

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL [LHausenfluck1] to amend and reenact §§ 2.2-3705.5, 2.2-3711, 2.2-3806, 32.1-48.08, 32.1-
2 48.011, 32.1-48.015, 32.1-283.1, 32.1-283.2, 32.1-283.3, 32.1-283.5, 32.1-283.6, 54.1-2517,
3 54.1-2523, and 63.2-1702 of the Code of Virginia, relating to the Virginia Freedom of
4 Information Act; health and social services record exclusions.

5 **Be it enacted by the General Assembly of Virginia:**

6 **1. That §§ 2.2-3705.5, 2.2-3711, 2.2-3806, 32.1-48.08, 32.1-48.011, 32.1-48.015, 32.1-283.1, 32.1-**
7 **283.2, 32.1-283.3, 32.1-283.5, 32.1-283.6, 54.1-2517, 54.1-2523, and 63.2-1702 of the Code of**
8 **Virginia are amended and reenacted as follows:**

9 **§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.**

10 The following information contained in a public record is excluded from the mandatory
11 disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except
12 where such disclosure is prohibited by law: Redaction of information excluded under this section from a
13 public record shall be conducted in accordance with § 2.2-3704.01. [HB 817]

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

16 Where the person who is the subject of health records is confined in a state or local correctional
17 facility, the administrator or chief medical officer of such facility may assert such confined person's right
18 of access to the health records if the administrator or chief medical officer has reasonable cause to
19 believe that such confined person has an infectious disease or other medical condition from which other
20 persons so confined need to be protected. Health records shall only be reviewed and shall not be copied
21 by such administrator or chief medical officer. The information in the health records of a person so
22 confined shall continue to be confidential and shall not be disclosed by the administrator or chief
23 medical officer of the facility to any person except the subject or except as provided by law.

24 Where the person who is the subject of health records is under the age of 18, his right of access
25 may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's

26 parental rights have been terminated, a court of competent jurisdiction has restricted or denied such
27 access, or a parent has been denied access to the health record in accordance with § 20-124.6. In
28 instances where the person who is the subject thereof is an emancipated minor, a student in a public
29 institution of higher education, or is a minor who has consented to his own treatment as authorized by §
30 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

31 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning
32 abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and
33 Developmental Services shall be open to inspection and copying as provided in § 2.2-3704. No such
34 summaries or data shall include any information that identifies specific individuals receiving services.

35 2. Applications for admission to examinations or for licensure and scoring records maintained by
36 the Department of Health Professions or any board in that department on individual licensees or
37 applicants. ~~However, such material may be made available during normal working hours for copying, at
38 the requester's expense, by the individual who is the subject thereof, in the offices of the Department of
39 Health Professions or in the offices of any health regulatory board, whichever may possess the material;~~
40 information required to be provided to the Department of Health Professions by certain licensees
41 pursuant to § 54.1-2506.1; [#8] information held by the Health Practitioners' Monitoring Program
42 Committee within the Department of Health Professions that identify any practitioner who may be, or
43 who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517[#11]; and information
44 relating to the prescribing and dispensing of covered substances to recipients and any abstracts from
45 such information that are in the possession of the Prescription Monitoring Program pursuant to Chapter
46 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the
47 Program.[#15]

48 3. Reports, documentary evidence and other information as specified in §§ 51.5-122, 51.5-141,
49 and ~~63.2-104~~ Chapter 1 (§ 63.2-100 et seq.) of Title 63.2. Information and statistical registries required
50 to be kept confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2. [#14]

51 4. Investigative notes; proprietary information not published, copyrighted or patented;
52 information obtained from employee personnel records; personally identifiable information regarding

53 residents, clients or other recipients of services; other correspondence and information furnished in
54 confidence to the Department of Social Services in connection with an active investigation of an
55 applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title
56 63.2; and records and information furnished to the Office of the Attorney General in connection with an
57 investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and
58 Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However, nothing in this section shall prohibit disclosure of
59 information from the records of completed investigations in a form that does not reveal the identity of
60 complainants, persons supplying information, or other individuals involved in the investigation.

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

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

66 ~~7. Data formerly required to be submitted to the Commissioner of Health relating to the~~
67 ~~establishment of new or the expansion of existing clinical health services, acquisition of major medical~~
68 ~~equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.~~

69 ~~8. Information required to be provided to the Department of Health Professions by certain~~
70 ~~licensees pursuant to § 54.1-2506.1.~~

71 ~~9.~~ Information and records acquired (i) during a review of any child death conducted by the State
72 Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality
73 review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death conducted
74 by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during
75 a review of any adult death conducted by the Adult Fatality Review Team to the extent made
76 confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent made
77 confidential by § 32.1-283.6.

78 ~~10-8.~~ Patient level data collected by the Board of Health and not yet processed, verified, and
79 released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the
80 Commissioner of Health has contracted pursuant to § 32.1-276.4.

81 ~~11. Records of the Health Practitioners' Monitoring Program Committee within the Department~~
82 ~~of Health Professions, to the extent such records may identify any practitioner who may be, or who is~~
83 ~~actually, impaired to the extent disclosure is prohibited by § 54.1-2517.~~

84 ~~12-9.~~ Records submitted as a grant application, or accompanying a grant application, to the
85 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of
86 Chapter 14 of Title 51.5, to the extent such records contain (i) medical or mental health records, or other
87 data identifying individual patients or (ii) proprietary business or research-related information produced
88 or collected by the applicant in the conduct of or as a result of study or research on medical,
89 rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly
90 released, published, copyrighted or patented, if the disclosure of such information would be harmful to
91 the competitive position of the applicant.

92 ~~13-10.~~ Any record copied, recorded or received by the Commissioner of Health in the course of
93 an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§
94 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all
95 computer or other recordings.

96 ~~14. Records, information and statistical registries required to be kept confidential pursuant to §§~~
97 ~~63.2-102 and 63.2-104.~~

98 ~~15. All data, records, and reports relating to the prescribing and dispensing of covered substances~~
99 ~~to recipients and any abstracts from such data, records, and reports that are in the possession of the~~
100 ~~Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any~~
101 ~~material relating to the operation or security of the Program.~~

102 ~~16-11.~~ Records of the Virginia Birth-Related Neurological Injury Compensation Program
103 required to be kept confidential pursuant to § 38.2-5002.2.

104 | ~~17-12.~~ Records of the State Health Commissioner relating to the health of any person or persons
105 | subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.)
106 | of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of
107 | statistical summaries, abstracts or other information in aggregate form.

108 | ~~18-13.~~ Records containing the names and addresses or other contact information of persons
109 | receiving transportation services from a state or local public body or its designee under Title II of the
110 | Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for
111 | Needy Families (TANF) created under § 63.2-600.

112 | ~~19-14.~~ Records of certain health care committees and entities, to the extent that they reveal
113 | information that may be withheld from discovery as privileged communications pursuant to § 8.01-
114 | 581.17.

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