



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

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## **2015 FOIA LEGISLATIVE UPDATE**

*NOTE: Unless otherwise stated, the changes in the law described herein will take effect July 1, 2015.*

### **I. Introduction**

The General Assembly passed a total of 16 bills amending the Virginia Freedom of Information Act (FOIA) during the 2015 Session. At its last meeting of 2014, the FOIA Council voted favorably to recommend the subject matter of three bills that passed the General Assembly in 2015: HB 1633 and SB 968, identical bills that create an exemption for certain records of certain health care committees and entities to the extent that they reveal information that may be withheld from discovery as privileged communications, and HB 2104, which provides that the record and open meeting exemptions for VCU Medical Center shall also apply when the records are in the possession of VCU or the discussion of certain matters occurs at a meeting of the Virginia Commonwealth University Board of Visitors.

Four bills add two new records exemptions in FOIA as follows:

- Creates an exemption for certain records of certain health care committees and entities to the extent that they reveal information that may be withheld from discovery as privileged communications. HB 1633 and SB 968 amending § § 2.2-3705.5;
- Eliminates the Alcoholic Beverage Control (ABC) Board and replaces it with the Virginia Alcoholic Beverage Control Authority, created by the bill. Adds an exemption for certain proprietary records, trade secrets, financial records, and cost estimates. The bill contains numerous technical amendments. The bill has a delayed effective date of July 1, 2018, except that the provisions of the thirteenth and fourteenth enactments become effective July 1, 2015. [NOTE: The act amends an existing records exemption in § 2.2-3705.3, adds a new records exemption in § 2.2-3705.7, and adds a new meetings exemption in § 2.2-3711, all subject to the delayed effective date of July 1, 2018. The thirteenth enactment, effective July 1, 2015, directs the FOIA Council to include a review of the

amendments to § 2.2-3705.7 in the FOIA Council's three-year study directed by House Joint Resolution No. 96 (2014), effective July 1, 2015.] HB 1776 and SB 1032 amending §§ 2.2-3705.3, 2.2-3705.7, and 2.2-3711.

Four bills add two new meetings exemptions in FOIA as follows:

- Allows a closed meeting to be held for the discussion of certain exempt records related to Resource Management Plans. HB 1618 and SB 1126 amending § 2.2-3711;
- Eliminates the Alcoholic Beverage Control (ABC) Board and replaces it with the Virginia Alcoholic Beverage Control Authority, as summarized above. Allows a closed meeting to be held to discuss certain exempt records held by the Authority. HB 1776 and SB 1032 amending §§ 2.2-3705.3, 2.2-3705.7, and 2.2-3711.

Twelve bills amend existing provisions of FOIA as follows:

- Amends existing records and meetings exemptions to cover certain adult death investigations by adult fatality review teams. HB 1558 amending §§ 2.2-3705.5 and 2.2-3711;
- Amends the definition of public body to include private police departments, for purposes of access to public records. Enacted with an emergency clause, giving it an effective date of March 16, 2015. HB 1606 and SB 1217 amending § 2.2-3701;
- Abolishes the Capital Access Fund for Disadvantaged Businesses, and makes a corresponding amendment to an existing records exemption. HB 1757 and SB 854 amending § 2.2-3705.6;
- Eliminates the Alcoholic Beverage Control (ABC) Board and replaces it with the Virginia Alcoholic Beverage Control Authority, as summarized above. Makes a corresponding technical amendment to an existing records exemption for certain administrative investigations. HB 1776 and SB 1032 amending §§ 2.2-3705.3, 2.2-3705.7, and 2.2-3711;
- Amends an existing records exemption to provide that the identity of donors to the Veterans Services Foundation does not have to be disclosed under FOIA if the donor has requested anonymity in connection with or as a condition of making a pledge or donation. HB 1967 amending § 2.2-3705.7;
- Provides that the record and open meeting exemptions for VCU Medical Center shall also apply when the records are in the possession of VCU or the discussion of certain matters occurs at a meeting of the Virginia Commonwealth University Board of Visitors. HB 2104 amending §§ 2.2-3705.7 and 2.2-3711;

- Clarifies that 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, is not a meeting under FOIA. SB 969 amending §§ 2.2-3701 and 2.2-3707;
- Expands the open meeting exemption for the discussion of plans to protect public safety as it relates to terrorism and security of governmental facilities to include the discussion of specific cybersecurity threats or vulnerabilities, including the discussion of related records excluded from FOIA, 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. Enacted with an emergency clause, giving it an effective date of March 16, 2015. SB 1109 amending § 2.2-3711;
- Expands the current record exemption for plans and information to prevent or respond to terrorism to include 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. Enacted with an emergency clause, giving it an effective date of March 16, 2015. SB 1129 amending § 2.2-3705.2.

Section II of this update presents a brief overview of amendments to FOIA section by section in order to provide context and organization to the numerous bills. Section III presents a brief overview of other access-related legislation passed during the 2015 Session of the General Assembly.

For more specific information on the particulars of each bill, please see the bill itself. Unless otherwise indicated, the changes will become effective July 1, 2015.

