](#). The provisions of Article 12 (§ [16.1-299](#) et seq.) of Chapter 11 of this title relating to the confidentiality of files, papers, and records shall apply to proceedings under this article.

B. Any health care provider, as defined in § [32.1-127.1:03](#), or other provider rendering services to a minor who is the subject of proceedings under this article, upon request, shall disclose to a magistrate, the juvenile intake officer, the court, the minor's attorney, the minor's guardian ad litem, the qualified evaluator performing the evaluation required under §§ [16.1-338](#), [16.1-339](#), and [16.1-342](#), the community services board or its designee performing the evaluation, preadmission screening, or monitoring duties under this article, or a law-enforcement officer any and all information that is necessary and appropriate to enable each of them to perform his duties under this article. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the person and to monitor that care and treatment. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the minor, or the public from physical injury or to address the health care needs of the minor. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider providing services to a minor who is the subject of proceedings under this article ~~may~~ shall make a reasonable attempt to notify the minor's parent of information ~~which~~ that is directly relevant to such individual's involvement with the minor's health care, which may include the minor's location and general condition, in accordance with subdivision D 34 of § [32.1-127.1:03](#), unless the provider has actual knowledge that the parent is currently prohibited by court order from contacting the minor. *No health care provider shall be required to notify a person's family member or personal representative pursuant to this section if the health care provider has actual knowledge that such notice has been provided.*

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and

Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

C. Any order entered where a minor is the subject of proceedings under this article shall provide for the disclosure of health records pursuant to subsection B. This subsection shall not preclude any other disclosures as required or permitted by law.

§ [37.2-804.2](#). Disclosure of records.

Any health care provider, as defined in § [32.1-127.1:03](#), or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to this chapter shall, upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to § [37.2-815](#), the community services board or its designee performing any evaluation, preadmission screening, or monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant to this chapter. Any health care provider, as defined in § [32.1-127.1:03](#), or other provider who has provided or is currently evaluating or providing services to a person who is the subject of proceedings pursuant to this chapter shall disclose information that may be necessary for the treatment of such person to any other health care provider or other provider evaluating or providing services to or monitoring the treatment of the person. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider providing services to a person who is the subject of proceedings under this chapter ~~may notify the person's~~ shall (i) inform the person that his family member or personal representative, including any agent named in an advance directive executed in accordance with the Health Care Decisions Act (§ [54.1-2981](#) et seq.), will be notified of information that is directly relevant to such individual's involvement with the person's health care, which may include the person's location and general condition, in accordance with subdivision D 34 of § [32.1-127.1:03](#), and (ii) make a reasonable effort to so notify the person's family member or personal representative, unless the provider has actual knowledge that the family member or personal representative is currently prohibited by court order from contacting the person. *No health care provider shall be required to notify a person's family member or personal representative pursuant to this section if the health care provider has actual knowledge that such notice has been provided.*

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

§ [37.2-809](#). Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii) is able to provide an independent examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department.

"Investment interest" means the ownership or holding of an equity or debt security, including shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § [37.2-804.1](#) by an employee or a designee of the local community services board to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider, *if available*, (a) *information provided by the person who initiated emergency custody* and (b) the recommendations of any treating or examining physician licensed in Virginia ~~if available~~ either verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § [37.2-804.2](#). This subsection shall not preclude any other disclosures as required or permitted by law.

C. When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

D. A magistrate may issue a temporary detention order without an emergency custody order proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to subsection B if (i) the person has been personally examined within the previous 72 hours by an employee or a designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

E. An employee or a designee of the local community services board shall determine the facility of temporary detention in accordance with the provisions of § [37.2-809.1](#) for all individuals detained pursuant to this section. An employee or designee of the local community services board may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the individual given the specific security, medical, or behavioral health needs of the person. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary custody, transportation of the individual to the alternative facility of temporary detention shall be provided in accordance with the provisions of § [37.2-810](#). The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board designates an alternative facility, that employee or designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the provisions of § [37.2-809.1](#), if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § [37.2-808](#), the individual shall be detained in a state facility for the treatment of individuals with mental illness and such facility shall be indicated on the temporary detention order. Except as provided in § [37.2-811](#) for inmates requiring hospitalization in accordance with subdivision A 2 of § [19.2-169.6](#), the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by either the initial facility of temporary detention identified in the temporary detention order or by the alternative facility of temporary detention designated by the employee or designee of the local community services board pursuant to this subsection. The person detained or in custody pursuant to this section shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures.

F. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § [37.2-804](#). The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

G. The employee or the designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

H. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § [37.2-815](#), preparation of the preadmission screening report required by § [37.2-816](#), and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The person may be released, pursuant to § [37.2-813](#), before the 72-hour period herein specified has run.

I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this section. Each community services board shall provide to each general district court and magistrate's office within its service area a list of its employees and designees who are available to perform the evaluations required herein.

K. For purposes of this section, a health care provider or designee of a local community services board or behavioral health authority shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

L. ~~The~~ *If the employee or designee of the community services board who is conducting the evaluation pursuant to this section shall, if he recommends that the person should not be subject to a temporary detention order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if such person is present, and an onsite treating physician of his recommendation; (ii) promptly inform such person who initiated emergency custody that the community services board will facilitate communication between the person and the magistrate if the person disagrees with recommendations of the employee or designee of the community services board who conducted the evaluation and the person who initiated emergency custody so requests; and (iii) upon prompt request made by the person who initiated emergency custody, arrange for such person who initiated emergency custody to communicate with the magistrate as soon as is practicable and prior to the expiration of the period of emergency custody. The magistrate shall consider any information provided by the person who initiated emergency custody and any recommendations of the treating or examining physician and the employee or designee of the community services board who conducted the evaluation and consider such information and recommendations in accordance with subsection B in making his determination to issue a temporary detention order. The individual who is the subject of emergency custody shall remain in the custody of law enforcement or a*

*designee of law enforcement and shall not be released from emergency custody until communication with the magistrate pursuant to this subsection has concluded and the magistrate has made a determination regarding issuance of a temporary detention order.*

*M. For purposes of this section, "person who initiated emergency custody" means any person who initiated the issuance of an emergency custody order pursuant to § [37.2-808](#) or a law-enforcement officer who takes a person into custody pursuant to subsection G of § [37.2-808](#).*

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** Reverses the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell*, by setting out the general rule of redaction, which provides that no provision of FOIA is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by FOIA or by any other provision of law. Further, the bill states that a public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under FOIA or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under FOIA or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed. The bill defines the term "information" and provides that it is declaratory of the law as it existed prior to the September 17, 2015, decision of the Supreme Court of Virginia in the case of the *Department of Corrections v. Surovell*. The bill also reverses that part of the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell* by providing that in a FOIA enforcement action, no court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. The bill contains technical amendments. This bill is identical to [SB 494](#).

## CHAPTER 620

An Act to amend and reenact §§ [2.2-3701](#), [2.2-3704](#), [2.2-3705.1](#) through [2.2-3705.7](#), [2.2-3711](#), and [2.2-3713](#) of the Code of Virginia and to amend the Code of Virginia by adding a section numbered [2.2-3704.01](#), relating to the Virginia Freedom of Information Act; record exclusions; rule of redaction; no weight accorded to public body's determination.

[H 817]

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-3701](#), [2.2-3704](#), [2.2-3705.1](#) through [2.2-3705.7](#), [2.2-3711](#), and [2.2-3713](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered [2.2-3704.01](#) as follows:

§ [2.2-3701](#). Definitions.

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

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information" as used in the exclusions established by §§ [2.2-3705.1](#) through [2.2-3705.7](#), means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § [2.2-3708](#) or [2.2-3708.1](#), as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction

of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ [38.2-5000](#) et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § [9.1-101](#) shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

§ [2.2-3704](#). Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld ~~because their release is prohibited by law or the custodian has exercised his discretion to withhold the records in accordance with this chapter~~. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being withheld in part ~~because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records in accordance with this chapter~~. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. ~~When a portion of a requested record is withheld, the public body may delete or exercise only that portion of the record to which an exemption applies and shall release the remainder of the record.~~

3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is

used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ [42.1-76](#) et seq.). In accordance with § [42.1-79](#), the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

§ [2.2-3704.01](#). *Records containing both excluded and nonexcluded information; duty to redact.*

*No provision of this chapter is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by this chapter or by any other provision of law. A public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under this chapter or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed.*

§ [2.2-3705.1](#). Exclusions to application of chapter; exclusions of general application to public bodies.

The following ~~records are~~ *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. ~~Personnel records containing~~ *information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record such information and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying such information shall be disclosed.*

2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other ~~records~~ *information* protected by the attorney-client privilege.

3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § [2.2-3711](#).

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

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

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

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

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

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

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

9. ~~Records~~ Information concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ [2.2-1832](#) et seq.) of Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall ~~prohibit the disclosure~~ authorize the withholding of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

10. Personal information, as defined in § [2.2-3801](#), including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.

11. Communications and materials required to be kept confidential pursuant to § [2.2-4119](#) of the Virginia Administrative Dispute Resolution Act (§ [2.2-4115](#) et seq.).

12. ~~Records~~ Information relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such ~~records~~ information would adversely affect the bargaining position or negotiating strategy of the public body. Such ~~records~~ information shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), the provisions of this subdivision shall not apply, and any

release of ~~records~~ *information* relating to such transactions shall be governed by the Virginia Public Procurement Act.

13. ~~Those portions of records that contain account~~ *Account* numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the ~~record~~ *information*. For the purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.

§ [2.2-3705.2](#). Exclusions to application of chapter; records relating to public safety.

The following ~~records~~ *are 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. Confidential ~~records~~ *information*, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

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

~~Those portions of~~ *Information contained in* engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ [36-97](#) et seq.) or the Statewide Fire Prevention Code (§ [27-94](#) et seq.), ~~the if disclosure of which such information would jeopardize the safety or security of any public or private commercial office, multifamily residential, or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that. In order for the information to be excluded from mandatory disclosure, the owner or lessee of such property, equipment, or system in writing shall (i) invokes invoke the protections of this paragraph; (ii) identifies identify the drawings, plans, or other materials to be protected; and (iii) states state the reasons why protection is necessary.~~

Nothing in this subdivision shall ~~prevent the disclosure~~ *authorize the withholding* of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

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

4. ~~Plans and information to prevent or respond~~ *Information concerning the prevention or response* to terrorist activity or cyber attacks, ~~the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; (iii) engineering or architectural records plans or drawings, or records containing information derived from such records, to the extent plans or drawings; and (iv) information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities or security plans and measures of an entity, facility, building, structure, information technology~~

~~system, or software program if disclosure of such records information would (a) reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems; and (iv) information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities or security plans and measures of an entity, facility, building structure, information technology system, or software program or (b) jeopardize the safety of any person.~~

The same categories of ~~records of information concerning~~ any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing ~~(a) (1) invokes the protections of this subdivision, (b) (2) identifies with specificity the records or portions thereof information for which protection is sought, and (c) (3) states with reasonable particularity why the protection of such records information from public disclosure is necessary to meet the objective of antiterrorism or cybersecurity planning or protection.~~ Such statement shall be a public record and shall be disclosed upon request.

Nothing in this subdivision shall be construed to ~~prohibit the disclosure~~ *authorize the withholding* of ~~records information~~ relating to the structural or environmental soundness of any building, nor shall it ~~prevent the disclosure~~ *authorize the withholding* of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

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

~~6. Engineering~~ *Information contained in engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which if disclosure of such information would (i) reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would or (ii) jeopardize the security of any governmental facility, building, or structure or the safety of persons using such facility, building, or structure.*

~~7. Security~~ *Information concerning security plans and specific assessment components of school safety audits, as provided in § [22.1-279.8](#).*

Nothing in this subdivision shall be construed to ~~prohibit the disclosure~~ *authorize the withholding* of ~~records information~~ relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster, or other catastrophic event; or (ii) any person on school property has suffered or been threatened with any personal injury.

