



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

COMMONWEALTH OF VIRGINIA

Senator Mamie E. Locke, Chair
Delegate Marcus B. Simon, Vice-Chair

Alan Gernhardt, Esq., Executive Director/ Senior Attorney

Pocahontas Building ~ 900 E. Main Street, 8th Floor ~ Richmond, Virginia 23219
804-225-3056 ~ (Toll Free) 1-866-448-4100 ~ (Fax) 804-698-1899 ~ <http://foiacouncil.virginia.gov>

2022 FOIA LEGISLATIVE UPDATE

NOTE: Unless otherwise stated, the changes in the law described in this update will take effect July 1, 2022.

I. Introduction

The General Assembly passed a total of 12 bills amending the Virginia Freedom of Information Act (FOIA) during the 2022 Session. The 2022 Session of the General Assembly passed one bill that was recommended by the Virginia Freedom of Information Advisory Council (the Council): SB 152 (Locke) (adding a definition of "official public government website"). The General Assembly also passed HB 444 (Bennett-Parker) (addressing electronic meetings), which, in its introduced form, was substantially similar but not identical to legislation recommended by the Council. Two other bills were recommended by the Council but did not pass: HB 493 (Mullin) (addressing the required release of law-enforcement disciplinary records) and HB 599 (Roem) (addressing charges for production of public records).

Section II of this update lists the 12 bills enacted at the 2022 Session as each relates to the sections of FOIA. Section III presents a brief overview of amendments to FOIA section by section in order to provide context and organization to the numerous bills. Section IV presents a brief overview of other access-related legislation passed during the 2022 Session.

For more specific information regarding each bill, please see the bill itself. Unless otherwise indicated, the changes will become effective July 1, 2022.

II. Bills Enacted at the 2022 Session That Amend FOIA

One bill adds a new records exemption in FOIA as follows:

- Provides that public agencies shall not request personal donor information, defined in the bill, from (i) any individual or any entity organized under § 501(c) of the Internal Revenue Code or (ii) any bidder, offeror, or contractor of an agency. The bill prohibits such public agencies from disclosing personal information without the express, written permission of every individual who is identifiable from the potential release of such personal information, including individuals identifiable as members, supporters, or volunteers of, or donors to, the agency. The bill exempts the Campaign Finance Disclosure Act of 2006 from the requirements that public agencies protect personal information and refrain from requesting personal information. HB 970 amending § 2.2-3705.1.

One bill adds a new section to FOIA as follows:

- Requires, with certain exceptions outlined in the bill, any local public body subject to the provisions of FOIA to post meeting minutes on its official public government website, if any, within seven working days of final approval of the minutes. The bill provides that if a local public body does not own or maintain an official public government website, it shall make copies of all meeting minutes available no later than seven working days after the conclusion of a meeting at a prominent public location in which meeting notices are regularly posted, at the office of the clerk of the public body, or, in the case of a public body that has no clerk, at the office of the chief administrator. HB 150 adding § 2.2-3707.2.

Eight bills amend existing provisions of FOIA as follows:

- Provides that a public body subject to FOIA shall make all reasonable efforts to supply records requested by a citizen at the lowest possible cost; however, no such public body shall charge for the provision of certain scholastic records, outlined in the bill. The bill requires a public body, prior to conducting a search for records, to notify the requester in writing of the public body's right to make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records. Finally, the bill provides that any costs incurred by a public body in estimating the cost of supplying requested records shall be applied toward the overall charges to be paid by the requester for the supplying of such records. HB 307 amending §§ 2.2-3704 and 2.2-3704.1.
- Authorizes the Board of Directors of the Virginia Alcoholic Beverage Control Authority (the Board) to issue a mixed beverage casino license. The issuance of such license is limited to a mixed beverage casino licensee owned by a casino operator licensed under Virginia law. The bill provides for the sale and service of alcoholic beverages for on-premises consumption in areas designated by the Board during all hours of operation of the mixed beverage casino licensee and authorizes the licensee to provide gifts of alcoholic beverages to patrons and establish loyalty or reward credit programs under certain conditions. In addition, the bill provides that a mixed beverage restaurant licensee located on the premises of a casino gaming establishment may sell alcoholic beverages for on-premises consumption on the licensed premises of the restaurant during all hours of operation of the mixed beverage restaurant licensee and that any alcoholic beverages purchased from a restaurant on the premises of a casino gaming establishment may be taken onto the premises of the mixed beverage casino licensee and possessed and consumed in areas of the establishment as designated by the Board. Under the bill, a mixed beverage restaurant licensee that is located on the premises of and operated by a casino gaming establishment and holds a valid mixed beverage restaurant license issued by the Board prior to July 1, 2022, is authorized to operate with the privileges of a mixed beverage casino license as created by the bill until the casino gaming establishment at which the restaurant is located is issued a mixed beverage casino license or July 1, 2023, whichever occurs first. The Board may promulgate any regulations that it deems necessary for implementing the provisions of the bill no later than October 1, 2022. The initial adoption of regulations is exempt from the Administrative Process Act, except that the Board shall provide an opportunity for public comment on the regulations prior to adoption. The bill also (i) revises the definition of "gross receipts" to include electronic credits and electronic cash and to exclude the cash

