

SENATE BILL NO. 401

BY SENATOR TALBOT AND REPRESENTATIVE CHASSION

## 1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(11), to enact Subpart C-2 of Part II of Chapter 6 of  
3 Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.  
4 22:1870.10 through 1870.18, and to repeal R.S. 22:1870(B)(5), relative to a  
5 Prescription Drug Affordability Board; to provide legislative findings and purpose;  
6 to provide for definitions; to establish the Prescription Drug Affordability Board; to  
7 provide for membership, powers, and duties of the board; to require drug  
8 manufacturers to provide drug pricing information to the board; to require drug  
9 pricing transparency requirements; to provide for annual report requirements; to  
10 provide for reporting requirements of prescription drug price that increases over a  
11 certain amount; to provide for manufacturers' obligations; to provide for webpage  
12 requirements; to provide for public access to certain drug pricing information; to  
13 provide for penalties for violations; to provide for the authority of the attorney  
14 general; to provide for public records exception; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Subpart C-2 of Part II of Chapter 6 of Title 22 of the Louisiana Revised  
17 Statutes of 1950, comprised of R.S. 22:1870.10 through 1870.18, is hereby enacted to read  
18 as follows:

19 **SUBPART C-2. Prescription Drug Affordability Board**20 **§1870.10. Legislative findings; purpose**

21 **A.(1) The Legislature of Louisiana hereby finds that the costs of**  
22 **prescription drugs have been increasing dramatically without any attributed**  
23 **reason.**

24 **(2) The legislature further finds that containing healthcare costs requires**  
25 **containing prescription drug costs.**

26 **B. Therefore, the legislature hereby declares, in order to contain**  
27 **prescription drug costs, it is essential to understand the drivers of those costs,**

1 as transparency is typically the first step toward cost containment.

2 §1870.11. Definitions

3 As used in this Part, the following words have the following meanings  
4 unless the context indicates otherwise:

5 (1) "Board" means the Prescription Drug Affordability Board  
6 established pursuant to this Subpart.

7 (2) "Department" means the Department of Insurance.

8 (3) "Enrollee" means any individual entitled to coverage of healthcare  
9 services.

10 (4) "Manufacturer" means any entity which is engaged in the  
11 production, preparation, propagation, compounding, conversion, or processing  
12 of prescription drugs for human use, whether directly or indirectly, by  
13 extraction from substances of natural origin, independently by means of  
14 chemical synthesis, or by a combination of extraction and chemical synthesis,  
15 or any entity engaged in the packaging, repackaging, labeling, relabeling, or  
16 distribution of prescription drugs. The term shall not include a wholesale  
17 distributor of prescription drugs licensed pursuant to the Louisiana Drug and  
18 Device Distributors Act, R.S. 37:3461 et seq., a retailer, or a pharmacist licensed  
19 pursuant to the Louisiana Pharmacy Practice Act, R.S. 37:1161 et seq.

20 (5) "Prescription drug" means a drug as defined in 21 U.S.C. 321.

21 (6) "Rebate" means either of the following:

22 (a) Drug manufacturer price concessions including but not limited to  
23 base price concessions, whether described as a rebate or otherwise, and any  
24 price protection rebates and performance-based price concessions that may  
25 accrue directly or indirectly to the pharmacy benefit manager, health insurance  
26 issuer or health plan, or other party on behalf of the health insurance issuer or  
27 health plan, including a pharmacy benefit manager, from a manufacturer,  
28 dispensing pharmacy, or other party in connection with the dispensing or  
29 administration of a prescription drug.

30 (b) Reasonable estimates of any other costs that are passed through or

1 are reasonably anticipated to be passed through to the health insurance issuer  
 2 or health plan and serve to reduce the health insurance issuer or health plan's  
 3 liabilities for a prescription drug.

4 (7) "Research and development expenditures" means all costs that a  
 5 pharmaceutical manufacturer incurs during a calendar year that relate to the  
 6 research and development of products, processes, or services and includes the  
 7 costs of research and development of products, processes, or services that the  
 8 pharmaceutical manufacturer has acquired or obtained via a license.

9 (8) "Wholesale acquisition cost" or "WAC" has the same meaning as  
 10 provided in 42 U.S.C. 1395w-3a(c)(6)(B).

11 §1870.12. Prescription Drug Affordability Board

12 A. The Prescription Drug Affordability Board is hereby established  
 13 within the Department of Insurance.

14 B. The board shall consist of the following members:

15 (1) The commissioner of insurance, or his designee.

16 (2) The secretary of the Louisiana Department of Health, or his designee.

17 (3) The president of the Louisiana Board of Pharmacy, or his designee.

18 (4) Two public members appointed by the governor.