8. ~~Expired.~~

~~9. Records of the Commitment Review Committee~~ *Information concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2 held by the Commitment Review Committee; except that in no case shall records information identifying the victims of a sexually violent predator be disclosed.*

~~10-9. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system; if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision shall prevent the release~~ *authorize the withholding* of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

*For the purposes of this subdivision, "subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier.*

~~11-10. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ [56-484.12](#) et seq.); and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system; if such records are not otherwise publicly available.~~

Nothing in this subdivision shall ~~prevent the release~~ *authorize the withholding* of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

*For the purposes of this subdivision, "subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier.*

~~12. Records of 11. Information held by the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, to the extent such records (i) contain information relating to that would (i) reveal strategies under consideration or development by the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), provided to the Council or such commission or organizations in connection with their work.~~

In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to authorize the withholding of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.

~~13. Documentation or other information 12. Information, as determined by the State Comptroller, that describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and systems, and the assessment of risks and vulnerabilities of those controls, including the annual assessment of internal controls mandated by the State Comptroller, the if disclosure of which such information would jeopardize the security of the Commonwealth's financial assets. However, records relating to the investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.~~

~~14. Documentation or other information 13. Information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, programming maintained by or~~

utilized by STARS or any other similar local or regional public safety communications system; those portions of engineering and construction drawings and plans that reveal critical structural components, interconnectivity, security equipment and systems, network monitoring, network operation center, master sites, ventilation systems, fire protection equipment, mandatory building emergency equipment, electrical systems, and other utility equipment and systems related to STARS or any other similar local or regional public safety communications system; and special event plans, operational plans, storm plans, or other pre-arranged programming, ~~the if disclosure of which such information would (a) reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would or (b) jeopardize the security of any governmental facility, building, or structure or the safety of any person.~~

~~15. Records of a~~ 14. Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS department, ~~to the extent that the records disclose if disclosure of such information would reveal the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.~~

~~16. Records of hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health, to the extent such records reveal~~ 15. Information concerning the disaster recovery plans or the evacuation plans for such facilities in the event of fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health. Nothing in this subdivision shall be construed to ~~prohibit the disclosure~~ authorize the withholding of records information relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

§ [2.2-3705.3](#). Exclusions to application of chapter; records relating to administrative investigations.

The following records are 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. (Effective until July 1, 2018) ~~Confidential records of all~~ Information relating to investigations of applications applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

1. (Effective July 1, 2018) ~~Confidential records of all~~ Information relating to investigations of applications applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth pursuant to § [54.1-108](#).

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. ~~However, nothing in this section shall prohibit the disclosure of information taken from~~ Information contained in inactive reports shall be disclosed in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ [2.2-3900](#) et seq.) or under any local ordinance adopted in accordance with the authority specified in § [2.2-524](#), or adopted pursuant to § [15.2-965](#), or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. ~~However, nothing in this section shall prohibit the distribution of information taken from~~ *Information contained in inactive reports shall be disclosed* in a form that does not reveal the identity of the parties involved or other persons supplying information.

~~6. Records of Information relating to~~ studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ [58.1-4014](#) through [58.1-4018](#), (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such ~~official records have~~ *information has* not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § [2.2-3010](#) with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ [2.2-3009](#) et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ [2.2-307](#) et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § [15.2-825](#); or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. ~~Records of Information contained in~~ completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is ~~prohibited~~ *excluded* by this ~~section~~ *subdivision*, the ~~records~~ *information* disclosed shall include, ~~but not be limited to~~, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Information furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under § [2.2-1202.1](#), and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. ~~However, nothing in this section shall prohibit the distribution of information taken from~~ *Information contained in inactive reports shall be disclosed* in a form that does not reveal the identity of the parties involved or other persons supplying information.

9. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ [36-97](#) et seq.) or the Statewide Fire Prevention Code (§ [27-94](#) et seq.) made to a local governing body.

10. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ [9.1-138](#) et seq.), Article 4.1 (§ [9.1-150.1](#) et seq.), Article 11 (§ [9.1-185](#) et seq.), and Article 12 (§ [9.1-186](#) et seq.) of Chapter 1 of Title 9.1.

11. ~~Records~~ *Information* furnished to or prepared by the Board of Education pursuant to subsection D of § [22.1-253.13:3](#) in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of ~~records~~ *such information* to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take

personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

12. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of ~~records~~ *such information* to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. ~~Records of Information contained in~~ completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. ~~The records information~~ disclosed shall include ~~information regarding~~ the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information ~~in the records~~ regarding a current or former student shall be released except as permitted by state or federal law.

13. ~~Records, notes and information~~ *Information* provided in confidence and related to an investigation by the Attorney General under Article 1 (§ [3.2-4200](#) et seq.) or Article 3 (§ [3.2-4204](#) et seq.) of Chapter 42 of Title 3.2, Article 10 (§ [18.2-246.6](#) et seq.) of Chapter 6 or Chapter 13 (§ [18.2-512](#) et seq.) of Title 18.2, or Article 1 (§ [58.1-1000](#)) of Chapter 10 of Title 58.1. However, ~~records information~~ related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses, or other individuals involved in the investigation.

§ [2.2-3705.4](#). Exclusions to application of chapter; educational records and certain records of educational institutions.

The following ~~records are~~ *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. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, ~~the public body~~ *such records shall open such records for inspection and copying be disclosed.*

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

~~3. Records of Information held by the Brown v. Board of Education Scholarship Awards Committee relating to that would reveal personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.~~

~~4. Data, records or information Information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.~~

~~5. All records of Information held by the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.~~

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

~~7. Records Information maintained in connection with fundraising activities by or for a public institution of higher education to the extent that such records would reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-related information; employment, familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the withholding of records information relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of the donor unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the performance of research services or other work or (ii) the terms and conditions of such grants or contracts.~~

~~8. Records of Information held by a threat assessment team established by a public institution of higher education pursuant to § [23-9.2:10](#) relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, the records such information of such the threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § [19.2-389](#) or [19.2-389.1](#), health records obtained pursuant to § [32.1-127.1:03](#), or scholastic records as defined in § [22.1-289](#). The public body providing such records information shall remove information personally identifying information of any person who provided information to the threat assessment team under a promise of confidentiality.~~

§ [2.2-3705.5](#). Exclusions to application of chapter; health and social services records.

The following ~~records are~~ 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 continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

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

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be ~~open to inspection and copying as provided in § [2-2-3704](#)~~ *disclosed*. No such summaries or data shall include any information that identifies specific individuals receiving services.

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

3. Reports, documentary evidence and other information as specified in §§ [51.5-122](#), [51.5-141](#), and [63.2-104](#).

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ [63.2-1700](#) et seq.) and 18 (§ [63.2-1800](#) et seq.) of Title 63.2; and ~~records and~~ information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ [8.01-216.1](#) et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ [32.1-310](#) et seq.) of Title 32.1. ~~However, nothing in this section shall prohibit disclosure of information~~ *Information* from the records of completed investigations *shall be disclosed* in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

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

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § [37.2-818](#).

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § [32.1-102.3:4](#).

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § [54.1-2506.1](#).

9. Information ~~and records~~ acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § [32.1-283.1](#) or by a local or regional child fatality review team to the extent *that such information is made confidential* by § [32.1-283.2](#); (ii) during a review of any death conducted by a family violence fatality review team to the extent *that such information is made confidential* by § [32.1-283.3](#); or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § [32.1-283.5](#) or by a local or regional adult fatality review team to the extent *that such information is made confidential* by § [32.1-283.6](#).

10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § [32.1-276.9](#), to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § [32.1-276.4](#).

11. ~~Records of Information held by~~ the Health Practitioners' Monitoring Program Committee within the Department of Health Professions, ~~to the extent such records~~ that may identify any practitioner who may be, or who is actually, impaired ~~to the extent~~ and disclosure of such information is prohibited by § [54.1-2517](#).

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

13. Any ~~record~~ information copied, recorded, or received by the Commissioner of Health in the course of an examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§ [32.1-137.4](#) and [32.1-137.5](#), including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

14. ~~Records, information~~ Information and statistical registries required to be kept confidential pursuant to §§ [63.2-102](#) and [63.2-104](#).

15. ~~All data, records, and reports~~ Information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such ~~data, records, and reports~~ information that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ [54.1-2519](#) et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § [38.2-5002.2](#).

17. ~~Records of Information held by~~ the State

the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § [63.2-600](#). Health Commissioner relating to the health of any person ~~or persons~~ subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ [32.1-48.05](#) et seq.) of Chapter 2 of Title 32.1; ~~this provision shall not, however,~~ *However, nothing in this subdivision shall be construed to prohibit the disclosure* authorize the withholding of statistical summaries, abstracts, or other information in aggregate form.

18. ~~Records containing the~~ The names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of

~~19. Records of Information held by certain health care committees and entities, to the extent that they reveal information that may be withheld from discovery as privileged communications pursuant to § [8.01-581.17](#).~~

§ [2.2-3705.6](#). Exclusions to application of chapter; proprietary records and trade secrets.

The following ~~records are~~ *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. Proprietary information gathered by or for the Virginia Port Authority as provided in § [62.1-132.4](#) or [62.1-134.1](#).
2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ [15.2-4900](#) et seq.) of Title 15.2.
3. ~~Confidential proprietary records~~ *Proprietary information*, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other ~~records information~~ *information* related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, ~~if disclosure of such records are made public, information would adversely affect the financial interest of the public body would be adversely affected.~~ *information would adversely affect the financial interest of the public body*.
4. Information that was filed as confidential under the Toxic Substances Information Act (§ [32.1-239](#) et seq.), as such Act existed prior to July 1, 1992.
5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § [28.2-204](#).
6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.
7. ~~Confidential proprietary records~~ *Proprietary information* related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.
8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ [32.1-331.12](#) et seq.) of Chapter 10 of Title 32.1.
9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. [105-178](#)) for transportation projects, ~~provided if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.~~
10. Confidential information designated as provided in subsection F of § [2.2-4342](#) as trade secrets or proprietary information by any person *in connection with a procurement transaction or by any person* who has submitted to a

public body an application for prequalification to bid on public construction projects in accordance with subsection B of § [2.2-4317](#).

11. a. Memoranda, staff evaluations, or other ~~records~~ *information* prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or the ~~Public-Private~~ *Public-Private* Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.); where (i) if such ~~records were~~ *information was* made public prior to or after the execution of an interim or a comprehensive agreement, § [33.2-1820](#) or [56-575.17](#) notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected; and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. ~~Records~~ *Information* provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002, ~~to the extent that~~ (§ [56-575.1](#) et seq.) if *disclosure of such records contain information would reveal* (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.); (ii) financial ~~records~~ *information* of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity; where, if ~~the records were~~ *such information was* made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the ~~records~~ *information* specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

~~1-(1)~~ Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

~~2-(2)~~ Identifying with specificity the data or other materials for which protection is sought; and

~~3-(3)~~ Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial ~~records~~ *information* of the private entity. To protect other ~~records~~ *information* submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the ~~records~~ *information* afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § [33.2-1820](#) or [56-575.17](#); (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.).

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

13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), or confidential proprietary ~~records information~~ that ~~are~~ is not generally available to the public through regulatory disclosure or otherwise, provided by a ~~(a)~~ (i) bidder or applicant for a franchise or ~~(b)~~ (ii) franchisee under Chapter 21 (§ [15.2-2100](#) et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the ~~records relate~~ information relates to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies, or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such ~~records information~~ were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall ~~(i)~~ (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, ~~(ii)~~ (b) identify the data or other materials for which protection is sought, and ~~(iii)~~ (c) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

~~14. Documents and other information~~ Information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § [18.2-340.34](#).