## **II. Amendments to the Freedom of Information Act**

### **§ 2.2-3701 Definitions.**

**Private police departments.** Defines "private police department" as any police department that employs private police officers operated by an entity authorized by statute or an act of assembly to establish a private police department. The bill provides that the authority of a private police department is limited to real property owned, leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous property. The bill also provides that private police departments and private

police officers shall be subject to and comply with the relevant laws and regulations governing municipal police departments and shall meet the minimum compulsory training requirements for law-enforcement officers. The bill provides further that any private police department in existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and whose status as a private police department was recognized by the Department of Criminal Justice Services at that time may continue to operate as a private police department, provided that it complies with the necessary requirements. The private police departments so recognized by the Department are the Aquia Harbor Police Department, the Babcock and Wilcox Police Department, the Bridgewater Airpark Police Department, the Carilion Police and Security Services Department, the Kings Dominion Park Police Department, the Kingsmill Police Department, the Lake Monticello Police Department, the Massanutten Police Department, and the Wintergreen Police Department. The bill contains an emergency clause. [NOTE: The bill adds private police departments to the definition of public bodies subject to FOIA for purposes of access to public records; the act was approved on March 16, 2015.] HB 1606 (2015 Acts of Assembly, c. 195) and SB 1217 (2015 Acts of Assembly, c. 224).

**Virginia Freedom of Information Act (FOIA); exception to open meeting requirements.** Clarifies that 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, is not a meeting under FOIA. The bill contains a technical amendment. SB 969 (2015 Acts of Assembly, c. 131).

### **§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.**

**Virginia Freedom of Information Act; record exemption for public safety; cybersecurity.** Expands the current record exemption for plans and information to prevent or respond to terrorism to include 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. The bill contains an emergency clause and technical amendments. [NOTE: The act was approved on March 16, 2015.] SB 1129 (2015 Acts of Assembly, c. 183).

### **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.**

**Alcoholic beverage control.** Eliminates the Alcoholic Beverage Control (ABC) Board and replaces it with the Virginia Alcoholic Beverage Control Authority, created by the bill. The bill provides for the appointment of the Board of Directors of the Authority by the Governor, to be confirmed by the General Assembly, and the appointment by the Governor of a Chief Executive Officer of the Authority, also to be confirmed by the General Assembly. The bill sets the eligibility requirements for appointment of both the Board members and the Chief Executive Officer, including background checks. The bill provides for the salary of Board members and the Chief Executive Officer and specifies that Board members and the Chief Executive Officer may be only removed for cause by the Governor. Among other things, the bill also (i) provides for the transfer of current ABC employees to the Authority, (ii) continues such employees' participation in the state health plan and VRS, and (iii) sets out the powers and duties of the Authority and the Chief Executive Officer. The bill contains numerous technical amendments. The bill has a delayed effective date of July 1, 2018, except that the provisions of the thirteenth and fourteenth enactments become effective July 1, 2015. [NOTE: The act amends an existing records exemption in § 2.2-3705.3, adds a new records exemption in § 2.2-3705.7, and adds a new meetings exemption in § 2.2-3711, all subject to the delayed effective date of July 1, 2018. The thirteenth enactment, effective July 1, 2015, directs the FOIA Council to include a review of the amendments to § 2.2-3705.7 in the FOIA Council's three-year study directed by House Joint Resolution No. 96 (2014).] HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

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

**Local and regional adult fatality review teams; penalty.** Allows for the creation of local or regional adult fatality review teams upon the initiative of any local or regional law-enforcement agency, department of social services, emergency medical services agency, attorney for the Commonwealth's office, or community services board. The bill provides that such teams may review the death of any person age 60 years or older, or any adult age 18 years or older who is incapacitated, who resides in the Commonwealth and who is in need of temporary or emergency protective services (i) who was the subject of an adult protective services or law-enforcement investigation; (ii) whose death was due to abuse, neglect, or exploitation or acts suggesting abuse, neglect, or exploitation; or (iii) whose death came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner as occurring in any suspicious, unusual, or unnatural manner. A violation of the confidentiality of the review process is punishable as a Class 3 misdemeanor. HB 1558 (2015 Acts of Assembly, c. 108).

**Virginia Freedom of Information Act; record exemption for certain health records.** Clarifies that records of certain health care committees and entities, to the extent that they reveal information that may be withheld from discovery as privileged communications, are exempt from disclosure under FOIA. HB 1633 (2015 Acts of Assembly, c. 127) and SB 968 (2015 Acts of Assembly, c. 22).

**§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

**Virginia Small Business Financing Authority; Small, Women-owned, and Minority-owned Business Loan Fund.** Abolishes the Capital Access Fund for Disadvantaged Businesses, which provides loan guarantees, loan loss reserves, and interest rate write downs for disadvantaged businesses, and replaces it with the Small, Women-owned, and Minority-owned Business Loan Fund. The new fund will provide direct loans to eligible small, women-owned, and minority-owned businesses. The bill requires the Small Business Financing Authority and the Department of Small Business and Supplier Diversity to transfer cash balances in the Capital Access Fund for Disadvantaged Businesses to the Small, Women-owned, and Minority-owned Business Loan Fund. The bill contains technical amendments. [NOTE: The bill contains a technical amendment to an existing records exemption.] HB1757 (2015 Acts of Assembly, c. 696) and SB 854 (2015 Acts of Assembly, c. 697).

**§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.**

**Virginia Freedom of Information Act records held by both Virginia Commonwealth University (VCU) and the VCU Medical Center; discussion of same.** Provides that the record and open meeting exemptions for VCU Medical Center shall also apply when the records are in the possession of VCU or the discussion of certain matters occurs at a meeting of the Virginia Commonwealth University Board of Visitors. HB 2104 (2015 Acts of Assembly, c. 549).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

**Veterans Services Foundation.** Provides that the Veterans Services Foundation may accept revenue from all sources, including private source fundraising, to support its mission. The bill also provides that the identity of donors to the Foundation does not have to be disclosed under FOIA if the donor has requested anonymity in connection with or as a condition of making a pledge or donation. HB 1967 (2015 Acts of Assembly, c. 137).