value of promotions or credits under certain conditions and uncollectable counter checks; (ii) defines and authorizes the use of counter checks and prepaid access instruments; (iii) authorizes wagers to be conducted using electronic credits and electronic cash; and (iv) excludes conviction of misdemeanor possession of marijuana as a disqualifier for the issuance of a service permit by the Virginia Lottery. HB 455 and SB 519 amending § 2.2-3705.3 and various other sections in Titles 4.1 and 58.1. *(Note: Amends an existing FOIA exemption for information relating to investigations of applicants for licenses and permits, and of all licensees and permittees made by or submitted to certain public bodies.)*

- Changes the Charitable Gaming Board (the Board) from a policy board to an advisory board in the executive branch of state government, decreases the membership from 11 members to nine members, and moves the power and duty to promulgate regulations related to charitable gaming in the Commonwealth from the Board to the Department of Agriculture and Consumer Services (the Department). The bill provides that (i) the current regulations enacted by the Board shall be administered by the Department and remain in full force and effect until the Department promulgates new regulations pursuant to this bill and (ii) notwithstanding clause (i), the regulations promulgated by the Board regarding Texas Hold'em poker games and tournaments, which became effective on March 23, 2021, and were rescinded by the General Assembly pursuant to Item 105 of Chapter 552 of the Acts of Assembly of 2021, Special Session I, shall not take effect, but the Department shall promulgate regulations regarding Texas Hold'em poker games and tournaments consistent with the provisions of Chapter 982 of the Acts of Assembly of 2020 and pursuant to the provisions of the Administrative Process Act. The bill contains technical amendments. HB 765 and SB 402 amending § 2.2-3705.6 and various other sections in Titles 2.2, 3.2, and 18.2. *(Note: Contains a technical amendment to an existing exemption for certain information of a proprietary or confidential nature furnished by a supplier or manufacturer of charitable gaming supplies.)*
- Provides that individual votes of the members of the Virginia Parole Board are public records and subject to the provisions of FOIA. HB 1303 and SB 5 amending § 2.2-3703.
- Defines "official public government website" as it applies to FOIA and the Council as any Internet site controlled by a public body and used, among any other purposes, to post required notices and other content pursuant to FOIA on behalf of the public body. This bill is a recommendation of the Council. SB 152 amending §§ 2.2-3701 and 30-179.

One bill amends existing provisions and adds a new section in FOIA as follows:

- Amends existing provisions concerning electronic meetings by keeping the provisions for electronic meetings held in response to declared states of emergency, repealing the provisions that are specific to regional and state public bodies, and allowing certain public bodies to conduct all-virtual public meetings where all of the members who participate do so remotely and that the public may access through electronic communications means. The bill excepts local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards, and any board with the authority to deny, revoke, or suspend a professional or occupational license from the provisions that allow public bodies to conduct all-virtual public meetings. Definitions, procedural requirements, and limitations for all-virtual public meetings are set forth in the bill, along with technical amendments. The bill has a delayed effective date of September 1, 2022.

HB 444 amending §§ 2.2-3701, 2.2-3707, 2.2-3707.01, 2.2-3708.2, and 2.2-3714 and adding § 2.2-3708.3; the bill also amends various sections in Titles 2.2, 10.1, 15.2, 23.1, 30, and 62.1.

One bill amends existing provisions and adds a new section in Title 8.01:

- Provides that (i) criminal investigative files relating to a criminal investigation or proceeding that is not ongoing are excluded from the mandatory disclosure provisions of FOIA, though they may be disclosed by the custodian of such records to certain individuals except as otherwise provided in the bill, and (ii) with the exception of disclosure to an attorney representing a petitioner or inspection by an attorney or a person proceeding pro se in a petition for a writ of habeas corpus or writ of actual innocence or any other federal or state post-conviction proceeding or pardon, no criminal investigative file or portion thereof shall be disclosed to any requester except (a) the victim; (b) the victim's immediate family members, if the victim is deceased and the immediate family member to which the records are to be disclosed is not a person of interest or a suspect in the criminal investigation; or (c) the victim's parent or guardian, if the victim is a minor and the parent or guardian is not a person of interest or a suspect in the criminal investigation or proceeding, unless the public body has made reasonable efforts to notify any such individual of the request for such information. Upon receipt of notice that a public body has received a request for criminal investigative files, such persons shall have 14 days to file in an appropriate court for an injunction to prevent disclosure of the records and the time period within which the public body has to respond to the underlying request shall be tolled pending the notification process and any subsequent disposition by the court. The bill requires the court to consider certain information in making its determination and provides that a public body shall be prohibited from responding to the request until at least 14 days have passed from the time notice was received by any such individual listed in clauses (a), (b), or (c) and shall not disclose any criminal investigative files if the court awards an injunction. HB 734 amending § 2.2-3706.1 and adding § 8.01-622.2.