~~15. Records and reports~~ Information related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § [3.2-1215](#).

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

~~17. Records submitted as~~ Information relating to a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ [2.2-2233.1](#) et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ [23-277](#) et seq.) of Title 23 to the extent if disclosure of such ~~records contain~~ information would (i) reveal proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, ~~if the disclosure of such information would and~~ (ii) be harmful to the competitive position of the applicant.

18. Confidential proprietary ~~records information~~ and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § [56-265.4:4](#) and (ii) providing cable television services pursuant to Article 1.1 (§ [15.2-2108.2](#) et seq.) of Chapter 21 of Title 15.2, to the extent that if disclosure of such ~~records information~~ would be harmful to the competitive position of the locality.

In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the ~~records or portions thereof~~ information for which protection is sought, and (c) state the reasons why protection is necessary.

19. Confidential proprietary ~~records~~ *information* and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ [56-484.7:1](#) et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that ~~records~~ *information* required to be maintained in accordance with § [15.2-2160](#) shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) or financial ~~records~~ *information* of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ [2.2-1603](#) et seq.). In order for such trade secrets or financial ~~records~~ *information* to be excluded from the provisions of this chapter, the business shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.

21. ~~Documents and other information~~ *Information* of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ [32.1-276.5:1](#) and [32.1-276.7:1](#).

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), including, but not limited to, financial ~~records~~ *information*, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

In order for the ~~records~~ *information* specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

~~1-~~*a.* Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

~~2-~~*b.* Identifying with specificity the data or other materials for which protection is sought; and

~~3-~~*c.* Stating the reasons why protection is necessary.

The State Inspector General shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial ~~records~~ *information* of the private entity. The State Inspector General shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. ~~Records submitted as~~ *Information relating to* a grant application, or accompanying a grant application, *submitted* to the Tobacco Region Revitalization Commission ~~to the extent such records contain that would~~ (i) reveal (a) trade secrets as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), ~~(ii) (b) financial records information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (iii) (c) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would~~ and (ii) be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other ~~records~~ *information* prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § [3.2-3103](#).

In order for the ~~records~~ *information* specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

- ~~1-a.~~ Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- ~~2-b.~~ Identifying with specificity the data, ~~records~~ *information* or other materials for which protection is sought; and
- ~~3-c.~~ Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial ~~records~~ *information*, or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

24. a. ~~Records of Information held by~~ the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if ~~public disclosure of such information would adversely affect the financial interest or bargaining position of the Authority or a private entity providing records the information to the Authority; or~~

b. ~~Records~~ *Information* provided by a private entity to the Commercial Space Flight Authority, ~~to the extent that if disclosure of such records contain information would~~ (i) reveal (a) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.); ~~(ii) (b) financial records information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) (c) other information submitted by the private entity, where, if the records were made public, and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity would be adversely affected.~~

In order for the ~~records~~ *information* specified in clauses ~~(i) (a), (ii) (b), and (iii) (c)~~ of subdivision 24 b to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

- ~~1-(1)~~ Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- ~~2-(2)~~ Identifying with specificity the data or other materials for which protection is sought; and
- ~~3-(3)~~ Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial ~~records~~ *information* of the private entity. To protect other ~~records~~ *information* submitted by the private entity from disclosure, the Authority shall determine whether public disclosure would adversely affect the financial interest or bargaining position of the Authority or private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

25. ~~Documents and other information~~ *Information* of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ [10.1-104.7](#), [10.1-104.8](#), and [10.1-104.9](#), other than when required as part of a state or federal regulatory enforcement action.

26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), provided to the Department of Environmental Quality pursuant to the provisions of § [10.1-1458](#). In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

27. ~~Documents and other information~~ *Information* of a proprietary nature furnished by a licensed public-use airport to the Department of Aviation for funding from programs administered by the Department of Aviation or the

Virginia Aviation Board, where if ~~the records were~~ *such information* was made public, the financial interest of the public-use airport would be adversely affected.

In order for the ~~records~~ *information* specified in this subdivision to be excluded from the provisions of this chapter, the public-use airport shall make a written request to the Department of Aviation:

~~1-a.~~ Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

~~2-b.~~ Identifying with specificity the data or other materials for which protection is sought; and

~~3-c.~~ Stating the reasons why protection is necessary.

§ [2.2-3705.7](#). Exclusions to application of chapter; records of specific public bodies and certain other limited exclusions.

The following ~~records are~~ *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. State income, business, and estate tax returns, personal property tax returns, ~~scholastic~~ and confidential records held pursuant to § [58.1-3](#).

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

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and ~~the~~ Assistant to the Governor for Intergovernmental Affairs; and those individuals to whom the Governor has delegated his authority pursuant to § [2.2-104](#).

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

~~3. Library~~ *Information contained in library* records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

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

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

~~6. Records and writings~~ *Information* furnished by a member of the General Assembly to a meeting of a standing committee, special committee, or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § [30-110](#) or of formulating advisory opinions to members on standards of conduct, or both.

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

8. Personal information, as defined in § [2.2-3801](#), (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § [15.2-2304](#) or [15.2-2305](#). However, access to one's own information shall not be denied.

9. ~~Records~~ *Information* regarding the siting of hazardous waste facilities, except as provided in § [10.1-1441](#), if disclosure of ~~them~~ *such information* would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

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

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

12. ~~Records of~~ *Information held by* the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or ~~of~~ a local retirement system, acting pursuant to § [51.1-803](#), or ~~of~~ the Rector and Visitors of the University of Virginia, acting pursuant to § [23-76.1](#), or ~~of~~ the Virginia College Savings Plan, acting pursuant to § [23-38.77](#), relating to the acquisition, holding, or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, ~~to the extent that: if disclosure of such information would~~ (i) ~~such records contain~~ *reveal* confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality; of the future value of such ownership interest or the future financial performance of the entity; and (ii) ~~disclosure of such confidential analyses would~~ have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to ~~prevent the disclosure of records~~ *authorize the withholding of information* relating to the identity of any investment held, the amount invested, or the present value of such investment.

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

14. Financial, medical, rehabilitative, and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ [51.5-53](#) et seq.) of Title 51.5.

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

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

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

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

19. ~~Records of Information held by~~ the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. ~~Records, investigative notes, correspondence, and information~~ Information pertaining to the planning, scheduling, and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ [55-210.1](#) et seq.) prepared by or for the State Treasurer, or his agents, or employees or persons employed to perform an audit or examination of holder records.

21. ~~Records of Information held by~~ the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, ~~to the extent that such records~~ that reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

~~22. Records of Information held by state or local park and recreation departments and local and regional park authorities to the extent such records contain information identifying a person concerning identifiable individuals under the age of 18 years. However, nothing in this subdivision shall operate to prohibit the disclosure authorize the withholding of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records such information of such persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the record information may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records information for inspection and copying.~~

~~23. Records Information submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they that reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.~~

~~24. Records of Information held by the Judicial Inquiry and Review Commission made confidential by § [17.1-913](#).~~

~~25. Records of Information held by the Virginia Retirement System acting pursuant to § [51.1-124.30](#), of a local retirement system acting pursuant to § [51.1-803](#) (hereinafter collectively referred to as the retirement system), or of the Virginia College Savings Plan, acting pursuant to § [23-38.77](#) relating to:~~

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, ~~to the extent that if~~ disclosure of such records information would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan, ~~to the extent if~~ disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

- (1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

~~26. Records of Information held by the Department of Corrections made confidential by § [53.1-233](#).~~

~~27. Records Information~~ maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ [2.2-4600](#) et seq.), ~~to the extent such records relate to information~~ and required to be provided by such participants to the Department to establish accounts in accordance with § [2.2-4602](#).

28. Personal information, as defined in § [2.2-3801](#), contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the ~~record~~ information.

~~29. Records Information~~ maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § [2.2-2716](#) ~~to the extent that such records~~ that reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the ~~record~~ information. Nothing in this subdivision, however, shall be construed to authorize the withholding of ~~records~~ information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. However, no ~~record~~ information that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any such correspondence.

~~31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are~~ Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such ~~records are~~ information is not otherwise available to the public and the ~~release~~ disclosure of such ~~records~~ information would reveal confidential strategies, methods, or procedures to be employed in law-enforcement activities; or materials created for the investigation and prosecution of a criminal case.

~~32. Records Information~~ provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft; where the ~~records~~ information would not be subject to disclosure by the entity providing the ~~records~~ information. The entity providing the ~~records~~ information to the Department of Aviation shall identify the specific ~~portion of the records~~ information to be protected and the applicable provision of this chapter that ~~exempts the record or portions thereof~~ excludes the information from mandatory disclosure.

~~33. Records Information~~ created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § [17.1-100](#).

34. (Effective July 1, 2018) ~~Records of Information held by the Virginia Alcoholic Beverage Control Authority to~~ the extent such records contain that contains (i) information of a proprietary nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), of any private entity; (iii) financial ~~records~~ information of a private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a) confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.

In order for the ~~records~~ information identified in clauses (i) ~~through~~, (ii), or (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect such ~~records~~ *information* of the private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

§ [2.2-3711](#). Closed meetings authorized for certain limited purposes.

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

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.
2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.
3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.
4. The protection of the privacy of individuals in personal matters not related to public business.
5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.
6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.
7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.
8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher

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

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other ~~records~~ *information* excluded from this chapter pursuant to subdivision 4 of § [2.2-3705.1](#).

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

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

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

15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.5](#).

16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § [58.1-4007](#) regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § [2.2-3705.3](#) and subdivision 11 of § [2.2-3705.7](#).

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

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

19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of ~~records~~ *information* excluded from this chapter pursuant to subdivision 3 or 4 of § [2.2-3705.2](#), where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information

technology system, or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or of any local retirement system, acting pursuant to § [51.1-803](#), or of the Rector and Visitors of the University of Virginia, acting pursuant to § [23-76.1](#), or by the Board of the Virginia College Savings Plan, acting pursuant to § [23-38.80](#), regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § [32.1-283.1](#), those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § [32.1-283.2](#), those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § [32.1-283.3](#), those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § [32.1-283.5](#), and those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § [32.1-283.6](#).

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

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees. This ~~exemption~~ *exclusion* shall also apply when the foregoing discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

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

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § [2.2-3801](#), which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ [23-38.75](#) et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § [56-484.15](#), of trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), submitted by CMRS providers as defined in § [56-484.12](#), related to the provision of wireless E-911 service.
27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § [2.2-4019](#) or [2.2-4020](#) during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.
28. Discussion or consideration of ~~records~~ *information* excluded from this chapter pursuant to subdivision 11 of § [2.2-3705.6](#) by a responsible public entity or an affected locality or public entity, as those terms are defined in § [33.2-1800](#), or any independent review panel appointed to review information and advise the responsible public entity concerning such records.
29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.
30. Discussion or consideration of grant or loan application ~~records~~ *information* excluded from this chapter pursuant to subdivision 17 of § [2.2-3705.6](#) by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.
31. Discussion or consideration by the Commitment Review Committee of ~~records~~ *information* excluded from this chapter pursuant to subdivision ~~9~~ 8 of § [2.2-3705.2](#) relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2.
32. [Expired.]
33. Discussion or consideration of confidential proprietary ~~records~~ *information* and trade secrets excluded from this chapter pursuant to subdivision 18 of § [2.2-3705.6](#).
34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) of confidential proprietary ~~records~~ *information* and trade secrets excluded from this chapter pursuant to subdivision 19 of § [2.2-3705.6](#).
35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § [24.2-625.1](#).
36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ [9.1-1109](#) et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision A 2 a of § [2.2-3706](#).
37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of ~~records~~ *information* or confidential matters excluded from this chapter pursuant to subdivision 3 of § [2.2-3705.4](#), and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.
38. Discussion or consideration by the Virginia Port Authority of ~~records~~ *information* excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.6](#).