**§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

**Virginia Freedom of Information Act (FOIA); exception to open meeting requirements.** *See summary under § 2.2-3701, supra.* SB 969 (2015 Acts of Assembly, c. 131).

**§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

**Local and regional adult fatality review teams; penalty.** *See summary under § 2.2-3705.5, supra.* HB 1558 (2015 Acts of Assembly, c. 108).

**Resource management plans; consideration of certain records in closed meetings.** Creates an open meeting exemption for the discussion or consideration of certain records, currently excluded from FOIA, that relate to resource management plans. The bill provides that this exemption shall not apply, however, 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. HB 1618 (2015 Acts of Assembly, c. 169) and SB 1126 (2015 Acts of Assembly, c. 27).

**Virginia Freedom of Information Act records held by both Virginia Commonwealth University (VCU) and the VCU Medical Center; discussion of same.** *See summary under § 2.2-3705.7, supra.* HB 2104 (2015 Acts of Assembly, c. 549).

**Virginia Freedom of Information Act (FOIA); open meeting exemptions; discussions relating to cybersecurity.** Expands the open meeting exemption for the discussion of plans to protect public safety as it relates to terrorism and security of governmental facilities to include the discussion of specific cybersecurity threats or vulnerabilities, including the discussion of related records excluded from FOIA, 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. The bill contains an emergency clause. [NOTE: The act was approved on March 16, 2015.] SB 1109 (2015 Acts of Assembly, c. 182).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

### **III. Other Access-Related Legislation**

#### **Title 1 General Provisions.**

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

**Circuit court clerk responsibilities.** Revises certain circuit court clerk responsibilities, including (i) permitting the posting of notices on the circuit court clerk's website; (ii) clarifying that, if a name change is granted to a convicted sex offender, the clerk entering such order shall transmit a certified copy to any agency or department of the Commonwealth that has issued a license using such person's changed name, if known to the court and identified in the court order; (iii) clarifying that the clerk of court is not required to enter partial satisfactions of each installment payment of court costs; and (iv) allowing the clerk of court to compel production of a will or require security. HB 1780 (2015 Acts of Assembly, c. 631).

## **Title 2.2 Administration of Government.**

**Local and regional adult fatality review teams; penalty.** *See summary under § 2.2-3705.5, supra.* HB 1558 (2015 Acts of Assembly, c. 108).

**Virginia Small Business Financing Authority; Small, Women-owned, and Minority-owned Business Loan Fund.** *See summary under § 2.2-3705.6, supra.* HB1757 (2015 Acts of Assembly, c. 696) and SB 854 (2015 Acts of Assembly, c. 697).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

**Innovation and Entrepreneurship Investment Authority; powers.** Provides the Innovation and Entrepreneurship Investment Authority (commonly known as the CIT) with the power to exclusively, or with any other person, form and otherwise develop, own, operate, govern, and otherwise direct the disposition of assets of separate legal entities, provided that such entities are formed solely for the purpose of managing and administering any assets disposed of by the Authority. The bill provides that these legal entities may include limited liability companies, limited partnerships, charitable foundations, real estate holding companies, investment holding companies, nonstock corporations, and benefit corporations and provides that any such entities shall be operated under the governance of the Authority. The bill sets out other requirements for such entities, including that they shall not be deemed to be a state or governmental agency, advisory agency, or public body or instrumentality and that no director, officer, or employee of any such entity shall be deemed to be an officer or employee for purposes of the State and Local Government Conflict of Interests Act. The bill does provide, however, that the Auditor of Public Accounts or his legally authorized representatives shall annually audit the financial accounts of the Authority and any such entity, provided that the working papers and records of the Auditor of Public Accounts relating to such audits shall not be subject to the provisions of FOIA. The bill also sets the quorum for the Authority's board of directors at nine and requires the reporting of certain additional information to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance, the Secretary of Technology, and the Director of Planning and Budget. HB 1799 (2015 Acts of Assembly, c. 685).

**State and Local Government Conflict of Interests Act, General Assembly Conflicts of Interests Act, and Virginia Conflict of Interest and Ethics Advisory Council; certain gifts prohibited; approvals required for certain travel.** Removes the distinction between tangible and intangible gifts and prohibits any state or local officer or employee, member of the General Assembly, and certain candidates from soliciting, accepting, or receiving within any calendar year a single gift with a value exceeding \$100 or a combination of gifts with a value exceeding \$100 from certain persons; however, such prohibition does not apply to gifts from personal friends. The bill also prohibits the immediate family of such officers, employees, members, or candidates from soliciting, accepting, or receiving such gifts. The bill provides an exception for gifts received at widely attended events, which are those events at which at least 25 persons have been