III. Amendments to FOIA by Code Section

§ 2.2-3701. Definitions.

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. Amends existing provisions concerning electronic meetings by keeping the provisions for electronic meetings held in response to declared states of emergency, repealing the provisions that are specific to regional and state public bodies, and allowing certain public bodies to conduct all-virtual public meetings where all of the members who participate do so remotely and that the public may access through electronic communications means. The bill excepts local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards, and any board with the authority to deny, revoke, or suspend a professional or occupational license from the provisions that allow public bodies to conduct all-virtual public meetings. Definitions, procedural requirements, and limitations for all-virtual public meetings are set forth in the bill, along with technical amendments. The bill has a delayed effective date of September 1, 2022 (2022 Acts of Assembly, c. 597).

SB 152 Virginia Freedom of Information Act and Virginia Freedom of Information Advisory Council; definition; official public government website. Defines "official public government website" as it applies to FOIA and the Council as any Internet site controlled by a public body and used, among any other purposes, to post required notices and other content pursuant to FOIA on behalf of the public body. This bill is a recommendation of the Council (2022 Acts of Assembly, c. 325).

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.

HB 1303 and SB 5 Virginia Freedom of Information Act; Virginia Parole Board member votes. Provides that individual votes of the members of the Virginia Parole Board are public records and subject to the provisions of FOIA (2022 Acts of Assembly, cc. 25 and 26).

§ 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.

HB 307 Virginia Freedom of Information Act; estimated charges; exception for certain scholastic records. Provides that a public body subject to FOIA shall make all reasonable efforts to supply records requested by a citizen at the lowest possible cost; however, no such public body shall charge for the provision of certain scholastic records, outlined in the bill. The bill requires a public body, prior to conducting a search for records, to notify the requester in writing of the public body's right to make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records. Finally, the bill provides that any costs incurred by a public body in estimating the cost of supplying requested records shall be applied toward the overall charges to be paid by the requester for the supplying of such records (2022 Acts of Assembly, c. 756).

§ 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.

HB 307 Virginia Freedom of Information Act; estimated charges; exception for certain scholastic records. *See summary under § 2.2-3704, supra (2022 Acts of Assembly, c. 756).*

§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.

HB 970 Public agencies; privacy of personal information; penalty. Provides that public agencies shall not request personal donor information, defined in the bill, from (i) any individual or any entity organized under § 501(c) of the Internal Revenue Code or (ii) any bidder, offeror, or contractor of an agency. The bill prohibits such public agencies from disclosing personal information without the express, written permission of every individual who is identifiable from the potential release of such personal information, including individuals identifiable as members, supporters, or volunteers of, or donors to, the agency. The bill exempts the Campaign Finance Disclosure Act of 2006 from the requirements that public agencies protect personal information and refrain from requesting personal information (2022 Acts of Assembly, c. 525).

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

HB 455 and SB 519 Casino gaming; sale and consumption of alcoholic beverages in casino gaming establishments; casino employees; wagers, accounting, and games. Authorizes the Board of Directors of the Virginia Alcoholic Beverage Control Authority (the Board) to issue a mixed beverage casino license. The issuance of such license is limited to a mixed beverage casino licensee owned by a casino operator licensed under Virginia law. The bill provides for the sale and service of alcoholic beverages for on-premises consumption in areas designated by the Board during all hours of operation of the mixed beverage casino licensee and authorizes the licensee to provide gifts of alcoholic beverages to patrons and establish loyalty or reward credit programs under certain conditions. In addition, the bill provides that a mixed beverage restaurant licensee located on the premises of a casino gaming establishment may sell alcoholic beverages for on-premises consumption on the licensed premises of the restaurant during all hours of operation of the mixed beverage restaurant licensee and that any alcoholic beverages purchased from a restaurant on the premises of a casino gaming establishment may be taken onto the premises of the mixed beverage casino licensee and possessed and consumed in areas of the establishment as designated by the Board. Under the bill, a mixed beverage restaurant licensee that is located on the premises of and operated by a casino gaming establishment and holds a valid mixed beverage restaurant license issued by the Board prior to July 1, 2022, is authorized to operate with the privileges of a mixed beverage casino license as created by the bill until the casino gaming establishment at which the restaurant is located is issued a mixed beverage casino license or July 1, 2023, whichever occurs first. The Board may promulgate any regulations that it deems necessary for implementing the provisions of the bill no later than October 1, 2022. The initial adoption of regulations is exempt from the Administrative Process Act, except that the Board shall provide an opportunity for public comment on the regulations prior to adoption. The bill also (i) revises the definition of "gross receipts" to include electronic credits and electronic cash and to exclude the cash value of promotions or credits under certain conditions and uncollectable counter checks; (ii) defines and authorizes the use of counter checks and prepaid access instruments; (iii) authorizes wagers to be conducted using electronic credits and electronic cash; and (iv) excludes conviction of misdemeanor possession of marijuana as a disqualifier for the issuance of a service permit by the Virginia Lottery (2022 Acts of Assembly, cc. 589 and 590). *(Note: Amends an existing FOIA exemption for information relating to investigations of applicants for licenses and permits, and of all licensees and permittees made by or submitted to certain public bodies.)*