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § [51.1-124.30](#), by the Investment Advisory Committee appointed pursuant to § [51.1-124.26](#), by any local retirement system, acting pursuant to § [51.1-803](#), by the Board of the Virginia College Savings Plan acting pursuant to § [23-38.80](#), or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § [23-38.79:1](#) of ~~records information~~ excluded from this chapter pursuant to subdivision 25 of § [2.2-3705.7](#).

40. Discussion or consideration of ~~records information~~ excluded from this chapter pursuant to subdivision 3 of § [2.2-3705.6](#).

41. Discussion or consideration by the Board of Education of ~~records information~~ relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of § [2.2-3705.3](#).

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of ~~records information~~ excluded from this chapter pursuant to subdivision ~~12~~ 11 of § [2.2-3705.2](#).

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of ~~records information~~ excluded from this chapter pursuant to subdivision 29 of § [2.2-3705.7](#).

44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of ~~records information~~ excluded from this chapter pursuant to subdivision 23 of § [2.2-3705.6](#).

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of ~~records information~~ excluded from this chapter pursuant to subdivision 24 of § [2.2-3705.6](#).

46. Discussion or consideration of personal and proprietary information that are excluded from the provisions of this chapter pursuant to (i) subdivision 25 of § [2.2-3705.6](#) or (ii) subsection E of § [10.1-104.7](#). This ~~exemption~~ exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of ~~records information~~ excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.3](#) or subdivision 34 of § [2.2-3705.7](#).

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

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

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

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ [15.2-4900](#) et seq.), or any public body empowered to issue industrial revenue bonds by general or special law,

to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ [2.2-3713](#). Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § [8.01-644](#), the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an ~~exemption~~ *exclusion* by a preponderance of the evidence. *No court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies.* Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § [2.2-3707](#) shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

2. That the provisions of this act are declaratory of the law as is it existed prior to the September 17, 2015 decision of the Supreme Court of Virginia in the case of the *Department of Corrections v. Surovell*.

**Virginia Freedom of Information Act (FOIA); designation of FOIA officer; posting of FOIA rights and responsibilities.** Requires certain local public bodies to post a FOIA rights and responsibilities document on their respective public government website. The bill also requires all state public bodies created in the executive branch of state government, including state authorities, and all local public bodies that are subject to FOIA to designate and publicly identify one or more FOIA officers whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body's compliance with the provisions of FOIA. The bill sets out where contact information for the designated FOIA officer is to be posted. The bill requires that any such FOIA officer shall possess specific knowledge of the provisions of FOIA and be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council.

## CHAPTER 748

*An Act to amend and reenact § 2.2-3704.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-3704.2, relating to the Virginia Freedom of Information Act; designation of FOIA officer; posting of FOIA rights and responsibilities.*

[H 818]

Approved April 20, 2016

Be it enacted by the General Assembly of Virginia:

1. That § [2.2-3704.1](#) of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered [2.2-3704.2](#) as follows:

§ [2.2-3704.1](#). Posting of notice of rights and responsibilities by state and local public bodies; assistance by the Freedom of Information Advisory Council.

A. All state public bodies ~~created in the executive branch of state government and~~ subject to the provisions of this chapter ~~and any county or city, and any town with a population of more than 250,~~ shall make available the following information to the public upon request and shall post ~~such information on a link to such information on the homepage of~~ their respective public government websites:

1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this section, "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;

2. Contact information for the ~~person~~ FOIA officer designated by the public body pursuant to § [2.2-3704.2](#) to (i) assist a requester in making a request for records or (ii) respond to requests for public records;

3. A general description, summary, list, or index of the types of public records maintained by such state public body;

4. A general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release;

5. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter or other law; and

6. The following statement: "A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § [2.2-3704](#) of the Code of Virginia."

B. The Freedom of Information Advisory Council, created pursuant to § [30-178](#), shall assist in the development and implementation of the provisions of subsection A, upon request.

§ [2.2-3704.2](#). *Public bodies to designate FOIA officer.*

*A. All state public bodies, including state authorities, that are subject to the provisions of this chapter and all local public bodies that are subject to the provisions of this chapter, shall designate and publicly identify one or more Freedom of Information Act officers (FOIA officer) whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body's compliance with the provisions of this chapter.*

*B. For such state public bodies, the name and contact information of the public body's FOIA officer to whom members of the public may direct requests for public records and who will oversee the public body's compliance with the provisions of this chapter shall be made available to the public upon request and be posted on the respective public body's website at the time of designation and maintained thereafter on such website for the duration of the designation.*

*C. For such local public bodies, the name and contact information of the public body's FOIA officer to whom members of the public may direct requests for public records and who will oversee the public body's compliance with the provisions of this chapter shall be made available in a way reasonably calculated to provide notice to the public, including posting at the public body's place of business, posting on its website, or including such information in its publications.*

*D. For the purposes of this section, local public bodies shall include constitutional officers.*

*E. Any such FOIA officer shall possess specific knowledge of the provisions of this chapter and be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council.*

Line of Duty Act. Revises the Line of Duty Act (the Act) by codifying revisions to the Act from the appropriation act and, among other changes, transferring overall administration of the Act to the Virginia Retirement System (VRS), transferring administration of health insurance benefits under the Act to the Department of Human Resource Management (the Department), and creating separate health benefits plans for beneficiaries under the Act. The bill has a delayed effective date of July 1, 2017, except that a final enactment requiring each nonparticipating employer to pay its pro rata share of estimated implementation costs to the VRS and the Department becomes effective July 1, 2016.

## CHAPTER 677

*An Act to amend and reenact §§ [9.1-400](#), [9.1-401](#), [9.1-402](#) through [9.1-405](#), [9.1-407](#), and [58.1-3](#), as it is currently effective and as it shall become effective, of the Code of Virginia; to amend the Code of Virginia by adding a section numbered [9.1-400.1](#) and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered [51.1-124.38](#); and to repeal § [9.1-406](#) of the Code of Virginia, relating to benefits for certain public employees disabled in the line of duty and their families, and for the families and beneficiaries of such employees who die in the line of duty.*

[H 1345]

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [9.1-400](#), [9.1-401](#), [9.1-402](#) through [9.1-405](#), [9.1-407](#), and [58.1-3](#), as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered [9.1-400.1](#) and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered [51.1-124.38](#) as follows:

§ [9.1-400](#). Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

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

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

(Effective until July 1, 2018) "Deceased person" means any individual whose death occurs on or after April 8, 1972, *in the line of duty* as the direct or proximate result of the performance of his duty, including the presumptions under §§ [27-40.1](#), [27-40.2](#), [51.1-813](#), ~~and [65.2-402](#)~~, and [65.2-402.1](#) if his position is covered by the applicable statute, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § [53.1-1](#); a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or emergency medical services agency that has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of the Commonwealth as an integral part of the official safety program of such county, city, or town; a member of any fire company providing fire protection services for facilities of the Virginia National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any regular or special conservation police officer who receives compensation from a county, city, or town or from the Commonwealth appointed pursuant to the provisions of § [29.1-200](#); any commissioned forest warden appointed under the provisions of § [10.1-1135](#); any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § [28.2-900](#); any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#); any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#)

or a local emergency, as defined in § [44-146.16](#), declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#); or any full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#).

(Effective July 1, 2018) "Deceased person" means any individual whose death occurs on or after April 8, 1972, *in the line of duty* as the direct or proximate result of the performance of his duty, including the presumptions under §§ [27-40.1](#), [27-40.2](#), [51.1-813](#), ~~and [65.2-402](#)~~, and [65.2-402.1](#) if his position is covered by the applicable statute, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § [53.1-1](#); a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or emergency medical services agency that has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of the Commonwealth as an integral part of the official safety program of such county, city, or town; a member of any fire company providing fire protection services for facilities of the Virginia National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Authority; any regular or special conservation police officer who receives compensation from a county, city, or town or from the Commonwealth appointed pursuant to the provisions of § [29.1-200](#); any commissioned forest warden appointed under the provisions of § [10.1-1135](#); any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § [28.2-900](#); any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#); any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#) or a local emergency, as defined in § [44-146.16](#), declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#); or any full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#).

"Disabled person" means any individual who; *has been determined to be mentally or physically incapacitated so as to prevent the further performance of his duties at the time of his disability where such incapacity is likely to be permanent, and whose incapacity occurs in the line of duty* as the direct or proximate result of the performance of his duty, including the presumptions under §§ [27-40.1](#), [27-40.2](#), [51.1-813](#), [65.2-402](#), and [65.2-402.1](#) if his position is covered by the applicable statute, in any position listed in the definition of deceased person in this section, ~~has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent. The term shall also include~~ "Disabled person" does not include any individual who has been determined to be no longer disabled pursuant to subdivision A 2 of § [9.1-404](#). Disabled person also does not include any individual during any period in which his health insurance coverage in the LODA Health Benefits Plan is suspended pursuant to subdivision C 4 of § [9.1-401](#). "Disabled person" includes any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Eligible dependent" for purposes of continued health insurance pursuant to § [9.1-401](#) means the natural or adopted child or children of a deceased person or disabled person or of a deceased or disabled person's eligible spouse, including any children born as the result of a pregnancy or adopted pursuant to a preadoptive agreement, either of which occurred prior to the time of the employee's death or disability. Eligibility will continue until the end of the year in which the eligible dependent reaches age 26 or when the eligible dependent ceases to be eligible based on the Virginia Administrative Code or administrative guidance as determined by the Department of Human Resource Management.

"Eligible spouse" for purposes of continued health insurance pursuant to § [9.1-401](#) means the spouse of a deceased person or a disabled person at the time of the death or disability. Eligibility will continue until the eligible spouse dies, ceases to be married to a disabled person, or in the case of the spouse of a deceased person, dies, remarries, or

*otherwise ceases to be eligible based on the Virginia Administrative Code or administrative guidance as determined by the Department of Human Resource Management.*

*"Employee" means any person who would be covered or whose spouse, dependents, or beneficiaries would be covered under the benefits of this chapter if the person became a disabled person or a deceased person.*

*"Employer" means (i) the employer of a person who is a covered employee or (ii) in the case of a volunteer who is a member of any fire company or department or rescue squad described in the definition of "deceased person," the county, city, or town that by ordinance or resolution recognized such fire company or department or rescue squad as an integral part of the official safety program of such locality.*

*"Fund" means the Line of Duty Death and Health Benefits Trust Fund established pursuant to § [9.1-400.1](#)*

*"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.*

*"LODA Health Benefits Plans" means the separate health benefits plans established pursuant to § [9.1-401](#).*

*"Nonparticipating employer" means any employer that is a political subdivision of the Commonwealth that elected on or before July 1, 2012, to directly fund the cost of benefits provided under this chapter and not participate in the Fund.*

*"Participating employer" means any employer that is a state agency or is a political subdivision of the Commonwealth that did not make an election to become a nonparticipating employer.*

*"VRS" means the Virginia Retirement System.*

*§ [9.1-400.1](#). Line of Duty Death and Health Benefits Trust Fund.*

*A. There is hereby established a permanent and perpetual fund to be known as the Line of Duty Death and Health Benefits Trust Fund, consisting of such moneys as may be appropriated by the General Assembly, contributions or reimbursements from participating and nonparticipating employers, gifts, bequests, endowments, or grants from the United States government or its agencies or instrumentalities, net income from the investment of moneys held in the Fund, and any other available sources of funds, public and private. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such moneys shall remain in the Fund and be credited to it. The moneys in the Fund shall be (i) deemed separate and independent trust funds, (ii) segregated and accounted for separately from all other funds of the Commonwealth, and (iii) administered solely in the interests of the persons who are covered under the benefits provided pursuant to this chapter. Deposits to and assets of the Fund shall not be subject to the claims of creditors.*

*B. The Virginia Retirement System shall invest, reinvest, and manage the assets of the Fund as provided in § [51.1-124.38](#) and shall be reimbursed from the Fund for such activities as provided in that section.*

*C. The Fund shall be used to provide the benefits under this chapter related to disabled persons, deceased persons, eligible dependents, and eligible spouses on behalf of participating employers and to pay related administrative costs.*

*D. Each participating employer shall make annual contributions to the Fund and provide information as determined by VRS. The amount of the contribution for each participating employer shall be determined on a current disbursement basis in accordance with the provisions of this section. If any participating employer fails to remit contributions or other fees or costs associated with the Fund, VRS shall inform the State Comptroller and the affected participating employer of the delinquent amount. In calculating the delinquent amount, VRS may impose an interest rate of one percent per month of delinquency. The State Comptroller shall forthwith transfer such delinquent amount, plus interest, from any moneys otherwise distributable to such participating employer.*

§ ~~9.1-401~~. Continued health insurance coverage for employees, eligible spouses, and eligible dependents.