invited to attend or there is a reasonable expectation that at least 25 persons will attend the event. The bill requires disclosure of any single gift or entertainment, or any combination of gifts or entertainment, with a value exceeding \$50. The bill also requires persons subject to the Conflict of Interest Acts to request approval from the Virginia Conflict of Interest and Ethics Advisory Council (the Council) and receive the approval of the Council prior to accepting or receiving any travel-related transportation, lodging, meal, hospitality, or other thing of value provided by certain third parties that has a value exceeding \$100. The bill modifies the current composition of the Council, reducing the number of members from 15 to 9 and requires that there be bipartisan balance of the General Assembly members appointed to the Council. The bill requires electronic filing of disclosure forms with the Council and provides that local officers and employees will file disclosure forms locally instead of with the Council. The bill provides that the making of a knowing and intentional false statement on a disclosure form is punishable as a Class 5 felony. The bill also prohibits the Governor, his campaign committee, and any political action committee established on his behalf from knowingly soliciting or accepting a contribution, gift, or other item with a value greater than \$100 from persons and entities seeking loans or grants from the Commonwealth's Development Opportunity Fund (the Fund), restricts such gifts and contributions from persons and entities seeking loans or grants from the Fund, and provides that any violation shall result in a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The bill has a delayed effective date of January 1, 2016, except the provisions of the bill related to the Council and its duties become effective July 1, 2015. HB 2070 (2015 Acts of Assembly, c. 763) and SB 1424 (2015 Acts of Assembly, c. 777).

**Community policy and management teams; information sharing.** Changes the term "community management and planning team" to the term "community policy and management team" (CPMT) in a section of the Code of Virginia relating to information sharing and confidentiality of information in cases being reviewed by a CPMT or family assessment and planning team, to be consistent with terminology used throughout the Code. HB 2141 (2015 Acts of Assembly, c. 357).

**Innovation and Entrepreneurship Investment Authority; powers.** Provides the Innovation and Entrepreneurship Investment Authority (commonly known as the CIT) with the power to exclusively, or with any other person, form and otherwise develop, own, operate, govern, and otherwise direct the disposition of assets of separate legal entities, provided that such entities are formed solely for the purpose of managing and administering any assets disposed of by the Authority. The bill provides that these legal entities may include limited liability companies, limited partnerships, charitable foundations, real estate holding companies, investment holding companies, nonstock corporations, and benefit corporations and provides that any such entities shall be operated under the governance of the Authority. The bill sets out other requirements for such entities, including that they shall not be deemed to be a state or governmental agency, advisory agency, or public body or instrumentality and that no director, officer, or employee of any such entity shall be deemed to be an officer or employee for purposes of the State and Local Government Conflict of Interests Act. The bill requires, however, that the Auditor of Public Accounts or his legally authorized representatives shall

annually audit the financial accounts of the Authority and any such entity, provided that the working papers and records of the Auditor of Public Accounts relating to such audits shall not be subject to the provisions of the Virginia Freedom of Information Act. The bill (i) adds two members to the board of directors appointed by the Speaker of the House and the Senate Committee on Rules and sets the quorum for the Authority's board of directors at nine; (ii) requires the reporting of certain additional information to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance, the Secretary of Technology, and the Director of Planning and Budget; and (iii) clarifies the Authority's powers related the MACH37 Cyber Accelerator entity. SB 1385 (2015 Acts of Assembly, c. 687).

### **Title 3.2 Agriculture, Animal Care, and Food.**

**Industrial hemp production and manufacturing.** Allows the cultivation of industrial hemp by licensed growers as part of a university-managed research program. The bill defines industrial hemp as the plant *Cannabis sativa* with a concentration of THC no greater than that allowed by federal law, excludes industrial hemp from the definition of marijuana in the Drug Control Act, and bars the prosecution of a licensed grower under drug laws for the possession of industrial hemp as part of the research program. The bill directs the Commissioner of the Department of Agriculture and Consumer Services to adopt relevant regulations and establish an industrial hemp research program to be managed by public institutions of higher education. [NOTE: Contains an exemption from FOIA for "records, data, and information filed in support of a license application."] HB 1277 (2015 Acts of Assembly, c. 158) and SB 955 (2015 Acts of Assembly, c. 180).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

**Tobacco Indemnification and Community Revitalization Commission; financial viability and feasibility study prior to disbursement; Virginia Tobacco Region Revolving Fund.** Renames the Tobacco Indemnification and Community Revitalization Commission as the Tobacco Region Revitalization Commission (the Commission) and requires it to contract with a manager to oversee Commission loans, grants, and other distributions of money. The bill requires the manager to provide a written report on the financial viability and feasibility of any such distribution and prohibits the Commission from making the distribution until its viability and feasibility have received recommendations from the manager. The bill eliminates future appointments of three nonlegislative citizen members and requires 13 of the remaining 28 Commission members to have experience in particular fields. The bill requires the Commission to (i) adopt policies governing the Tobacco Region Opportunity Fund; (ii) require a dollar-for-dollar match from entities receiving grants; (iii) make no distribution to a tobacco-dependent community solely based on the historical production of tobacco; (iv) require each project to have an accountability matrix, provide a set of quantified outcome expectations and other figures, and demonstrate how it will address low employment levels or other indicators; (v) develop a strategic plan every two years; and (vi) establish a public database of awards. The bill also establishes the Virginia Tobacco Region

Revolving Fund (the Fund), the assets of which are to be used to make loans to local governments for the financing of any project. The bill empowers the Virginia Resources Authority (the Authority) to administer the Fund, pledge assets of the Fund as security for bonds issued to finance a project, sell or collect on loans made from the Fund, and, in accordance with a memorandum of agreement with the Commission, establish the rates and terms of loans. The bill directs the Commission, in conjunction with the Authority, to make an annual report to the General Assembly and the Governor on all loans made from the Fund. HB 2330 (2015 Acts of Assembly, c. 399) and SB 1440 (2015 Acts of Assembly, c. 433).