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

HB 765 and SB 402 Virginia Department of Agriculture and Consumer Services; Charitable Gaming Board; powers and duties. Changes the Charitable Gaming Board (the Board) from a policy board to an advisory board in the executive branch of state government, decreases the membership from 11 members to nine members, and moves the power and duty to promulgate regulations related to charitable gaming in the Commonwealth from the Board to the Department of Agriculture and Consumer Services (the Department). The bill provides that (i) the current regulations enacted by the Board shall be administered by the Department and remain in full force and effect until the Department promulgates new regulations pursuant to this bill and (ii) notwithstanding clause (i), the regulations promulgated by the Board regarding Texas Hold'em

poker games and tournaments, which became effective on March 23, 2021, and were rescinded by the General Assembly pursuant to Item 105 of Chapter 552 of the Acts of Assembly of 2021, Special Session I, shall not take effect, but the Department shall promulgate regulations regarding Texas Hold'em poker games and tournaments consistent with the provisions of Chapter 982 of the Acts of Assembly of 2020 and pursuant to the provisions of the Administrative Process Act. The bill contains technical amendments (2022 Acts of Assembly, cc. 554 and 609). *(Note: Contains a technical amendment to an existing exemption for certain information of a proprietary or confidential nature furnished by a supplier or manufacturer of charitable gaming supplies.)*

§ 2.2-3706.1. Disclosure of law-enforcement records; criminal incident information and certain criminal investigative files; limitations.

HB 734 Virginia Freedom of Information Act; disclosure of certain criminal records.

Provides that (i) criminal investigative files relating to a criminal investigation or proceeding that is not ongoing are excluded from the mandatory disclosure provisions of FOIA, though they may be disclosed by the custodian of such records to certain individuals except as otherwise provided in the bill, and (ii) with the exception of disclosure to an attorney representing a petitioner or inspection by an attorney or a person proceeding pro se in a petition for a writ of habeas corpus or writ of actual innocence or any other federal or state post-conviction proceeding or pardon, no criminal investigative file or portion thereof shall be disclosed to any requester except (a) the victim; (b) the victim's immediate family members, if the victim is deceased and the immediate family member to which the records are to be disclosed is not a person of interest or a suspect in the criminal investigation; or (c) the victim's parent or guardian, if the victim is a minor and the parent or guardian is not a person of interest or a suspect in the criminal investigation or proceeding, unless the public body has made reasonable efforts to notify any such individual of the request for such information. Upon receipt of notice that a public body has received a request for criminal investigative files, such persons shall have 14 days to file in an appropriate court for an injunction to prevent disclosure of the records and the time period within which the public body has to respond to the underlying request shall be tolled pending the notification process and any subsequent disposition by the court. The bill requires the court to consider certain information in making its determination and provides that a public body shall be prohibited from responding to the request until at least 14 days have passed from the time notice was received by any such individual listed in clauses (a), (b), or (c) and shall not disclose any criminal investigative files if the court awards an injunction. This bill incorporates HB 890 (2022 Acts of Assembly, c. 386).

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

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra (2022 Acts of Assembly, c. 597).*

§ 2.2-3707.01. Meetings of the General Assembly.

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra (2022 Acts of Assembly, c. 597).*

§ 2.2-3707.2. Posting of minutes for local public bodies.

HB 150 Virginia Freedom of Information Act; posting of minutes; local public bodies. Requires, with certain exceptions outlined in the bill, any local public body subject to the provisions of FOIA to post meeting minutes on its official public government website, if any, within seven working days of final approval of the minutes. The bill provides that if a local public body does not own or maintain an official public government website, it shall make copies of all meeting minutes available no later than seven working days after the conclusion of a meeting at a prominent public location in which meeting notices are regularly posted, at the office of the clerk of the public body, or, in the case of a public body that has no clerk, at the office of the chief administrator (2022 Acts of Assembly, c. 396).

§ 2.2-3708.2. Meetings held through electronic communication means during declared states of emergency.

NOTE: HB 444 amends the catch line of § 2.2-3708.2, which was previously "Meetings held through electronic communication means."

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra (2022 Acts of Assembly, c. 597).*

§ 2.2-3708.3. Meetings held through electronic communication means; situations other than declared states of emergency.

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra (2022 Acts of Assembly, c. 597).*

§ 2.2-3714. Violations and penalties.

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra (2022 Acts of Assembly, c. 597).*

IV. Other Access-Related Legislation

Uncodified Acts

HB 137 and SB 478 Capital Region Airport Commission. Authorizes the Capital Region Airport Commission to (i) make charitable donations to organizations and (ii) form or support independent foundations designed to foster an appreciation by the public of the importance of aviation, assist the public in aviation travel, or help develop and educate the next generation of aviation professionals in the Commonwealth. The bill provides that any such foundation is not a public body and is exempt from the provisions of the Virginia Public Procurement Act and FOIA. The bill also authorizes the Commission to indemnify any current or former Commissioner, officer, employee, or agent of the Commission against liability arising from such position (2022 Acts of Assembly, cc. 367 and 368).