19 (5) Two public members appointed by the president of the Senate.

20 (6) Two public members appointed by the speaker of the House of  
 21 Representatives.

22 (7) One member of a patient advocacy group, appointed by the  
 23 commissioner.

24 C. The public members shall have a significant healthcare or pharmacy  
 25 background.

26 D.(1) Each public member shall serve for a term of five years.

27 (2) Each public member shall hold office for the term of appointment  
 28 and until his successor is appointed and qualified.

29 E. Any vacancy in the membership of the board shall be filled for the  
 30 unexpired term in the manner provided for the original appointment. Members

1 shall be eligible for reappointment to the board.

2 F.(1) The board shall organize as soon as possible after the appointment  
3 of its members and shall annually elect a chairperson and vice chairperson from  
4 among its members, and a secretary who need not be a member of the board.

5 (2) The board shall meet at least four times a year and may hold  
6 additional meetings as necessary to discharge its duties. The board shall also  
7 meet at the call of the chairperson or the commissioner.

8 G. A majority of the membership of the board shall constitute a quorum  
9 for the transaction of board business.

10 H. Members of the board shall serve without compensation.

11 I. A member, or his designee, shall not be an employee of, a board  
12 member of, or a consultant to a manufacturer, pharmacy benefit manager,  
13 health insurance carrier, health maintenance organization, managed care  
14 organization, or wholesale distributor or related trade association.

15 J. Any conflict of interest, including a financial or personal association,  
16 that has the potential to bias or has the appearance of biasing an individual's  
17 decision in matters related to the board or the conduct of the board's activities  
18 shall be considered and disclosed when appointing members, or a member's  
19 designee, to the board.

20 K. The department shall provide the board with staff support from  
21 existing personnel within the department and meeting facilities as is necessary  
22 for the board to carry out its duties.

23 §1870.13. Critical prescription drug list

24 A. The board shall develop a list of critical prescription drugs made  
25 available in Louisiana for which there is a substantial public interest in  
26 understanding the development of pricing for the drugs. Generic or biosimilar  
27 drugs shall be placed on the list only if they have a wholesale acquisition cost of  
28 one hundred dollars or more for a unit cost increase of more than two hundred  
29 percent during any twelve-month period.

30 B. In developing the list required by Subsection A of this Section, the

1 board shall consider, at a minimum, all of the following factors:

2 (1) The cost of the drug to public healthcare programs including but not  
3 limited to Medicaid.

4 (2) The current cost of the drug in the state.

5 (3) The extent of use of the drug within the state.

6 (4) The availability and cost of comparable or therapeutically equivalent  
7 courses of treatment.

8 (5) The rate at which the drug is deemed to produce successful outcomes  
9 when used to treat the conditions for which it is most commonly prescribed.

10 (6) Any other objectively quantifiable factors as the board determines to  
11 be relevant to evaluating the significance of the availability of the drug in  
12 Louisiana.

13 C. The board may also consider recommendations for drugs to be  
14 included in the list submitted by government agencies, members of the public,  
15 and professional organizations representing the pharmaceutical industry,  
16 healthcare practitioners, pharmaceutical manufacturers, managed care plans,  
17 prescription drug benefit managers, and other insurers.

18 D. The list developed pursuant to this Section shall be reviewed and  
19 updated by the board at least once every three years.

20 §1870.14. Manufacturer reporting

21 A. By June first of each calendar year, the board shall identify up to ten  
22 prescription drugs on which the state spends significant healthcare dollars, after  
23 accounting for rebates. The drugs identified shall represent different drug  
24 classes and may include generics.

25 B. For each prescription drug identified pursuant to Subsection A of this  
26 Section, the board shall require the drug's manufacturer to report all of the  
27 following:

28 (1) The drug's wholesale acquisition cost increase.

29 (2) The manufacturer's aggregate company-level research and  
30 development and other relevant capital expenditures for the most recent year

1 for which final audited data is available.

2 (3) A written description, suitable for public release, of factors that  
3 contributed to any reported increase in wholesale acquisition cost for the  
4 reporting year.

5 C. The quality and types of information and data that a drug  
6 manufacturer submits to the board under this Section shall be consistent with  
7 the quality and types of information and data that the manufacturer includes  
8 in the manufacturer's annual consolidated report on Securities and Exchange  
9 Commission Form 10-K or any other public disclosure.

10 D. By December thirty-first of each calendar year, the board shall  
11 publish a report on its website based on the information that it receives  
12 pursuant to Subsection B of this Section.

13 E. Information provided to the board pursuant to Subsection B of this  
14 Section is exempt from public inspection and copying pursuant to the Public  
15 Records Law, R. S. 44:1 et seq.