#### **Title 4.1 Alcoholic beverage control act.**

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

#### **Title 8.01 Civil remedies and procedure.**

**Circuit court clerk responsibilities.** *See summary under Title 1, supra.* HB 1780 (2015 Acts of Assembly, c. 631).

**Dissemination, etc., of criminal history record information; civil action.** Creates a civil action against any person who disseminates, publishes, or maintains or causes to be disseminated, published, or maintained the criminal history record information of an individual pertaining to that individual's charge or arrest for a criminal offense and solicits, requests, or accepts money or other thing of value for removing such information. Such person shall be liable to the individual who is the subject of the information for actual damages or \$500, whichever is greater, in addition to reasonable attorney fees and costs. SB 720 (2015 Acts of Assembly, c. 414).

**Circuit court clerks; electronic records, fees, etc.** Makes various changes to the operations of circuit court clerks, including (i) allowing any agency or instrumentality of the Commonwealth to submit records in electronic form; (ii) providing that the state highway plat book kept in the clerk's office may be produced in paper, microfilm, or electronic form; (iii) providing that the clerk may set a convenience fee for electronic filing of civil or criminal proceedings that is lower than the convenience fee currently charged for payment by debit or credit card; and (iv) providing that all unpaid fines and costs be docketed as a judgment against the defendant in favor of the Commonwealth. SB 1316 (2015 Acts of Assembly, c. 641).

#### **Title 9.1 Commonwealth Public Safety.**

**Private police departments.** *See summary under § 2.2--3701, supra.* HB 1606 (2015 Acts of Assembly, c. 195) and SB 1217 (2015 Acts of Assembly, c. 224).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

## **Title 15.2 Counties, Cities, and Towns.**

**Family day homes and child day centers; licensure; background checks; reporting; notice.** Requires fingerprint-based national criminal history records checks for licensed child day centers and family day homes and requires employees and volunteers of such child day centers and family day homes to notify the provider if they are convicted of a barrier crime or subject to a founded complaint of child abuse or neglect. The bill adds the offenses that require registration in the Sex Offender and Crimes Against Minors Registry to the list of barrier crimes specific to family day homes. The bill lowers from five to four the maximum number of children for whom a family day home may provide care without a license, exclusive of the provider's children and any children who reside in the home. The bill requires (i) local commissioners of the revenue or other local business license officials to report to the Department of Social Services (the Department) semiannually the contact information for any child day center or family day home to which a business license was issued; (ii) unlicensed and unregistered family day homes, other than those in which all of the children receiving care are related to the provider by blood or marriage, to provide written notice to parents stating that the family day home is not regulated by the Department and referring the parents to a website maintained by the Department for additional information; and (iii) child day centers and family day homes that contract with the Department to provide child care services that are funded by the Child Care and Development Block Grant to comply with all requirements established by federal law and regulation. The bill also requires the Department to (a) develop recommendations related to appropriate criminal and civil penalties for individuals who wrongfully operate a child day center or family day home without a license or provide care for more children than the maximum number permitted under their license; (b) report on the requirements established in the Child Care and Development Block Grant to the Senate Committee on Rehabilitation and Social Services and the House Committee on Health, Welfare and Institutions by December 1, 2015; (c) develop and make available to child day centers and family day homes training and technical information and assistance regarding compliance with new licensure requirements established in the bill; and (d) work with certain localities authorized to regulate and license family day homes to identify and address any differences between ordinances adopted by such localities and state regulations for the licensure of family day homes. The provisions of the bill that require licensure of family day homes providing care for five or more children have a delayed effective date of July 1, 2016. The provisions of the bill that require fingerprint-based national criminal history records checks have a delayed effective date of July 1, 2017. HB 1570 (2015 Acts of Assembly, c. 758) and SB 1168 (2015 Acts of Assembly, c. 770).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

**Variances.** Changes the standard by which a board of zoning appeals shall grant an application for a variance by eliminating or altering several of the requirements. [NOTE:

Contains cross-references to FOIA regarding the provision of certain records.] HB 1849 (2015 Acts of Assembly, c. 597).

## **Title 17.1 Courts of Record.**

**Remote access to land records; fee; Department of Historic Resources.** Exempts the Department of Historic Resources from paying the fee for remote access to land records. HB 1875 (2015 Acts of Assembly, c. 65).

**Remote access to land records; indemnification.** Prohibits a circuit court clerk or an outside vendor contracted by the clerk, or both, from including their indemnification as a requirement in an agreement with a state agency or employee thereof acting in the employee's official capacity to provide subscribers remote access to land records. HB 1983 (2015 Acts of Assembly, c. 174).

**Circuit court clerks; electronic records, fees, etc.** *See summary under Title 8.01, supra.* SB 1316 (2015 Acts of Assembly, c. 641).

## **Title 18.2 Crimes and Offenses Generally.**

**Virginia Small Business Financing Authority; Small, Women-owned, and Minority-owned Business Loan Fund.** *See summary under § 2.2-3705.6, supra.* HB1757 (2015 Acts of Assembly, c. 696) and SB 854 (2015 Acts of Assembly, c. 697).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

## **Title 19.2 Criminal Procedure.**

**Right to privacy in electronic communications; confidential relationship; civil action.** Doubles the amount of liquidated damages that may be recovered against a person who intercepts, discloses, or uses wire, electronic, or oral communications in violation of Virginia's wiretapping law if such communications are between (i) a husband and wife; (ii) an attorney and client; (iii) a licensed practitioner of the healing arts and patient; (iv) a licensed professional counselor, licensed clinical social worker, licensed psychologist, or licensed marriage and family therapist and client; or (v) a clergy member and person seeking spiritual counsel or advice. The bill increases the allowable liquidated damages from \$400 a day for each day of violation or \$4,000, whichever is higher, to \$800 a day or \$8,000, whichever is higher. HB 1308 (2015 Acts of Assembly, c. 672).