~~A. The surviving spouse and any dependents of a deceased person~~ *Employees, eligible spouses, and eligible dependents* shall be afforded continued health insurance coverage *as provided in this section*, the cost of which shall be paid ~~in full out of the general fund of the state treasury by the nonparticipating employer to the Department of Human Resource Management or from the Fund on behalf of a participating employer, as applicable. If any disabled person is receiving the benefits described in this section and would otherwise qualify for the health insurance credit described in Chapter 14 (§ 51.1-1400 et seq.) of Title 51.1, the amount of such credit shall be deposited into the Line of Duty Death and Health Benefits Trust Fund or paid to the nonparticipating employer, as applicable, from the health insurance credit trust fund, in a manner prescribed by VRS.~~

~~B. If the disabled person's disability (i) occurred while in the line of duty as the direct or proximate result of the performance of his duty or (ii) was subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813 or § 65.2-402, and arose out of and in the course of his employment, the disabled person, his surviving spouse and any dependents shall be afforded continued health insurance coverage. The cost of such health insurance coverage shall be paid in full out of the general fund of the state treasury.~~

~~C. The continued health insurance coverage provided by this section shall be the same plan of benefits which the deceased or disabled person was entitled to on the last day of his active duty or comparable benefits established as a result of a replacement plan.~~

~~D. For any spouse, continued health insurance provided by this section shall terminate upon such spouse's death or coverage by alternate health insurance.~~

~~E. For dependents,~~ *1. The continued health insurance coverage provided by this section for all disabled persons, eligible spouses, and eligible dependents shall be through separate plans, referred to as the LODA Health Benefits Plans (the Plans), administered by the Department of Human Resource Management. The Plans shall comply with all applicable federal and state laws and shall be modeled upon state employee health benefits program plans. Funding of the Plans' reserves and contingency shall be provided through a line of credit, the amount of which shall be based on an actuarially determined estimate of liabilities. The Department of Human Resource Management shall be reimbursed for health insurance premiums and all reasonable costs incurred and associated, directly and indirectly, in performing the duties pursuant to this section (i) from the Line of Duty Death and Health Benefits Trust Fund for costs related to disabled persons, deceased persons, eligible dependents, and eligible spouses on behalf of participating employers and (ii) from a nonparticipating employer for premiums and costs related to disabled persons, deceased persons, eligible dependents, and eligible spouses for which the nonparticipating employer is responsible. If any nonparticipating employer fails to remit such premiums and costs, the Department of Human Resource Management shall inform the State Comptroller and the affected nonparticipating employer of the delinquent amount. In calculating the delinquent amount, the Department of Human Resource Management may impose an interest rate of one percent per month of delinquency. The State Comptroller shall forthwith transfer such delinquent amount, plus interest, from any moneys otherwise distributable to such nonparticipating employer.*

*2. In the event that temporary health care insurance coverage is needed for employees, eligible spouses, and eligible dependents during the period of transition into the LODA Health Benefits Plans, the Department of Human Resource Management is authorized to acquire and provide temporary transitional health insurance coverage. The type and source of the transitional health plans shall be within the sole discretion of the Department of Human Resource Management. Transitional coverage for eligible dependents shall comply with the eligibility criteria of the transitional plans until enrollment in the LODA Health Benefits Plan can be completed.*

*C. 1. a. Except as provided in subdivision 2 and any other law, continued health insurance ~~provided by this section~~ coverage in any LODA Health Benefits Plans shall not be provided to any person ~~terminate upon such dependent's death, marriage, coverage by alternate health insurance or twenty-first birthday~~ (i) whose coverage under the Plan is based on a deceased person's death or a disabled person's disability occurring on or after July 1, 2017 and (ii) who is eligible for Medicare due to age.*

*b. Coverage in the LODA Health Benefits Plans shall also cease for any person upon his death.*

~~Continued health care insurance shall be provided beyond the dependent's twenty first birthday if the dependent is a full time college student and shall continue until such time as the dependent ceases to be a full time student or reaches his twenty fifth birthday, whichever occurs first. Continued health care insurance shall also be provided beyond the dependent's twenty first birthday if the dependent is mentally or physically disabled, and such coverage shall continue until three months following the cessation of the disability.~~

~~F. For any disabled person, continued health insurance provided by this section~~

*2. The provisions of subdivision 1 a shall not apply to any disabled person who is eligible for Medicare due to disability under Social Security Disability Insurance or a Railroad Retirement Board Disability Annuity. The Department of Human Resource Management may provide such disabled person coverage under a LODA Health Benefits Plan that is separate from the plan for other persons.*

*3. Continued health insurance under this section shall ~~automatically~~ also terminate upon the disabled person's death, ~~recovery or~~ return to full duty in any position listed in the definition of deceased person in § [9.1-400](#). Such disabled person shall promptly notify the participating or nonparticipating employer, VRS, and the Department of Human Resource Management upon his return to work.*

*4. Such continued health insurance shall be suspended for the year following a calendar year in which the disabled person has earned income in an amount equal to or greater than the salary of the position held by the disabled person at the time of disability, indexed annually based upon the annual increases in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor. Such suspension shall cease the year following a calendar year in which the disabled person has not earned such amount of income. The disabled person shall notify the participating or nonparticipating employer, VRS, and the Department of Human Resource Management no later than January 15 of the year following any year in which he earns income of such amount, and notify the participating or nonparticipating employer, VRS, and the Department of Human Resource Management when he no longer is earning such amount. Upon request, a disabled person shall provide VRS and the Department of Human Resource Management with documentation of earned income.*

§ [9.1-402](#). Payments to beneficiaries of certain deceased law-enforcement officers, firefighters, etc., and retirees.

A. The beneficiary of a deceased person whose death occurred on or before December 31, 2005, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of \$75,000, which shall be ~~payable out of the general fund of the state treasury~~, *paid by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable*, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

B. The beneficiary of a deceased person whose death occurred on or after January 1, 2006, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of \$100,000, which shall be ~~payable out of the general fund of the state treasury~~ *paid by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable*, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

C. Subject to the provisions of  ~~§§ § [27-40.1](#), [27-40.2](#), [51.1-813](#), or § [65.2-402](#)~~, if the deceased person's death (i) arose out of and in the course of his employment or (ii) was within five years from his date of retirement, his beneficiary shall be entitled to receive the sum of \$25,000, which shall be ~~payable out of the general fund of the state treasury~~ *paid by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable*.

§ [9.1-402.1](#). Payments for burial expenses.

It is the intent of the General Assembly that expeditious payments for burial expenses be made for *deceased* persons whose death is determined to be a direct and proximate result of their performance in the line of duty as defined by

the Line of Duty Act. ~~The State Comptroller is hereby authorized to release, Upon the approval of VRS, at the request of the family of a person who may be subject to the line of duty death benefits, payments shall be made to a funeral service provider for burial and transportation costs by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable.~~ These payments would be advanced from the death benefit that would be due to the beneficiary of the deceased person if it is determined that the person qualifies for line of duty coverage. Expenses advanced under this provision shall not exceed the coverage amounts outlined in § [65.2-512](#). In the event a determination is made that the death is not subject to the line of duty benefits, ~~the Virginia Retirement System VRS or other Virginia governmental retirement fund to~~ of which the deceased is a member will deduct from benefit payments otherwise due to be paid to the beneficiaries of the deceased payments previously paid ~~by the State Comptroller~~ for burial and related transportation expenses and return such funds to the ~~State Comptroller nonparticipating employer or to the Fund on behalf of a participating employer, as applicable.~~ ~~The State Comptroller~~ Virginia Retirement System shall have the right to file a claim with the Virginia Workers' Compensation Commission against any employer to recover burial and related transportation expenses advanced under this provision.

§ [9.1-403](#). Claim for payment; costs.

A. Every beneficiary, disabled person or his spouse, or dependent of a deceased or disabled person shall present his claim to the chief officer, or his designee, of the ~~appropriate division or department that last employed the deceased or disabled person~~ employer for which the disabled or deceased person last worked on forms to be provided by ~~the State Comptroller's office~~ VRS. Upon receipt of a claim, the chief officer or his designee shall forward the claim to VRS within seven days. The Virginia Retirement System shall determine eligibility for benefits under this chapter. The Virginia Retirement System may request assistance in obtaining information necessary to make an eligibility determination from the Department of State Police. The Department of State Police shall take action to conduct the investigation as expeditiously as possible. The Department of State Police shall be reimbursed from the Fund or the nonparticipating employer, as applicable, for the cost of searching for and obtaining information requested by VRS. The Virginia Retirement System shall be reimbursed for the reasonable costs incurred for making eligibility determinations by nonparticipating employers or from the Fund on behalf of participating employers, as applicable. If any nonparticipating employer fails to reimburse VRS for reasonable costs incurred in making an eligibility determination, VRS shall inform the State Comptroller and the affected nonparticipating employer of the delinquent amount. In calculating the delinquent amount, VRS may impose an interest rate of one percent per month of delinquency. The State Comptroller shall forthwith transfer such delinquent amount, plus interest, from any moneys otherwise distributable to such nonparticipating employer.

B. ~~In the case of a police department or a sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof, the chief officer, or his designee, of such department or office shall investigate and report upon the circumstances surrounding the deceased or disabled person and report his findings to the Comptroller within 10 business days after completion of the investigation. The Comptroller, the Attorney General, or any such chief officer, in his discretion, may submit a request to the Superintendent of the Department of State Police to perform the investigation pursuant to subsection C.~~

C. ~~In all other cases, upon receipt of the claim the chief officer, or his designee, of the appropriate division or department shall submit a request to the Superintendent of the Department of the State Police, who shall investigate and report upon the circumstances surrounding the deceased or disabled person, calling upon the additional information and services of any other appropriate agents or agencies of the Commonwealth. The Superintendent, or his designee, shall report his findings to the Comptroller within 10 business days after completion of the investigation. The Department of State Police shall take action to conduct the investigation as expeditiously as possible. The Department shall be reimbursed for the cost of investigations conducted pursuant to this section from the appropriate employer that last employed the deceased or disabled employee.~~

~~D-1.~~ Within 10 business days of being notified by an employee, or an employee's representative, that such employee is permanently and totally disabled due to a work-related injury suffered in the line of duty, the agency or department employing the ~~disabled person~~ employee shall provide him with information about the continued health insurance coverage provided under this ~~act~~ chapter and the process for initiating a claim. The employer shall assist in filing a claim, unless such assistance is waived by the employee or the employee's representative.