HB 894 Generation of electricity and energy development in the Commonwealth. Requires the Department of Energy, in cooperation with the Virginia Nuclear Energy Consortium Authority, to convene a stakeholder work group to identify strategies and any needed public policies,

including statutory or regulatory changes, for promoting the development of advanced small modular reactors in localities in the Commonwealth. The bill requires the Department of Energy to consider the economic development of rural Virginia while minimizing the impact on prime farmland a key priority in updating its Virginia Energy Plan.

The bill requires the Virginia Cooperative Extension to develop and maintain a map or repository of prime farmland in the Commonwealth, in consultation with the Department of Agriculture and Consumer Services, the Department of Forestry, the Department of Conservation and Recreation, and the Department of Energy. An initial report of such map or repository shall be submitted the Governor and the General Assembly by December 1, 2022.

Finally, the bill requires the State Corporation Commission to develop a program to encourage and expedite infrastructure investments by Dominion Energy Virginia or American Electric Power, in industrial sites determined to be relevant and in high demand by the Virginia Economic Development Partnership. The bill requires such program to be implemented by December 1, 2022, and the Commission is required to submit a report including recommendations for such program by December 15, 2022, to the Governor and General Assembly (2022 Acts of Assembly, c. 488). *(Note: The bill provides that certain electric distribution and transmission grid information shall not be subject to the disclosure requirements of FOIA.)*

SB 358 Seafood industry workforce liaison. Directs the Governor or the Secretary of Labor to designate a liaison to address seafood industry workforce needs by (i) promoting the interests of seafood industry employees and employers; (ii) assisting employees and employers in understanding the rights and processes available to them, including those related to temporary worker visas; (iii) answering inquiries; (iv) providing referrals to public and private agencies upon request; and (v) reporting annually on the liaison's activities to the House Committees on Commerce and Energy and Agriculture, Chesapeake and Natural Resources and the Senate Committees on Commerce and Labor and Agriculture, Conservation and Natural Resources. The bill requires the liaison to carry out his duties with impartiality and provides that he is immune from civil liability in the performance of his duties. The bill also provides that certain records and communications are exempt from FOIA. The bill directs the Governor or the Secretary of Labor to designate a current employee of the executive branch to serve in this capacity in lieu of hiring a new employee (2022 Acts of Assembly, c. 406).

SB 693 Common interest communities; notice of final adverse decision; allowing audio and video recordings; report. Directs the Common Interest Community Board (the Board) to review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision. The bill requires the Board to reports its findings and any legislative, regulatory, policy, or budgetary recommendations to the Secretary of Labor and the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology on or before November 1, 2022 (2022 Acts of Assembly, c. 244).

Title 1. General Provisions

HB 677 Posting of notices; electronic posting. Requires any notice, summons, order, or other official document of any type that is required to be posted on or at the front door of a courthouse or on a public bulletin board at the courthouse to also be posted on the public government website of the locality served by the court or on the website of the circuit court clerk. Under current law, the website posting is sufficient when such official document is required to be posted at the

courthouse. As introduced, this bill was a recommendation of the Boyd-Graves Conference. The bill has a delayed effective date of July 1, 2024 (2022 Acts of Assembly, c. 683).

Title 2.2. Administration of Government

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra (2022 Acts of Assembly, c. 597).*

HB 765 and SB 402 Virginia Department of Agriculture and Consumer Services; Charitable Gaming Board; powers and duties. *See summary under § 2.2-3705.6, supra (2022 Acts of Assembly, cc. 554 and 609).*

HB 970 Public agencies; privacy of personal information; penalty. *See summary under § 2.2-3705.1, supra (2022 Acts of Assembly, c. 525).*

HB 1290 and SB 764 Public bodies; security of government databases and data communications. Requires every public body to report to the Virginia Fusion Intelligence Center all known incidents that threaten the security of the Commonwealth's data or communications or result in exposure of data protected by federal or state laws and all other incidents compromising the security of the public body's information technology systems with the potential to cause major disruption to normal activities of the public body or other public bodies. The bill requires such reports to be made to the Virginia Fusion Intelligence Center within 24 hours of the discovery of the incident and that the Virginia Fusion Intelligence Center share such reports with the Chief Information Officer promptly upon receipt. The bill requires the Chief Information Officer to convene a work group to review current cybersecurity reporting and information sharing practices and report any legislative recommendations to the Governor and the Chairmen of the Senate Committee on General Laws and Technology and the House Committee on Communications, Technology and Innovation by November 15, 2022 (2022 Acts of Assembly, cc. 626 and 627).