**Warrant requirement for certain telecommunications records; prohibition on collection by law enforcement.** Provides that if an investigative or law-enforcement officer would be required to obtain a search warrant in order to obtain the contents of electronic communications or real-time location data from a provider of electronic communication service or remote computing service, the officer shall not use any device to intercept such communications or collect such real-time location data without first

obtaining a search warrant authorizing the use of the device. HB 1408 (2015 Acts of Assembly, c. 43).

**Family day homes and child day centers; licensure; background checks; reporting; notice.** *See summary under Title 15.2, supra.* HB 1570 (2015 Acts of Assembly, c. 758) and SB 1168 (2015 Acts of Assembly, c. 770).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

## **Title 22.1 Education.**

**Public elementary and secondary schools; student identification numbers.** Prohibits the Department of Education (the Department) and each local school board from requiring any student enrolled in a public elementary or secondary school or receiving home instruction, or his parent, to provide the student's federal social security number. The bill requires the Department to instead develop a system of unique student identification numbers and requires each local school board to assign such a number to each student enrolled in a public elementary or secondary school. Under current law, every student is required to present a federal social security number within 90 days of his enrollment; if a student is ineligible to obtain a social security number or his parent is unwilling to present a social security number, the superintendent may assign another identifying number or waive the requirement. The bill has a delayed effective date of August 1, 2015. HB 1307 (2015 Acts of Assembly, c. 666) and SB 1293 (2015 Acts of Assembly, c. 372).

**Students' personally identifiable information.** Requires the Department of Education to develop and make publicly available on its website policies to ensure state and local compliance with the federal Family Educational Rights and Privacy Act (FERPA) and state law applicable to students' personally identifiable information, including policies for (i) access to students' personally identifiable information and (ii) the approval of requests for student data from public and private entities and individuals for the purpose of research. The bill requires the Department and each local school division to notify the parent of any student whose personally identifiable information contained in electronic records could reasonably be assumed to have been disclosed in violation of FERPA or state law applicable to such information, except as otherwise provided in certain other provisions of law. Such notification shall include the (a) date, estimated date, or date range of the disclosure; (b) type of information that was or is reasonably believed to have been disclosed; and (c) remedial measures taken or planned in response to the disclosure. HB 1334 (2015 Acts of Assembly, c. 139).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

**Uniformed services-connected students; identification.** Requires the Department of Education to establish a process for the identification by local school divisions of newly

enrolled students who have a parent in the uniformed services. Local school divisions are required to identify such students in accordance with the process. Nonidentifiable, aggregate data collected from the identification of such students shall be made available to local, state, and federal entities for the purposes of becoming eligible for nongeneral fund sources and receiving services to meet the needs of uniformed services-connected students residing in the Commonwealth. [NOTE: Also provides that certain records are not public records subject to FOIA.] HB 2373 (2015 Acts of Assembly, c. 582) and SB 1354 (2015 Acts of Assembly, c. 583).

**Public schools; annual budget publication.** Requires each local school division to publish the annual school budget in line item form on its website. Current law requires publication of the budget but does not specify line item form. SB 1286 (2015 Acts of Assembly, c. 371).

**School board clerks; electronic maintenance of records.** Permits the clerk of each school board to keep volumes of meeting minutes and receipt and disbursement records, vouchers, contracts, and other official papers electronically. HB 2245 (2015 Acts of Assembly, c. 388) and SB 1339 (2015 Acts of Assembly, c. 330).

**Home instruction; religious exemption; information privacy.** Prohibits a division superintendent or local school board from disclosing to the Department of Education or any other person or entity outside of the local school division information provided by a student or parent for the purpose of (i) notifying the superintendent that the student will be receiving home instruction or (ii) claiming a religious exemption from school attendance. The bill contains a technical amendment. SB 1383 (2015 Acts of Assembly, c. 592).

## **Title 23 Educational Institutions.**

**Public institutions of higher education; students exhibiting suicidal tendencies or behavior; notification of student health or counseling center.** Requires each public institution of higher education's policies that advise students, faculty, and staff of the proper procedures for identifying and addressing the needs of students exhibiting suicidal tendencies or behavior to require procedures for notifying the institution's student health or counseling center when a student exhibits suicidal tendencies or behavior. HB 1715 (2015 Acts of Assembly, c. 663) and SB 1122 (2015 Acts of Assembly, c. 716).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

**Campus police departments; sexual assault reporting.** Requires that mutual aid agreements between a campus police force and a law-enforcement agency contain provisions requiring either the campus police force or the agency with which it has established a mutual aid agreement to notify the local attorney for the Commonwealth within 48 hours of beginning any investigation involving felony criminal sexual assault occurring on campus property or other property related to the institution of higher

education. The bill also requires institutions of higher education that have security departments instead of campus police forces to enter into a memorandum of understanding with a law-enforcement agency and such memorandum of understanding shall contain similar provisions requiring reports to the local attorney for the Commonwealth. HB 1785 (2015 Acts of Assembly, c. 707).