2. Within 10 business days of having knowledge that a deceased person's surviving spouse, dependents, or beneficiaries may be entitled to benefits under this chapter, the employer for which the deceased person last worked shall provide the surviving spouse, dependents, or beneficiaries, as applicable, with information about the benefits provided under this chapter and the process for initiating a claim. The employer shall assist in filing a claim, unless such assistance is waived by the surviving spouse, dependents, or beneficiaries.

C. Within 30 days of receiving a claim pursuant to subsection A, an employer may submit to VRS any evidence that could assist in determining the eligibility of a claim. However, when the claim involves a presumption under § [65.2-402](#) or [65.2-402.1](#), VRS shall provide an employer additional time to submit evidence as is necessary not to exceed nine months from the date the employer received a claim pursuant to subsection A. Any such evidence submitted by the employer shall be included in the agency record for the claim.

§ [9.1-404](#). Order of the Virginia Retirement System.

A. 1. The Virginia Retirement System shall make an eligibility determination within 45 days of receiving all necessary information for determining eligibility for a claim filed under § [9.1-403](#). ~~If it appears to the Comptroller that the requirements of either subsection A or B of § [9.1-402](#) have been satisfied, he shall issue his warrant in the appropriate amount for payment out of the general fund of the state treasury to the surviving spouse or to such persons and subject to such conditions as may be proper in his administrative discretion, and in the event there is no beneficiary, the Comptroller shall issue the payment to the estate of the deceased person. The Comptroller shall issue a decision, and payment, if appropriate, shall be made no later than forty five days following receipt of the report required under § [9.1-403](#)~~ benefits under this chapter are due, VRS shall notify the nonparticipating employer, which shall provide the benefits within 15 days of such notice, or VRS shall pay the benefits from the Fund on behalf of the participating employer within 15 days of the determination, as applicable. The payments shall be retroactive to the first date that the disabled person was no longer eligible for health insurance coverage subsidized by his employer.

2. Two years after an individual has been determined to be a disabled person, VRS may require the disabled person to renew the determination through a process established by VRS. If a disabled person refuses to submit to the determination renewal process described in this subdivision, then benefits under this chapter shall cease for the individual, any eligible dependents, and an eligible spouse until the individual complies. If such individual does not comply within six months from the date of the initial request for a renewed determination, then benefits under this chapter shall permanently cease for the individual, any eligible dependents, and an eligible spouse. If VRS issues a renewed determination that an individual is no longer a disabled person, then benefits under this chapter shall permanently cease for the individual, any eligible dependents, and an eligible spouse. If VRS issues a renewed determination that an individual remains a disabled person, then VRS may require the disabled person to renew the determination five years after such renewed determination through a process established by VRS. The Virginia Retirement System may require the disabled person to renew the determination at any time if VRS has information indicating that the person may no longer be disabled.

B. ~~If it appears to the Comptroller that the requirements of either subsection A or B of § [9.1-401](#) have been satisfied, he shall issue his warrants in the appropriate amounts for payment from the general fund of the state treasury to ensure continued health care coverage for the persons designated under § [9.1-401](#). The Comptroller shall issue a decision, and payments, if appropriate, shall commence no later than forty five days following receipt of the report required under § [9.1-403](#). The payments shall be retroactive to the first date that the disability existed~~ The Virginia Retirement System shall be reimbursed for all reasonable costs incurred and associated, directly and indirectly, in performing the duties pursuant to this chapter (i) from the Line of Duty Death and Health Benefits Trust Fund for costs related to disabled persons, deceased persons, eligible dependents, and eligible spouses on behalf of participating employers and (ii) from a nonparticipating employer for premiums and costs related to disabled persons, deceased persons, eligible dependents, and eligible spouses for which the nonparticipating employer is responsible.

C. The Virginia Retirement System may develop policies and procedures necessary to carry out the provisions of this chapter.

§ [9.1-405](#). Appeal from decision of Virginia Retirement System.

Any beneficiary, disabled person or ~~his~~ *eligible* spouse or *eligible* dependent of a deceased or disabled person aggrieved by the decision of the Comptroller shall present a petition to the court in which the will of the deceased person is probated or in which the personal representative of the deceased person is qualified or might qualify or in the jurisdiction in which the disabled person resides VRS may appeal the decision through a process established by VRS. Any such process may utilize a medical board as described in § [51.1-124.23](#). An employer may submit information related to the claim and may participate in any informal fact-finding proceeding that is included in such process established by VRS. Upon completion of the appeal process, the final determination issued by VRS shall constitute a case decision as defined in § [2.2-4001](#). Any beneficiary, disabled person, or eligible spouse or eligible dependent of a deceased or disabled person aggrieved by, and claiming the unlawfulness of, such case decision shall have a right to seek judicial review thereof in accordance with Article 5 (§ [2.2-4025](#) et seq.) of the Administrative Process Act. The employer shall not have a right to seek such judicial review.

The Commonwealth shall be represented in such proceeding by the Attorney General or his designee. The court shall proceed as chancellor without a jury. If it appears to the court that the requirements of this chapter have been satisfied, the judge shall enter an order to that effect. The order shall also direct the Comptroller to issue his warrant in the appropriate amount for the payment out of the general fund of the state treasury to such persons and subject to such conditions as may be proper. If, in the case of a deceased person, there is no beneficiary, the judge shall direct such payment as is due under § [9.1-402](#) to the estate of the deceased person.

§ [9.1-407](#). Training.

Any law-enforcement or public safety officer entitled to benefits under this ~~Chapter~~ *chapter* shall receive training *within 30 days of his employment, and again every two years thereafter*, concerning the benefits available to himself or his beneficiary in case of disability or death in the line of duty. The Secretary of Public Safety and Homeland Security shall develop training information to be distributed to agencies and localities with employees subject to this chapter. The agency or locality shall be responsible for providing the training. Such training shall not count ~~towards~~ *toward* in-service training requirements for law-enforcement officers pursuant to § [9.1-102](#) and shall include, but not be limited to, the general rules for intestate succession described in § [64.2-200](#) that may be applicable to the distribution of benefits provided under § [9.1-402](#).

§ [51.1-124.38](#). Investment of assets of the Line of Duty Death and Health Benefits Trust Fund.

A. In addition to such other powers as shall be vested in the Board, the Board shall have the full power to invest, reinvest, and manage the assets of the Line of Duty Death and Health Benefits Trust Fund (the Fund) established pursuant to § [9.1-400.1](#). The Board shall maintain a separate accounting for the assets of the Fund.

B. The Board shall invest the assets of the Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

C. No officer, director, or member of the Board or of any advisory committee of the Retirement System or any of its tax-exempt subsidiary corporations whose actions are within the standard of care in subsection B shall be held personally liable for losses suffered by the Retirement System on investments made under the authority of this section.

D. The provisions of §§ [51.1-124.32](#) through [51.1-124.35](#) shall apply to the Board's activities with respect to moneys in the Fund.

E. The Board may assess the Fund a reasonable administrative fee for its services.

§ [58.1-3](#). (Effective until July 1, 2018) Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § [58.1-512](#) or [58.1-2712.2](#), or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any reports, returns, financial documents or other information filed with the Attorney General pursuant to the provisions of Article 3 (§ [3.2-4204](#) et seq.) of Chapter 42 of Title 3.2. Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;
2. Acts performed or words spoken, published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law;
3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;
4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;
5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § [58.1-1714](#), when requested by a beneficiary of the estate or an heir at law of the decedent;
6. Information regarding nonprofit entities exempt from sales and use tax under § [58.1-609.11](#), when requested by the General Assembly or any duly constituted committee of the General Assembly;
7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the provisions of Article 3 (§ [3.2-4204](#) et seq.), when such reports or information are provided by the Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow fund pursuant to § [3.2-4201](#) and are limited to the brand families of that manufacturer as listed in the Tobacco Directory established pursuant to § [3.2-4206](#) and are limited to the current or previous two calendar years or in any year in which the Attorney General receives Stamping Agent information that potentially alters the required escrow deposit of the manufacturer. The information shall only be provided in the following manner: the manufacturer may make a written request, on a quarterly or yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who reported stamping or selling its products and the amount reported. The Attorney General shall provide the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the reports the Stamping Agents filed with the Attorney General, it must first request them from the Stamping Agents pursuant to subsection C of § [3.2-4209](#). If the manufacturer does not receive the reports pursuant to subsection C of § [3.2-4209](#), the manufacturer may make a written request to the Attorney General, including a copy of the prior written request to the Stamping Agent and any response received, for copies of any reports not received. The Attorney General shall provide copies of the reports within 45 days of receipt of the request.

B. 1. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. Notwithstanding any other provision of this section or other law, the Department, upon request by the General Assembly or any duly constituted committee of the General Assembly, shall disclose the total aggregate amount of an income tax deduction or credit

taken by all taxpayers, regardless of (i) how few taxpayers took the deduction or credit or (ii) any other circumstances. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

2. This section shall not prohibit the Department from disclosing whether a person, firm, or corporation is registered as a retail sales and use tax dealer pursuant to Chapter 6 (§ [58.1-600](#) et seq.) or whether a certificate of registration number relating to such tax is valid. Additionally, notwithstanding any other provision of law, the Department is hereby authorized to make available the names and certificate of registration numbers of dealers who are currently registered for retail sales and use tax.

3. This section shall not prohibit the Department from disclosing information to nongovernmental entities with which the Department has entered into a contract to provide services that assist it in the administration of refund processing or other services related to its administration of taxes.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § [63.2-100](#); (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the Virginia Lottery such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § [55-210.2](#); (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Commissioner of the Department of Agriculture and Consumer Services such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ [59.1-270](#) et seq.), and the Enterprise Zone Grant Program (§ [59.1-538](#) et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and

Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § [40.1-29](#); (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report earnings as required by § [65.2-712](#); (xvii) provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii) provide to the Executive Director of the Northern Virginia Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xix) provide to the Commissioner of Agriculture and Consumer Services the name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as subject to regulation by the Board of Agriculture and Consumer Services pursuant to § [3.2-5130](#); ~~and~~ (xx) provide to the developer or the economic development authority of a tourism project authorized by § [58.1-3851.1](#), upon entering into a written agreement, tax information facilitating the repayment of gap financing; *and* (xxi) *provide to the Virginia Retirement System and the Department of Human Resource Management, after entering into a written agreement, such tax information as may be necessary to facilitate the enforcement of subdivision C 4 of § [9.1-401](#).* The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation.

The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § [58.1-512](#). This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor.

§ [58.1-3](#). (Effective July 1, 2018) Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § [58.1-512](#) or [58.1-2712.2](#), or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any reports, returns, financial documents or other information filed with the Attorney General pursuant to the provisions of Article 3 (§ [3.2-4204](#) et seq.) of Chapter 42 of Title 3.2. Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;
2. Acts performed or words spoken, published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law;
3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;
4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;
5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § [58.1-1714](#), when requested by a beneficiary of the estate or an heir at law of the decedent;
6. Information regarding nonprofit entities exempt from sales and use tax under § [58.1-609.11](#), when requested by the General Assembly or any duly constituted committee of the General Assembly;
7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the provisions of Article 3 (§ [3.2-4204](#) et seq.), when such reports or information are provided by the Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow fund pursuant to § [3.2-4201](#) and are limited to the brand families of that manufacturer as listed in the Tobacco Directory established pursuant to § [3.2-4206](#) and are limited to the current or previous two calendar years or in any year in which the Attorney General receives Stamping Agent information that potentially alters the required escrow deposit of the manufacturer. The information shall only be provided in the following manner: the manufacturer may make a written request, on a quarterly or yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who reported stamping or selling its products and the amount reported. The Attorney General shall provide the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the reports the Stamping Agents filed with the Attorney General, it

must first request them from the Stamping Agents pursuant to subsection C of § [3.2-4209](#). If the manufacturer does not receive the reports pursuant to subsection C of § [3.2-4209](#), the manufacturer may make a written request to the Attorney General, including a copy of the prior written request to the Stamping Agent and any response received, for copies of any reports not received. The Attorney General shall provide copies of the reports within 45 days of receipt of the request.