SB 480 Administrative Process Act; final orders; electronic retention. Clarifies that signed originals of final agency case decisions may be retained in an electronic medium. This bill is a recommendation of the Administrative Law Advisory Committee and the Virginia Code Commission (2022 Acts of Assembly, c. 247).

Title 3.2. Agriculture, Animal Care, and Food

HB 765 and SB 402 Virginia Department of Agriculture and Consumer Services; Charitable Gaming Board; powers and duties. *See summary under § 2.2-3705.6, supra (2022 Acts of Assembly, cc. 554 and 609).*

Title 8.01. Civil Remedies and Procedure

HB 4 and SB 36 School principals; incident reports. Requires that school principals report to law enforcement certain enumerated acts that may constitute a misdemeanor offense and report to the parents of any minor student who is the specific object of such act that the incident has been reported to law enforcement. Under current law, principals are required to make such reports only for such acts that may constitute a felony offense. The bill provides, as an exception to the requirement to report any written threats against school personnel while on a school bus, on school property, or at a school-sponsored activity, that a principal is not required but may

report to the local law-enforcement agency any such incident committed by a student who has a disability (2022 Acts of Assembly, cc. 793 and 794).

HB 734 Virginia Freedom of Information Act; disclosure of certain criminal records. *See summary under § 2.2-3706.1, supra (2022 Acts of Assembly, c. 386).*

Title 10.1. Conservation

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra (2022 Acts of Assembly, c. 597).*

Title 15.2. Counties, Cities and Towns

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra (2022 Acts of Assembly, c. 597).*

HB 961 Cemeteries; registration; publication prior to sale. Expands provisions that allow localities to adopt an ordinance setting forth a register of identified cemeteries, graveyards, or other places of burial located on private property not belonging to any memorial or monumental association by providing that such localities shall publish a notice prior to the public sale of any publicly owned property that contains a known cemetery, graveyard, or other place of burial, or as soon thereafter as possible. The notice shall specify that a cemetery is present on the property. If the property falls under an exception provided for significant historic and archeological sites that would be jeopardized by public disclosure of their location, then no such notice is required (2022 Acts of Assembly, c. 369).

Title 16.1. Courts Not of Record

HB 731 and SB 149 Juvenile law-enforcement records; inspection. Provides that a juvenile, the parent, guardian, or other custodian of the juvenile, and counsel for the juvenile may inspect a law-enforcement record concerning such juvenile if (i) no other law or rule of the Supreme Court of Virginia requires or allows withholding of the record; (ii) the parent, guardian, or other custodian requesting the record is not a suspect, offender, or person of interest in the record; and (iii) any identifying information of any other involved juveniles is redacted (2022 Acts of Assembly, cc. 455 and 456).

Title 18.2. Crimes and Offenses Generally

HB 765 and SB 402 Virginia Department of Agriculture and Consumer Services; Charitable Gaming Board; powers and duties. *See summary under § 2.2-3705.6, supra (2022 Acts of Assembly, cc. 554 and 609).*

Title 22.1. Education

HB 4 and SB 36 School principals; incident reports. *See summary under Title 8.01, supra (2022 Acts of Assembly, cc. 793 and 794).*

HB 741 Annual public elementary and secondary school safety audits; creation or review of school building floor plans required. Requires each local school board, as part of each annual school safety audit, to create a detailed and accurate floor plan for each public school building in the local school division or certify that the existing floor plan for each such school is sufficiently

detailed and accurate but provides that such floor plan may be withheld from public disclosure (2022 Acts of Assembly, c. 57).

HB 1129 and SB 600 School safety audits; law-enforcement officers. Requires each local school board to require its schools to collaborate with the chief law-enforcement officer of the locality or his designee when conducting required school safety audits. Under current law, the division superintendent is required to make the results of such audits available to the chief law-enforcement officer upon request. The bill also requires that the completed walk-through checklist using the standardized checklist provided by the Virginia Center for School and Campus Safety be made available to the chief law-enforcement officer of the locality or his designee. Current law requires that the completed walk-through checklist be made available to the chief law-enforcement officer or his designee upon request (2022 Acts of Assembly, cc. 21 and 22).

SB 421 Libraries and education services; obsolete provisions. Revises and repeals obsolete provisions in Title 22.1 (Education) related to early childhood education and elementary and secondary education and Title 42.1 (Libraries) related to libraries and the Virginia Public Records Act. The bill also makes technical amendments. This bill is a recommendation of the Virginia Code Commission (2022 Acts of Assembly, c. 355).

Title 23.1. Institutions of Higher Education; Other Educational and Cultural Institutions

HB 355 State Council of Higher Education for Virginia; baccalaureate public institutions of higher education; website; posting of certain comparative data relating to undergraduate students. Requires the State Council of Higher Education for Virginia to maintain on its website a comparison of each baccalaureate public institution of higher education to each other baccalaureate public institution of higher education on an enumerated list of undergraduate student metrics and requires each such institution to maintain a link on its website to such comparison (2022 Acts of Assembly, c. 365).

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra* (2022 Acts of Assembly, c. 597).