**Institutions of higher education; reporting acts of sexual violence.** Requires any responsible employee of a public or private nonprofit institution of higher education who in the course of his employment obtains information that an act of sexual violence has been committed against a student or on campus property or other property related to the institution to report such information to the Title IX coordinator for the institution as soon as practicable. The bill requires the Title IX coordinator to report such information to a review committee, which shall meet within 72 hours of the receipt of information of an alleged act of sexual violence and which shall include the Title IX coordinator, a representative of law enforcement, and a student affairs representative. If the review committee determines that disclosure of the information regarding the alleged act of sexual violence is necessary to protect the health and safety of the victim or other individuals, the representative of law enforcement on the review committee shall disclose the information, including personally identifiable information, to the law-enforcement agency responsible for investigating the alleged act. In cases involving a felony sexual assault, the representative of law enforcement on the review committee, or in certain situations, another committee member, shall consult with the local attorney for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of sexual violence.

The bill requires the governing board of each public or private nonprofit institution of higher education to (i) establish a written memorandum of understanding with a local sexual assault crisis center or other victim support service and (ii) adopt policies to provide victims with information on contacting such center or service. The bill requires each public or private nonprofit institution of higher education to annually certify to the State Council of Higher Education for Virginia that it has reviewed its sexual violence policy. Finally, the bill requires the Department of Criminal Justice Services to monitor the impact the legislation will have on the workload of local victim witness programs and report its findings to the Chairmen of the House and Senate Committees for Courts of Justice by October 1, 2016. HB 1930 (2015 Acts of Assembly, c. 737) and SB 712 (2015 Acts of Assembly, c. 745).

**Public institutions of higher education; required reports on intellectual property and externally sponsored research.** Requires each public institution of higher education to include in its six-year plan the following for the most recently ended fiscal year: (i) the assignment during the year of any intellectual property interests to a person or nongovernmental entity by the institution or any related entity, (ii) the value of externally sponsored research funds received during the year from a person or nongovernmental entity by the institution or any related entity, and (iii) the number and types of patents awarded during the year to the institution or any related entity that were developed in whole or part from externally sponsored research provided by a person or

nongovernmental entity. HB 1959 (2015 Acts of Assembly, c. 579) and SB 1206 (2015 Acts of Assembly, c. 580).

**Academic transcripts; suspension, permanent dismissal, or withdrawal from institution.** Requires the registrar of certain public and private institutions of higher education, or the other employee, office, or department of the institution that is responsible for maintaining student academic records, to include a prominent notation on the transcript of each student who has been suspended for, has been permanently dismissed for, or withdraws from the institution while under investigation for an offense involving sexual violence under the institution's code, rules, or set of standards governing student conduct. The bill defines sexual violence as physical sexual acts committed against a person's will or against a person incapable of giving consent. The bill provides that any notation due to a student's suspension shall be removed if the student completed the term of the suspension and any conditions thereof and has been determined by the institution to be in good standing. SB 1193 (2015 Acts of Assembly, c. 771).

## **Title 24.2 Elections.**

**Election administration; lists of registered voters and persons who voted in certain elections.** Requires the local electoral boards to provide to the Department of Elections within 14 days after the election the list of persons who voted, including those who voted provisionally and were determined to be entitled to vote, unless the local electoral board uses a nonelectronic pollbook, in which case the electoral board is required to submit such lists within seven days of the pollbook being released from the possession of the clerk of court. Current law requires that such lists be submitted to the Department of Elections within 60 days. The bill contains technical amendments to reflect the administrative reorganization of the Department of Elections that took effect July 1, 2014. HB 2056 (2015 Acts of Assembly, c. 712).

## **Title 30 General Assembly.**

**State and Local Government Conflict of Interests Act, General Assembly Conflicts of Interests Act, and Virginia Conflict of Interest and Ethics Advisory Council; certain gifts prohibited; approvals required for certain travel.** *See summary under Title 2.2, supra.* HB 2070 (2015 Acts of Assembly, c. 763) and SB 1424 (2015 Acts of Assembly, c. 777).

## **Title 32.1 Health.**

**Local and regional adult fatality review teams; penalty.** *See summary under § 2.2-3705.5, supra.* HB 1558 (2015 Acts of Assembly, c. 108).

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

## **Title 33.2 Highways and Other Surface Transportation Systems.**

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

## **Title 40.1 Labor and Employment.**

**Employers; disclosure of social media account information.** Prohibits an employer from requiring a current or prospective employee to disclose the username and password to his social media account. The measure also prohibits an employer from requiring an employee to add an employee, a supervisor, or an administrator to the list of contacts associated with the employee's social media account. HB 2081 (2015 Acts of Assembly, c. 576).

## **Title 46.2 Motor Vehicles.**

**Department of Motor Vehicles; emergency contact program.** Provides that DMV may establish an emergency contact program to allow customers to give DMV the name of an emergency contact person and related emergency contact information, which the customer may update or delete electronically at any time, to be kept in the customer's DMV record and made available to law-enforcement officers in emergency situations. The bill has a delayed effective date of January 1, 2016. [NOTE: The bill provides that such emergency contact information shall not be considered a public record subject to disclosure under FOIA.] HB 1392 (2015 Acts of Assembly, c. 162).

**Transportation network companies.** Establishes a process for the licensing of transportation network companies (TNCs) by the Department of Motor Vehicles (DMV), provided that TNCs comply with the requirements for licensure. The bill requires TNCs to screen drivers (TNC partners), ensure that all drivers are at least 21 years old and properly licensed to drive, and conduct background checks on all drivers including a national criminal background check, a driving history report, and status on the state and national sex offender registries. [NOTE: The bill also contains provisions regarding the disclosure of certain information, including that the information shall not be subject to FOIA.] HB 1662 (2015 Acts of Assembly, c. 2) and SB 1025 (2015 Acts of Assembly, c. 3).