B. 1. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. Notwithstanding any other provision of this section or other law, the Department, upon request by the General Assembly or any duly constituted committee of the General Assembly, shall disclose the total aggregate amount of an income tax deduction or credit taken by all taxpayers, regardless of (i) how few taxpayers took the deduction or credit or (ii) any other circumstances. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

2. This section shall not prohibit the Department from disclosing whether a person, firm, or corporation is registered as a retail sales and use tax dealer pursuant to Chapter 6 (§ [58.1-600](#) et seq.) or whether a certificate of registration number relating to such tax is valid. Additionally, notwithstanding any other provision of law, the Department is hereby authorized to make available the names and certificate of registration numbers of dealers who are currently registered for retail sales and use tax.

3. This section shall not prohibit the Department from disclosing information to nongovernmental entities with which the Department has entered into a contract to provide services that assist it in the administration of refund processing or other services related to its administration of taxes.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § [63.2-100](#); (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Virginia Alcoholic Beverage Control Authority, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the Virginia Lottery such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § [55-210.2](#); (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Commissioner of the Department of Agriculture and Consumer Services such tax information as may be necessary to identify those applicants for

registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ [59.1-270](#) et seq.), and the Enterprise Zone Grant Program (§ [59.1-538](#) et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § [40.1-29](#); (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report earnings as required by § [65.2-712](#); (xvii) provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii) provide to the Executive Director of the Northern Virginia Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xix) provide to the Commissioner of Agriculture and Consumer Services the name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as subject to regulation by the Board of Agriculture and Consumer Services pursuant to § [3.2-5130](#); ~~and~~ (xx) provide to the developer or the economic development authority of a tourism project authorized by § [58.1-3851.1](#), upon entering into a written agreement, tax information facilitating the repayment of gap financing; *and* (xxi) *provide to the Virginia Retirement System and the Department of Human Resource Management, after entering into a written agreement, such tax information as may be necessary to facilitate the enforcement of subdivision C 4 of § [9.1-401](#).* The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer

or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § [58.1-512](#). This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor.

2. That § [9.1-406](#) of the Code of Virginia is repealed.

3. That any person who holds a position listed in the definition of "deceased person" under § [9.1-400](#) of the Code of Virginia who is temporarily disabled in the direct line of duty as defined in § [9.1-400](#) of the Code of Virginia and who is required to have a state certification for purposes of maintaining his employment shall not have such certification lapse during such period of temporary disability, not to exceed two years. State agencies involved in such recertification, including but not limited to the Virginia Department of Emergency Management, the Department of Criminal Justice Services, the Virginia Department of Fire Programs, and the Virginia Department of Health, may develop and promulgate regulations to carry out the provisions of this act with input from persons holding the positions listed in the definition of "deceased person" or organizations that represent them. Certifying state agencies may suspend a person's certification when, but for the provisions of this act, it would otherwise lapse. Certifying state agencies shall provide a reasonable time frame for a person covered under the provisions of this act who wishes to return to work to become recertified.

4. That each nonparticipating employer shall pay its pro rata share of estimated implementation costs to the Virginia Retirement System and the Department of Human Resource Management in an amount and manner and on such date as may be determined by the Virginia Retirement System and the Department of Human Resource Management, respectively.

5. That the provisions of this act shall become effective on July 1, 2017, except the provisions of the fourth enactment of this act, which shall become effective on July 1, 2016.

## MISCELLANEOUS – SUMMARY ONLY

**HB184 and SB107 – Uncodified Act - Designating the Trooper Nathan-Michael W. Smith Memorial Bridge.** Designates the Route 301 bridge in Prince George County at Exit 45 over Interstate 95 the Trooper Nathan-Michael W. Smith Memorial Bridge. This bill is identical to [SB 107](#).

**SB448 – Uncodified Act - Designating the Trooper Harry Lee Henderson Memorial Bridge.** Designates the Interstate 66 bridge in Warren County the "Trooper Harry Lee Henderson Memorial Bridge".

**SB349 - § 29.1-301 - Free fishing days.** Removes the prohibition against fishing without a license in waters stocked with trout by the Department of Game and Inland Fisheries or other public body on days designated by the Department as free fishing days.

**HB202 – Uncodified Act - Anatomical gifts for the purpose of search and rescue dog training.** Requires the Department of Health to convene a work group of stakeholders, which shall include representatives of the Department of Health, the Department of Emergency Management, the State Anatomical Program, procurement organizations, and local search and rescue teams and organizations, to (i) identify and evaluate options for using human remains donated to search and rescue teams and organizations as anatomical gifts for the purpose of training dogs to find human remains during search and rescue operations and (ii) establish policies and procedures to govern the process of using anatomical gifts for such purpose. The work group shall report its activities, findings, and recommendations to the General Assembly by December 1, 2016.

**HB498 - § 54.1-3303 - TPA-certified optometrists; prescription of certain Schedule II controlled substances.** Provides that a TPA-certified optometrist who is authorized to prescribe controlled substances may issue prescriptions for or provide manufacturer's samples of analgesics included on Schedule II consisting of hydrocodone in combination with acetaminophen to his patients.

**HB629 - § 54.1-3411.2 - Prescription drug disposal.** Provides that pharmacies may participate in voluntary drug disposal programs, provided that such programs are operated in accordance with state and federal law by a pharmacy, and requires the Board of Pharmacy to maintain a list of such pharmacies on a website maintained by the Board. The bill also provides that no person that participates in a drug disposal program shall be liable for any theft, robbery, or other criminal act related to participation in the pharmacy drug disposal program or for any acts of simple negligence in the collection, storage, or destruction of prescription drugs collected through such pharmacy drug disposal program, provided that the pharmacy practice site is acting in good faith and in accordance with applicable state and federal law and regulations.

**HB657 - § 54.1-2523.1 - Prescription Monitoring Program; indicators of misuse; disclosure of information.** Directs the Director of the Department of Health Professions to develop, in consultation with an advisory panel that shall include representatives of the Boards of Medicine and Pharmacy, criteria for indicators of unusual patterns of prescribing or dispensing of covered substances by prescribers or dispensers and authorizes the Director to disclose information about the unusual prescribing or dispensing of a covered substance by an individual prescriber or dispenser to the Enforcement Division of the Department of Health Professions.

**HB293 and SB513 - § 54.1-2522.1 - Prescription Monitoring Program; requirements of prescribers of opioids.** Requires a prescriber to obtain information from the Prescription Monitoring Program at the time of initiating a new course of treatment that includes the prescribing of opioids anticipated to last more than 14 consecutive days. Currently, a prescriber must request such information when a course of treatment is expected to last 90 days. The bill also eliminates the requirement that a prescriber request information about a patient from the Prescription Monitoring Program when prescribing benzodiazepine; allows a prescriber to delegate the duty to request information from the Prescription Monitoring Program to another licensed, registered, or certified health care provider who is employed at the same facility under the direct supervision of the prescriber or dispenser who has routine access to confidential patient data and has signed a patient data confidentiality agreement; and creates an exemption from the requirement that a prescriber check the Prescription Monitoring Program for cases in which (i) the opioid is prescribed to a patient currently receiving hospice or palliative care; (ii) the opioid is prescribed to a

patient as part of treatment for a surgical procedure, provided that such prescription is not refillable; (iii) the opioid is prescribed to a patient during an inpatient hospital admission or at discharge; (iv) the opioid is prescribed to a patient in a nursing home or a patient in an assisted living facility that uses a sole source pharmacy; (v) the Prescription Monitoring Program is not operational or available due to temporary technological or electrical failure or natural disaster; or (vi) the prescriber is unable to access the Prescription Monitoring Program due to emergency or disaster and documents such circumstances in the patient's medical record. The bill requires the Director of the Department of Health Professions to report to the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health on utilization of the Prescription Monitoring Program and any impact on the prescribing of opioids. The provisions of the bill expire on July 1, 2019. This bill is identical to [SB 513](#).

**HB117 and SB719 - § 46.2-1149.8 - Permits for excessive size.** Authorizes the Commissioner of the Department of Motor Vehicles to issue permits for vehicles transporting boats or other watercraft that exceed an outside width of 102 inches but do not exceed an outside width of 108 inches; under current law, no such vehicle shall exceed an outside width of 102 inches. This bill is identical to [SB 719](#).

**HB624 - § 17.1-213 - Retention of court records; violent felonies and acts of violence.** Requires that the circuit court case files involving a conviction on crimes that are considered to be violent felonies or acts of violence be retained for 50 years or until the sentence term ends, whichever comes later.

**HB147 and SB424 - § 9.1-102 - Department of Criminal Justice Services; photo identification.** Provides that the Department of Criminal Justice Services (the Department) shall design and approve the issuance of photo-identification cards to every person who is issued a private security services registration by the Department. The photo-identification card shall contain the name, registration number, registration category, and photograph of the recipient; the date of issuance; the date of expiration; and the name of the issuer in the form "Department of Criminal Justice Services, Commonwealth of Virginia." The Department may enter into an agreement with the Department of Motor Vehicles to produce the photo-identification cards. The bill has a delayed effective date of July 1, 2017. This bill is identical to [SB 424](#).

**SB527 - § 15.2-1716.1 - Bomb threats; reimbursement of expenses incurred in emergency response.** Authorizes any locality to provide by ordinance that a person convicted of a felony violation of the bomb threat statute or the statute that penalizes the incitement of a bomb threat shall be liable for the reasonable expense, not to exceed \$1,000, of an appropriate emergency response to the threat. Current law allows such an ordinance to subject a person to liability for the expense of the emergency response to an imitation version of a weapon of terrorism or fire bomb or other explosive device.

**HB528 - §§ 2.2-4006, 54.1-3307, 54.1-3401, 54.1-3410.2, 54.1-3434, 54.1-3434.1, 54.1-3435, 54.1-3435.01, 54.1-3435.1 and 54.1-3437 - Manufacture and distribution of prescription drugs in the Commonwealth.** Eliminates the requirement that the Board of Pharmacy establish and implement a pedigree system for recording each distribution of a controlled substance from sale by a pharmaceutical manufacturer to a dispenser or person who will administer the controlled substance; defines "co-licensed partner" as a person who, with at least one other person, has the right to engage in the manufacturing or marketing of a prescription drug, consistent with state and federal law, and specifies that a co-licensed partner may be a manufacturer of a controlled substance; and defines "third-party logistics provider" as a person who provides or coordinates warehousing of or other logistics services for a drug or device in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of the drug or device but does not take ownership of the product or have responsibility for directing the sale or disposition of the product. The bill specifies that bulk drug substances used for compounding drugs distributed by a supplier other than a licensed wholesale distributor or registered nonresident wholesale distributor must be provided by a supplier who is approved by the Board of Pharmacy as well as the federal Food and Drug Administration and requires every pharmacy, nonresident pharmacy, wholesale distributor, and nonresident wholesale distributor to comply with federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed. The bill authorizes the Board of Pharmacy to deny, revoke, suspend, or take other disciplinary actions against holders of a third-party logistics provider permit, manufacturer permit, or nonresident manufacturer permit; applies the inspection and audit requirements that apply to wholesale distributors to nonresident wholesale drug distributors, third-party logistics providers, manufacturers, and nonresident manufacturers; creates a permitting process for third-party logistics providers; allows holders of a manufacturer permit to distribute the drug

manufactured, made, produced, packed, packaged, repackaged, relabeled, or prepared to anyone other than the end user without the need to obtain a wholesale distributor permit; and creates a process for registration of nonresident manufacturers of prescription drugs.