16 §1870.15. Rulemaking; enforcement

17 A. The commissioner, on behalf of the board, shall adopt, pursuant to the  
18 Administrative Procedure Act, R.S. 49:950 et seq., any rules and regulations  
19 necessary to implement the provisions of this Subpart.

20 B. The failure of a manufacturer to provide the information required by  
21 this Subpart shall constitute a prohibited practice under the Unfair Trade  
22 Practices and Consumer Protection Law, R.S. 51:1401 et seq., and shall be  
23 subject to the enforcement provisions of that Chapter.

24 §1870.16. Confidentiality

25 A. All information and data obtained by the department pursuant to this  
26 Subpart that are not otherwise publicly available are considered to be a trade  
27 secret, confidential, and proprietary information. Such information and data  
28 are not subject to disclosure pursuant to the Public Records Law, R.S. 44:1 et  
29 seq.

30 B.(1) Information provided to the department, board, or an interested

1 party pursuant to this Subpart shall, except to the extent it is already in the  
2 public domain, be considered trade secret pursuant to the Uniform Trade  
3 Secrets Act, R.S. 51:1431 et seq., exempt from disclosure pursuant to the Public  
4 Records Law, R. S. 44:1 et seq., and shall not be disclosed directly or indirectly.

5 (2) Except to provide the general public with wholesale acquisition costs  
6 under R.S. 22:1870.18(A)(2) of this Subpart, the department, board, or  
7 interested parties and their agents shall not publish or otherwise disclose any  
8 information that would allow for the identification of an individual drug,  
9 therapeutic class of drugs, or manufacturer; that would reveal the prices of any  
10 drug or therapeutic class of drugs; or that has the potential to compromise the  
11 financial, competitive, or proprietary nature of any information submitted by  
12 the manufacturer pursuant to this Subpart.

13 (3) The department, board, and interested third parties shall impose the  
14 confidentiality protections of this Subpart on any third party that may receive  
15 or otherwise have access to this information.

16 §1870.17. Report to the legislature

17 A.(1) The board shall prepare an annual report on prescription drug  
18 prices and their role in overall healthcare spending in the state based on the  
19 data submitted to the board pursuant to R.S. 22:1870.14 and in accordance with  
20 R.S. 22:1870.16.

21 (2) The board shall identify and include in the report a list of those  
22 prescription drugs that have a cost in this state that is excessively high when  
23 compared with the cost of the drug in other states and countries and when  
24 compared with the overall cost of researching, developing, and producing the  
25 drug in light of the number of years the drug has been made available for  
26 distribution.

27 (3) The board may include in the report recommendations for actions to  
28 lower prescription drug costs and spending across the state while maintaining  
29 access to and the quality of health care.

30 B. The board shall submit the report to the House and Senate committees

1 on insurance no later than sixty days prior to the start of the regular legislative  
2 session. The board shall also make the report publicly available on the website  
3 of the Department of Insurance and the Louisiana Department of Health.

4 §1870.18. Prescription drug pricing transparency; annual report;  
5 webpage requirements and publications; penalty and enforcement

6 A.(1) Not later than January fifteenth of each calendar year, a  
7 pharmaceutical drug manufacturer shall submit a report to the department  
8 stating the current wholesale acquisition cost information for the United States  
9 Food and Drug Administration-approved prescription drugs sold in or into this  
10 state by that manufacturer.

11 (2) The department shall develop a webpage that provides the general  
12 public with prescription drug price information submitted pursuant to this  
13 Section. The webpage shall be made available on the department's website with  
14 a dedicated link that is prominently displayed on the home page or by a  
15 separate easily identifiable webpage address.

16 B.(1) This Section applies only to prescription drugs with a wholesale  
17 acquisition cost of at least one hundred dollars for a thirty-day supply before  
18 the effective date of an increase described by this Section.

19 (2) Not later than the thirtieth day after the effective date of an increase  
20 of forty percent or more over the preceding three calendar years or fifteen  
21 percent or more in the preceding calendar year in the wholesale acquisition cost  
22 of a prescription drug to which this Section applies, a pharmaceutical drug  
23 manufacturer shall submit a report to the commissioner. The report shall  
24 include all of the following information:

25 (a) The name of the prescription drug.

26 (b) Whether the prescription drug is a brand name or generic.

27 (c) The effective date of the change in wholesale acquisition cost.

28 (d) A statement regarding the factor or factors that caused the increase  
29 in the wholesale acquisition cost and an explanation of the role of each factor's  
30 impact on the cost.