## **Title 48 Nuisances.**

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

## **Title 51.1 Pensions, Benefits, and Retirement.**

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

## **Title 53.1 Prisons and Other Methods of Correction.**

**Notice required upon transfer of prisoner.** Requires the sheriff, superintendent, or Department of Corrections to give notice to any victim of the offense for which a prisoner was incarcerated as soon as practicable following the transfer of such prisoner. Under current law, such notice must be given at least 15 days prior to the transfer. SB 1311 (2015 Acts of Assembly, c. 101).

## **Title 54.1 Professions and Occupations.**

**Industrial hemp production and manufacturing.** *See summary under Title 3.2, supra.* HB 1277 (2015 Acts of Assembly, c. 158) and SB 955 (2015 Acts of Assembly, c. 180).

**Prescription Monitoring Program; subpoenas.** Provides that records in possession of the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. HB 1810 (2015 Acts of Assembly, c. 507).

**Prescription Monitoring Program; disclosure of information.** Requires the Director of the Department of Health Professions to disclose information from the Prescription Monitoring Program relevant to a specific investigation, supervision, or monitoring of a specific recipient for purposes of the administration of criminal justice to a probation or parole officer or local community-based probation officer who has completed the Virginia State Police Drug Diversion School designated by the Director of the Department of Corrections or his designee. SB 817 (2015 Acts of Assembly, c. 118).

## **Title 58.1 Taxation.**

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

**Disclosure of information.** Authorizes the Department of Taxation to disclose (i) whether a person, firm, or corporation is registered as a retail sales and use tax dealer and whether a certificate of registration number for such tax is valid, (ii) to the developer or the economic development authority of a tourism project tax information facilitating the repayment of gap financing, and (iii) tax information to a private entity with which the Department has contracted to assist in the administration of the refund process. The bill also allows the Attorney General and the Tax Commissioner to disclose tax information relating to sellers and purchasers of cigarettes or other tobacco products to a federal, state, or local agency. SB 1010 (2015 Acts of Assembly, c. 247).

## **Title 59.1 Trade and Commerce.**

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

## **Title 62.1 Waters of the State, Ports and Harbors.**

**Tobacco Indemnification and Community Revitalization Commission; financial viability and feasibility study prior to disbursement; Virginia Tobacco Region Revolving Fund.** *See summary under Title 3.2, supra.* HB 2330 (2015 Acts of Assembly, c. 399) and SB 1440 (2015 Acts of Assembly, c. 433).

## **Title 63.2 Welfare (Social Services).**

**Local and regional adult fatality review teams; penalty.** *See summary under § 2.2-3705.5, supra.* HB 1558 (2015 Acts of Assembly, c. 108).

**Family day homes and child day centers; licensure; background checks; reporting; notice.** *See summary under Title 15.2, supra.* HB 1570 (2015 Acts of Assembly, c. 758) and SB 1168 (2015 Acts of Assembly, c. 770).

## **Title 64.2 Wills, Trusts, and Fiduciaries.**

**Circuit court clerk responsibilities.** *See summary under Title 1, supra.* HB 1780 (2015 Acts of Assembly, c. 631).

## **Title 65.2. Worker's Compensation.**

**Alcoholic beverage control.** *See summary under § 2.2-3705.3, supra.* HB 1776 (2015 Acts of Assembly, c. 730) and SB 1032 (2015 Acts of Assembly, c. 38).

## **Title 67**

**Virginia Solar Energy Development Authority.** Creates the Virginia Solar Energy Development Authority to facilitate, coordinate, and support the development of the solar energy industry and solar-powered electric energy facilities in the Commonwealth. The Authority is directed to do so by developing programs to increase the availability of financing for solar energy projects, facilitate the increase of solar energy generation systems on public and private sector facilities in the Commonwealth, promote the growth of the Virginia solar industry, and provide a hub for collaboration between entities to partner on solar energy projects. The Authority will be composed of 11 members, of whom six will be appointed by the Governor, three will be appointed by the Speaker of the House, and two will be appointed by the Senate Committee on Rules. Members may be representatives of solar businesses, solar customers, renewable energy financiers, state and local government solar customers, and solar research academics. The Authority is charged with, among other tasks, (i) identifying existing state and regulatory or administrative barriers to the development of the solar energy industry; (ii) collaborating with entities such as higher education institutions to increase the training and development of the workforce needed by the solar industry in Virginia, including industry-recognized credentials and certifications; (iii) applying to the U.S. Department of Energy for loan guarantees for such projects; and (iv) performing any other activities as may seem appropriate to increase solar energy generation in Virginia and the

associated jobs and economic development and competitiveness benefits, including assisting investor-owned utilities in the planned deployment of at least 400 megawatts of solar energy projects in the Commonwealth by 2020 through entering into agreements in its discretion in any manner provided by law for the purpose of planning and providing for the financing or assisting in the financing of the construction or purchase of solar energy projects that are authorized pursuant to a provision of Chapter 23 of Title 56. The Director of the Department of Mines, Minerals and Energy may utilize non-state-funded support to carry out any duties assigned to the Director. Funding may be provided by any source, public or private, for the purposes for which the Authority is created. The bill has a sunset date of July 1, 2025. [NOTE: The act contains certain provisions regarding confidentiality of information.] HB 2267 (2015 Acts of Assembly, c. 398) and SB 1099 (2015 Acts of Assembly, c. 90).

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