Title 24.2. Elections

HB 492 Campaign finance; record retention requirements and reviews of campaign finance disclosure reports. Requires campaign committee treasurers to retain certain records that may be used in reviews of campaign committee accounts. The bill gives the Department of Elections the authority and duty to conduct reviews of a percentage of campaign committees and to report the results of such reviews annually to the State Board of Elections, the Governor, and the General Assembly and make such report available on the Department's website. The bill has a delayed effective date of January 1, 2024, and provides that campaign finance reports filed prior to January 1, 2024, are not subject to the provisions of the bill (2022 Acts of Assembly, c. 258).

Title 30. General Assembly

HB 270 and SB 219 Virginia Employment Commission; administrative reforms; reporting requirements; electronic submissions; Unemployment Compensation Ombudsman established; emergency. Requires the Virginia Employment Commission to calculate and report the (i) average unemployment insurance benefit levels, (ii) average income replacement of

unemployment insurance benefits, and (iii) reciprocity rate for unemployment insurance benefits in the Commonwealth as part of the Commission's annual balance sheet. The bill also requires the Commission, as part of its biennial strategic plan submitted to the Department of Planning and Budget, to develop and maintain an unemployment insurance Resiliency Plan that describes the specific actions the agency would take, depending on the level of increase in unemployment insurance (UI) claims, to address staffing, communications, and other relevant aspects of operations to ensure continued efficient and effective administration of the UI program.

The bill creates within the Commission on Unemployment Compensation a subcommittee that shall be responsible for monitoring the Virginia Employment Commission's management of the unemployment insurance program. The subcommittee shall meet at least once each quarter and shall report annually, beginning on December 1, 2022, to the House Committee on Appropriations, the House Committee on Commerce and Energy, the Senate Committee on Commerce and Labor, and the Senate Committee on Finance and Appropriations. The bill also directs the Commission to convene an advisory committee composed of stakeholders and subject matter experts to review information related to UI claims.

The bill requires employers to submit claim-related forms and separation information electronically, as well as other information and electronic tax payments upon the Commission's request, unless the employer has received a waiver by the Commission.

The bill provides that a claim for unemployment benefits that has been determined invalid by the Virginia Employment Commission as a result of the claimant's monetary ineligibility shall first be reviewed upon a request for redetermination prior to filing an appeal. The bill also creates an Unemployment Compensation Ombudsman position for the purpose of providing information and assistance to persons seeking assistance in the unemployment compensation process and exempts confidential case files of the Unemployment Compensation Ombudsman from the mandatory disclosure provisions of FOIA.

The bill directs the Virginia Department of Human Resource Management to lead a multiagency work group to discuss strategies for staffing assistance and support for agencies that might need staffing assistance during emergencies. Additionally, the Virginia Employment Commission is directed to task its internal audit division to review and revise documents and online resources related to unemployment compensation.

The bill contains an emergency clause (2022 Acts of Assembly, cc. 716 and 754; enacted and effective April 27, 2022).

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra (2022 Acts of Assembly, c. 597).*

Title 32.1. Health

HB 916 Health care providers; health records of minors; available via secure website. Provides that every hospital and health care provider that makes patients' health records available to such patients through a secure website shall make all health records of a patient who is a minor available to such patient's parent through such secure website unless the hospital or health care provider cannot make such health record available in a manner that prevents disclosure of information, the disclosure of which has been denied by a health care provider or for which required consent has not been provided (2022 Acts of Assembly, c. 218).

HB 1359 Health care; consent to services and disclosure of records. Provides that an authorization for the release of health records shall remain in effect until (i) the authorization is revoked in writing and delivered to the health care entity maintaining the health record subject to the authorization, (ii) any expiration date set forth in the authorization, or (iii) the health care entity maintaining the health record becomes aware of any expiration event described in the authorization, whichever occurs first, and that a revocation shall not be effective to the extent that the health care entity maintaining the health record released health records prior to the delivery of such revocation.

The bill also provides that authorization for the release of health records shall include authorization for the person named in the authorization to assist the person who is the subject of the health record in accessing health care services, including scheduling appointments for the person who is the subject of the health record and attending appointments together with the person who is the subject of the health record.

The bill also provides that every health care provider shall make health records of a patient available to any person designated by a patient in an authorization to release health records and that a health care provider shall allow a spouse, parent, adult child, adult sibling, or other person identified by a patient to make an appointment for medical services on behalf of such patient, regardless of whether such patient has executed an authorization to release health records (2022 Acts of Assembly, c. 784).

Title 42.1. Libraries

SB 421 Libraries and education services; obsolete provisions. *See summary under Title 22.1, supra (2022 Acts of Assembly, c. 355).*

Title 46.2. Motor Vehicles

SB 237 Department of Motor Vehicles; mileage-based user fee program; protection of data. Prohibits the disclosure of certain data necessary for the administration of the mileage-based user fee program and authorizes participants in the mileage-based user fee program to participate without location tracking (2022 Acts of Assembly, c. 236).