**HB1126 - §§ 9.1-102 and 15.2-1627.4 - Department of Criminal Justice Services; training standards and model policies for law-enforcement personnel.** Reorganizes the Department of Criminal Justice Services' powers and duties for establishing training standards and publishing model policies for law-enforcement personnel by combining each discrete subject into one list. The bill also requires the Department to periodically update such model policies.

**HB1294 - § 19.2-215.9 - Multi-jurisdiction grand juries; access to record of testimony and evidence.** Permits access to the transcript of multi-jurisdiction grand jury proceedings and the evidence presented to such grand jury by the attorney for the Commonwealth or United States attorney of any jurisdiction where the offense investigated by such grand jury could be prosecuted or investigated. The bill also permits a person being prosecuted with evidence presented to a multi-jurisdiction grand jury similar access.

**HB1238 and SB38 - § 2.2-1124 - Department of General Services; disposition of surplus materials; animals trained for police work.** Allows the handler last in control of an animal especially trained for police work to purchase the animal for the price of \$1. The bill also allows an immediate survivor of any full-time sworn law-enforcement officer who (i) is killed in the line of duty or (ii) dies in service and has at least 10 years of service to purchase the animal issued to the officer by the agency or institution for the price of \$1. This bill is identical to [SB 38](#).

**SB287 - §§ 54.1-2521, 54.1-2523 and 54.1-2525 - Prescription Monitoring Program.** Provides that, beginning January 1, 2017, reports by dispensers to the Prescription Monitoring Program (the Program) shall be made within 24 hours or the dispenser's next business day, whichever comes later. The bill also allows the Director of the Department of Health Professions to disclose information about a specific recipient to a prescriber for the purpose of establishing the treatment history of the specific recipient when the prescriber is consulting on the treatment of such recipient; allows the Director to disclose information on a specific recipient to a dispenser for the purpose of establishing a prescription history to assist the dispenser in providing clinical consultation on the care and treatment of the recipient; removes the requirement that information disclosed to a dispenser for the purpose of determining the validity of a prescription be disclosed only when the recipient is seeking a covered substance from the dispenser or the facility in which the dispenser practices; and provides that a prescriber may include information obtained from the Program for the purpose of establishing the treatment history of a specific recipient in the recipient's medical record.

**HB691 - § 40.1-51.1 - Workplace safety; employer reporting requirements.** Extends from eight to 24 hours the time period within which an employer is required to notify the Virginia Department of Labor and Industry of any work-related incident resulting in hospitalization, amputation, or loss of an eye.

**HB1223 - § 24.2-643 - Procedures at polling place; provision of voter's full name and current residence address.** Permits a voter to give his full name and current residence address orally or in writing to the officer of election when offering to vote.

**HB198 - § 19.2-13.1 - Application for special conservator of the peace by locality.** Provides that no official or employee of a school board or county, city, or town may submit an application to a circuit court judge for the appointment of a special conservator of the peace without attaching a written assessment of the need for such appointment from the chief law-enforcement officer of the locality to the application.

**HB1015 - §§ 9.1-102, 9.1-1301 and 23-9.2:16 - Institutions of higher education; law-enforcement agencies; response to sexual assault.** Permits each public institution of higher education or nonprofit private institution of higher education to request the cooperation of the primary law-enforcement agency of the locality in which the institution is located to establish a written memorandum of understanding with such law-enforcement agency to address the prevention of and response to criminal sexual assault and requires such law-enforcement agency to cooperate in establishing such memorandum of understanding.

**HB1142 - § 9.1-519 - Hunting with a slingshot.** Allows the hunting of wild birds and wild animals, except deer, bear, elk, and turkey, with a slingshot unless shooting is expressly prohibited.

**HB1292 - § 54.1-3452 - Schedule IV drugs; eluxadoline.** Adds eluxadoline to the list of Schedule IV drugs. The bill contains a technical amendment.

**HB1279 - §§ 22.1-137 and 22.1-137.2 - Public schools; fire drills; lock-down drills.** Requires every public school to hold a fire drill at least twice during the first 20 school days of each school session and at least two additional fire drills during the remainder of the school session. Under current law, every public school is required to hold a fire drill at least once every week during the first 20 school days of each school session and at least once every month during the remainder of the school session. The bill also requires every public school to hold a lock-down drill at least twice during the first 20 school days of each school session and at least two additional lock-down drills during the remainder of the school session. Under current law, every public school is required to hold at least two lock-down drills every school year.

**SB296 - § 19.2-13 - Special conservators of the peace; criminal history record information check required.** Requires that a criminal history record information check be part of the background investigation required for appointment or temporary registration as a special conservator of the peace. The bill provides that no person who would be prohibited from possessing, transporting, or purchasing a firearm is eligible for appointment as a special conservator of the peace.

**HB1102 - § 9.1-102 - Department of Criminal Justice Services; trauma-informed sexual assault investigation training.** Requires the Department of Criminal Justice Services, in consultation with the State Council of Higher Education for Virginia and the Virginia Association of Campus Law Enforcement Administrators, to develop multidisciplinary curricula on trauma-informed sexual assault investigation.

**SB83 § 23-234 - Institutions of higher education; required agreements with law enforcement.** Requires all mutual aid agreements and memoranda of understanding required between public or private institutions of higher education and adjacent local law-enforcement agencies or the Department of State Police to specify the procedure for sharing information.

**SB363 - § 51.5-44.1 - Rights of persons with disabilities in public places and places of public accommodation; fraudulent representation of a service or hearing dog; penalty.** Provides that any person who knowingly and willfully fits a dog with a harness, collar, vest, sign, or identification card commonly used by a person with a disability in order to represent that the dog is a service dog or hearing dog to fraudulently gain public access for such dog in a public place is guilty of a Class 4 misdemeanor.

**SB701 - §§ 18.2-250.1 and 54.1-3408.3, adding sections numbered 54.1-3442.5 through 54.1-3442.8. - Cannabidiol oil and THC-A oil; permitting of pharmaceutical processors to manufacture and provide.** Authorizes a pharmaceutical processor, after obtaining a permit from the Board of Pharmacy (the Board) and under the supervision of a licensed pharmacist, to manufacture and provide cannabidiol oil and THC-A oil to be used for the treatment of intractable epilepsy. The bill sets limits on the number of permits that the Board may issue and requires that the Board adopt regulations establishing health, safety, and security requirements for permitted processors. The bill provides that only a licensed practitioner of medicine or osteopathy who is a neurologist or who specializes in the treatment of epilepsy may issue a written certification to a patient for the use of cannabidiol oil or THC-A oil. The bill also requires that a practitioner who issues a written certification for cannabidiol oil or THC-A oil, the patient issued such certification, and, if the patient is a minor or incapacitated, the patient's parent or legal guardian register with the Board. The bill requires further that a pharmaceutical processor shall not provide cannabidiol oil or THC-A oil to a patient or a patient's parent or legal guardian without first verifying that the patient, the patient's parent or legal guardian if the patient is a minor or incapacitated, and the practitioner who issued the written certification have registered with the Board. Finally, the bill provides an affirmative defense for agents and employees of pharmaceutical processors in a prosecution for the manufacture, possession, or distribution of marijuana. An enactment clause provides that except for provisions requiring the Board to promulgate regulations, the provisions of the bill do not become effective unless reenacted by the 2017 Session of the General Assembly.

**SB781 - § 53.1-70.1 - Transport of prisoners.** Provides that the sheriff or administrator in charge of a local or regional correctional facility and the employees of the facility acting on the direction of such sheriff or administrator have the authority to transport a prisoner for a lawful purpose (i) to another jurisdiction inside the Commonwealth and retain authority over such prisoner or (ii) through or to another state and retain authority over such prisoner as allowed by such state.

**SB294 - §§ 2.2-309 and adding section 2.2-2832 - Retaliatory actions by state officers and employees against persons providing testimony before a committee or subcommittee of the General Assembly.** Prohibits officers and employees of a state agency from retaliating or threatening to retaliate against a person for providing testimony before a committee or subcommittee of the General Assembly. The bill provides that to be covered, a person who provides testimony before a committee or subcommittee of the General Assembly shall do so in good faith and upon a reasonable belief that the information is accurate. Testimony that is reckless or that the person knew or should have known was false, confidential, malicious, or otherwise prohibited by law or policy shall not be deemed good faith testimony. Under the bill, an intentional violation by an officer or employee of a state agency constitutes malfeasance in office. The bill also provides that any person who believes that he is the subject of retaliatory action may file a complaint with the Office of the Inspector General and expands the authority of the Office to include receiving and investigating such complaints.

**SB457 - § 19.2-386.10 - Asset forfeiture; burden of proof.** Changes the Commonwealth's burden of proof to clear and convincing evidence from preponderance of the evidence in proving that the property is subject to forfeiture in civil asset forfeiture cases.

**HB373 and SB253 - § 63.2-104.1 - Confidentiality of information about victims of certain crimes.** Provides that, in order to ensure the safety of any adult or child victim of a violation of § 18.2-48, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1 and their families, programs and individuals providing services to such victims shall protect the confidentiality and privacy of persons receiving services by limiting the disclosure of information about such victims, including by prohibiting the release of individual client information without the informed consent of the minor and his parent or legal guardian, in cases in which the client is an unemancipated minor. The bill also clarifies that a person is a victim for purposes of such confidentiality and privacy protections regardless of whether any person has been charged with or convicted of any offense. The bill also provides that an alleged abuser of a minor or incapacitated person or of the minor's other parent may not consent to the release of confidential information. This bill incorporates [HB 554](#) and is identical to [SB 253](#).

**HB25 - § 18.2-151.1 - Tampering, etc., with firefighting equipment; penalty.** Provides that a person who injures, destroys, removes, tampers with, or otherwise interferes with the operation of (i) any firefighting equipment or apparatus or (ii) any emergency medical services vehicle is guilty of a Class 1 misdemeanor.

**HB1189 - § 18.2-371.1 - Operation of a child welfare agency without a license; child abuse and neglect; penalty.** Provides that operating or engaging in the conduct of a child welfare agency without first obtaining a license when it is known that such license is required or after such license has been revoked or has expired constitutes a willful act or willful omission for purpose of the crime of abuse and neglect of a child. Under current law, a parent, guardian, or other person responsible for the care of a child who by willful act or omission causes or permits serious injury to the life or health of such child is guilty of abuse and neglect of a child, which is punishable as a Class 4 felony.

**HB1160 and SB291 – Adds § 19.2-11.5 through 19.2-11.11 in Title 19.2 - Physical evidence recovery kits.** Establishes a comprehensive procedure for the collection and analysis of physical evidence recovery kits for victims of sexual assault, including those who elect at the time of the exam not to report a sexual assault to a law-enforcement agency. Kits from victims who elect not to report are known as "anonymous physical evidence recovery kits" and will be stored at the Division of Consolidated Laboratory Services (the Division) for two years, although the Division, the victim, or the law-enforcement agency may elect for the kits to be retained for a longer period of time. If the victim later elects to report the sexual assault, the victim's kit will be released to law enforcement. Health care providers are required to explain these procedures and time frames to victims. Where the victim elects to report the offense to law enforcement at the time of the exam, law enforcement is required to take possession of the victim's kit forthwith upon notification from the health care provider that the kit has been collected and, with limited exceptions, to submit the kit to the Department of Forensic Science for analysis within 60 days. The bill outlines the exceptions to mandatory submission for analysis, time frames, and storage requirements for

retention of analyzed samples; expungement of DNA samples obtained but not connected to a crime; and victims' notification rights. This bill incorporates [HB 1158](#) and is identical to [SB 291](#).