1           **(3) If, during a calendar year, a prescription drug with a wholesale**  
2           **acquisition cost of at least one hundred dollars for a thirty-day supply increases**  
3           **in price by forty percent or more over the preceding three calendar years or**  
4           **fifteen percent or more in the preceding calendar year in the wholesale**  
5           **acquisition cost of the prescription drug, the pharmaceutical drug**  
6           **manufacturer shall include in the annual report submitted pursuant to this**  
7           **Section all of the following information:**

8           **(a) Aggregate, company-level research and development costs for the**  
9           **most recent year for which final audit data is available.**

10           **(b) The name of each of the manufacturer's prescription drugs approved**  
11           **by the United States Food and Drug Administration in the previous three**  
12           **calendar years.**

13           **(c) The name of each of the manufacturer's prescription drugs that lost**  
14           **patent exclusivity in the United States in the previous three calendar years.**

15           **(4) A manufacturer's obligations pursuant to this Subsection shall be**  
16           **fully satisfied by the submission of information and data that a manufacturer**  
17           **includes in the manufacturer's annual consolidated report on Securities and**  
18           **Exchange Commission Form 10-K or any other public disclosure.**

19           **C. Not later than the sixtieth day after receipt of the report submitted,**  
20           **the department shall publish the cost increase information required pursuant**  
21           **to this Section on the department's webpage for prescription drug price**  
22           **information.**

23           **D.(1) If the department determines that a pharmaceutical drug**  
24           **manufacturer failed to submit a report, or failed to submit the report in the**  
25           **manner prescribed by Subsection B of this Section and the rules adopted**  
26           **pursuant to this Section, the department shall provide written notice of the**  
27           **failure to the manufacturer.**

28           **(2) On receipt of notice described by this Subsection, a pharmaceutical**  
29           **drug manufacturer shall submit a report that does all of the following:**

30           **(a) Complies with Subsection B of this Section and rules adopted**

1 pursuant to this Section.

2 (b) Addresses all issues raised in the notice.

3 (3) The department may not assess an administrative penalty pursuant  
4 to this Subsection against a pharmaceutical drug manufacturer that submits to  
5 the department the required report, as applicable, on or before the forty-fifth  
6 day after the date the manufacturer receives notice pursuant to this Section.

7 E.(1) The department may assess an administrative penalty against a  
8 manufacturer that violates this Section or rules pursuant to this Subsection.

9 (2) In determining the amount of the penalty, the department shall  
10 consider all of the following:

11 (a) The manufacturer's previous violations.

12 (b) The seriousness of the violation.

13 (c) The manufacturer's demonstrated good faith.

14 (d) Any other matters as justice may require.

15 (3) The penalty may not exceed one thousand dollars a day for each  
16 violation.

17 (4) Each day a violation continues may be considered a separate  
18 violation.

19 (5) The enforcement of the penalty may be stayed during the time the  
20 order is under judicial review if the manufacturer pays the penalty to the clerk  
21 of the court or files a security bond with the court in the amount of the penalty.

22 (6) The attorney general may sue to collect the penalty. Money collected  
23 pursuant to this Section shall be deposited in the state treasury and may be  
24 appropriated only to the department for the purposes of administering this  
25 Section.

26 Section 2. R.S. 44:4.1(B)(11) is hereby amended and reenacted to read as follows:

27 §4.1. Exceptions

28 \* \* \*

29 B. The legislature further recognizes that there exist exceptions, exemptions,  
30 and limitations to the laws pertaining to public records throughout the revised

1 statutes and codes of this state. Therefore, the following exceptions, exemptions, and  
2 limitations are hereby continued in effect by incorporation into this Chapter by  
3 citation:

4 \* \* \*

5 (11) R.S. 22:2, 14, 31, 42.1, 88, 244, 263, 265, 461, 550.7, 550.22, 550.29,  
6 550.30, 571, 572, 572.1, 572.2, 574, 601.3, 618, 639, 691.4, 691.5, 691.6, 691.7,  
7 691.8, 691.9, 691.9.1, 691.10, 691.38, 691.56, 732, 752, 753, 771, 834, 972(D), 976,  
8 1008, 1019.2, 1203, 1460, 1464, 1466, 1483.1. 1488, 1546, 1559, 1566(D), 1644,  
9 1656, 1657.1, 1660.7, 1723, 1796, 1801, 1808.3, 1869, **1870.14, 1870.16**, 1927,  
10 1929, 1983, 1984, 2036, 2045, 2056, 2085, 2091, 2293, 2303, 2508

11 \* \* \*

12 Section 3. R.S. 22:1870(B)(5) is hereby repealed.

13 Section 4. The provisions of Sections 1, 2, and 3 of this Act shall take effect and  
14 become enforceable on January 1, 2027, only if Section 7 of the Act which originated as  
15 Senate Bill No. 387 of the 2026 Regular Session of the Legislature is enacted and becomes  
16 effective.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_