SB 612 Highway use fee, mileage-based user fee program; program clarifications developed by the working group. Directs the Commissioner of the Department of Motor Vehicles to establish a process for issuing prorated refunds of mileage-based user fees to certain participants. The bill prohibits the disclosure of certain data necessary for the administration of the mileage-based user fee program and authorizes participants in the mileage-based user fee program to participate without location tracking (2022 Acts of Assembly, c. 446).

Title 53.1. Prisons and Other Methods of Correction

SB 547 Virginia Parole Board; monthly reports. Requires the Virginia Parole Board (the Board) to publish a statement regarding any action taken by the Board on the parole of a prisoner within 30 days of such action and to include in such statement information regarding the length of

sentence and the date such sentence was imposed for each prisoner considered for parole (2022 Acts of Assembly, c. 141).

Title 54.1. Professions and Occupations

HB 555 Health care providers; transfer of patient records in conjunction with closure, sale, or relocation of practice; electronic notice permitted. Allows health care providers to notify patients either electronically or by mail prior to the transfer of patient records in conjunction with the closure, sale, or relocation of the health care provider's practice. Current law requires health care providers to provide such notice by mail (2022 Acts of Assembly, c. 73).

HB 916 Health care providers; health records of minors; available via secure website. *See summary under Title 32.1, supra (2022 Acts of Assembly, c. 218).*

HB 1359 Health care; consent to services and disclosure of records. *See summary under Title 32.1, supra (2022 Acts of Assembly, c. 784).*

HB 470 and SB 197 Common interest communities; prohibition on refusal to recognize a licensed real estate broker. Clarifies the prohibition on property owners' associations and unit owners' associations pursuant to the Property Owners' Association Act (§ 55.1-1800 et seq.) and the Virginia Condominium Act (§ 55.1-1900 et seq.), as the case may be, refusing to recognize a licensed real estate broker that is designated by the lot owner or unit owner as such lot owner's or unit owner's authorized representative, provided that the property owners' association or unit owners' association is given a written authorization signed by the lot owner or unit owner designating such licensed individual as his authorized representative and containing certain information for such designated representative. The bill also expands the list of authorized persons to whom a seller or seller's authorized agent may provide a written request for the delivery of the association disclosure packet or resale certificate. The bill contains a technical amendment (2022 Acts of Assembly, cc. 65 and 66).

SB 199 Public auction of personal property to satisfy lien; advertisement requirement alternative contact. Removes the provisions regarding the content of and publishing requirements for an advertisement for a public auction of personal property for the purposes of satisfying a lien. The bill also permits a rental agreement for an individual storage space in a self-service storage facility to provide the occupant with the option to designate an alternative contact to receive any notices required by law and provides that no alternative contact shall have any right to access the leased space or any personal property stored within unless expressly stated otherwise in the rental agreement (2022 Acts of Assembly, c. 792).

Title 55.1. Property and Conveyances

HB 470 and SB 197 Common interest communities; prohibition on refusal to recognize a licensed real estate broker. *See summary under Title 54.1, supra (2022 Acts of Assembly, cc. 65 and 66).*

Title 59.1. Trade and Commerce

HB 186 and SB 595 Nitrile Glove Manufacturing Training Program; established. Establishes the Nitrile Glove Manufacturing Training Program, a funding program of up to \$4,601,000 for the Virginia Economic Development Partnership, through the Virginia Talent

Accelerator Program, to support the recruitment and training needs of nitrile glove manufacturing companies located in the Mount Rogers Planning District. The bill also requires companies eligible for such funding to enter into a memorandum of understanding with the Virginia Economic Development Partnership that is subject to performance targets for jobs and capital investment on or before January 1, 2027, unless an extension of no more than two years is agreed upon (2022 Acts of Assembly, cc. 731 and 746). *(Note: the bill provides that certain documents submitted by such companies shall not be subject to disclosure under FOIA.)*

HB 381 Consumer Data Protection Act; data deletion request. Provides that a controller that has obtained personal data about a consumer from a third party shall be deemed in compliance with a consumer's request to delete such data if the controller either (i) retains a record of the deletion request and the minimum data necessary for the purpose of ensuring that the consumer's personal data remains deleted and does not use such retained data for any other purpose or (ii) opts the consumer out of the processing of that data for any purpose except those purposes exempted pursuant to the Consumer Data Protection Act (2022 Acts of Assembly, c. 423) *(Note: HB 381 was approved by the Governor, but the Governor vetoed identical SB 393.)*

Title 60.2 Unemployment Compensation

HB 270 and SB 219 Virginia Employment Commission; administrative reforms; reporting requirements; electronic submissions; Unemployment Compensation Ombudsman established. *See summary under Title 30, supra (2022 Acts of Assembly, cc. 716 and 754).*

Title 62.1 Waters of the State, Ports and Harbors

HB 444 Virginia Freedom of Information Act; meetings conducted through electronic communication means. *See summary under § 2.2-3701, supra (2022 Acts of Assembly, c. 597).*