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HOUSE BILL NO. 2007**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Health, Welfare and Institutions
on January 28, 2021)

(Patron Prior to Substitute—Delegate Sickles)

A BILL to amend and reenact § 2.2-3705.6 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 1 of Title 32.1 a section numbered 32.1-23.3, by adding a section numbered 38.2-3407.15:6, by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.22, by adding in Article 3 of Chapter 34 of Title 54.1 a section numbered 54.1-3436.1, and by adding in Article 4 of Chapter 34 of Title 54.1 a section numbered 54.1-3442.02, relating to prescription drug price transparency.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.6 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 1 of Title 32.1 a section numbered 32.1-23.3, by adding a section numbered 38.2-3407.15:6, by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.22, by adding in Article 3 of Chapter 34 of Title 54.1 a section numbered 54.1-3436.1, and by adding in Article 4 of Chapter 34 of Title 54.1 a section numbered 54.1-3442.02 as follows:

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

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

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

60 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or
61 proprietary information by any person in connection with a procurement transaction or by any person
62 who has submitted to a public body an application for prequalification to bid on public construction
63 projects in accordance with subsection B of § 2.2-4317.

64 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity,
65 its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed
66 under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private
67 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such information
68 was made public prior to or after the execution of an interim or a comprehensive agreement,
69 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
70 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
71 documented in writing by the responsible public entity; and

72 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
73 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995
74 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002
75 (§ 56-575.1 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity;
76 (ii) financial information of the private entity, including balance sheets and financial statements, that are
77 not generally available to the public through regulatory disclosure or otherwise; or (iii) other information
78 submitted by the private entity where if such information was made public prior to the execution of an
79 interim agreement or a comprehensive agreement, the financial interest or bargaining position of the
80 public or private entity would be adversely affected. In order for the information specified in clauses (i),
81 (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written
82 request to the responsible public entity:

83 (1) Invoking such exclusion upon submission of the data or other materials for which protection from
84 disclosure is sought;

85 (2) Identifying with specificity the data or other materials for which protection is sought; and

86 (3) Stating the reasons why protection is necessary.

87 The responsible public entity shall determine whether the requested exclusion from disclosure is
88 necessary to protect the trade secrets or financial information of the private entity. To protect other
89 information submitted by the private entity from disclosure, the responsible public entity shall determine
90 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement
91 would adversely affect the financial interest or bargaining position of the public or private entity. The
92 responsible public entity shall make a written determination of the nature and scope of the protection to
93 be afforded by the responsible public entity under this subdivision. Once a written determination is made
94 by the responsible public entity, the information afforded protection under this subdivision shall continue
95 to be protected from disclosure when in the possession of any affected jurisdiction or affected local
96 jurisdiction.

97 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to
98 authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b)
99 information concerning the terms and conditions of any interim or comprehensive agreement, service
100 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity
101 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
102 that involves the use of any public funds; or (d) information concerning the performance of any private
103 entity developing or operating a qualifying transportation facility or a qualifying project.

104 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"
105 "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation
106 facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined
107 in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-Private Education
108 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

109 12. Confidential proprietary information or trade secrets, not publicly available, provided by a private
110 person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a
111 fund administered in connection with financial assistance rendered or to be rendered by the Virginia
112 Resources Authority where, if such information were made public, the financial interest of the private
113 person or entity would be adversely affected.

114 13. Trade secrets or confidential proprietary information that is not generally available to the public
115 through regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii)
116 franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority
117 pursuant to a promise of confidentiality from the franchising authority, to the extent the information
118 relates to the bidder's, applicant's, or franchisee's financial capacity or provision of new services,
119 adoption of new technologies or implementation of improvements, where such new services,
120 technologies, or improvements have not been implemented by the franchisee on a nonexperimental scale
121 in the franchise area, and where, if such information were made public, the competitive advantage or

122 financial interests of the franchisee would be adversely affected.

123 In order for trade secrets or confidential proprietary information to be excluded from the provisions
124 of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon submission of
125 the data or other materials for which protection from disclosure is sought, (b) identify the data or other
126 materials for which protection is sought, and (c) state the reason why protection is necessary.

127 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
128 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
129 applicable franchising authority serves on the management board or as an officer of the bidder,
130 applicant, or franchisee.

131 14. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of
132 charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to
133 subsection E of § 18.2-340.34 and (ii) pursuant to regulations promulgated by the Charitable Gaming
134 Board related to approval of electronic and mechanical equipment.

135 15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board
136 pursuant to § 3.2-1215.

137 16. Trade secrets submitted by CMRS providers as defined in § 56-484.12 to the former Wireless
138 Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, relating to the
139 provision of wireless E-911 service.

140 17. Information relating to a grant or loan application, or accompanying a grant or loan application,
141 to the Commonwealth Health Research Board pursuant to Chapter 5.3 (§ 32.1-162.23 et seq.) of Title
142 32.1 if disclosure of such information would (i) reveal proprietary business or research-related
143 information produced or collected by the applicant in the conduct of or as a result of study or research
144 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
145 has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the
146 competitive position of the applicant.

147 18. Confidential proprietary information and trade secrets developed and held by a local public body
148 (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
149 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if disclosure of such
150 information would be harmful to the competitive position of the locality.

151 In order for confidential proprietary information or trade secrets to be excluded from the provisions
152 of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify
153 with specificity the information for which protection is sought, and (c) state the reasons why protection
154 is necessary. However, the exemption provided by this subdivision shall not apply to any authority
155 created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

156 19. Confidential proprietary information and trade secrets developed by or for a local authority
157 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
158 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
159 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
160 position of the authority, except that information required to be maintained in accordance with
161 § 15.2-2160 shall be released.

162 20. Trade secrets or financial information of a business, including balance sheets and financial
163 statements, that are not generally available to the public through regulatory disclosure or otherwise,
164 provided to the Department of Small Business and Supplier Diversity as part of an application for
165 certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1
166 (§ 2.2-1603 et seq.). In order for such trade secrets or financial information to be excluded from the
167 provisions of this chapter, the business shall (i) invoke such exclusion upon submission of the data or
168 other materials for which protection from disclosure is sought, (ii) identify the data or other materials for
169 which protection is sought, and (iii) state the reasons why protection is necessary.

170 21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health
171 Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

172 22. Trade secrets, including, but not limited to, financial information, including balance sheets and
173 financial statements, that are not generally available to the public through regulatory disclosure or
174 otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State
175 Inspector General for the purpose of an audit, special investigation, or any study requested by the Office
176 of the State Inspector General in accordance with law.

177 In order for the information specified in this subdivision to be excluded from the provisions of this
178 chapter, the private or nongovernmental entity shall make a written request to the State Inspector
179 General:

- 180 a. Invoking such exclusion upon submission of the data or other materials for which protection from
181 disclosure is sought;
- 182 b. Identifying with specificity the data or other materials for which protection is sought; and

183 c. Stating the reasons why protection is necessary.

184 The State Inspector General shall determine whether the requested exclusion from disclosure is
185 necessary to protect the trade secrets or financial information of the private entity. The State Inspector
186 General shall make a written determination of the nature and scope of the protection to be afforded by it
187 under this subdivision.

188 23. Information relating to a grant application, or accompanying a grant application, submitted to the
189 Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets, (b) financial
190 information of a grant applicant that is not a public body, including balance sheets and financial
191 statements, that are not generally available to the public through regulatory disclosure or otherwise, or
192 (c) research-related information produced or collected by the applicant in the conduct of or as a result of
193 study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when
194 such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful
195 to the competitive position of the applicant; and memoranda, staff evaluations, or other information
196 prepared by the Commission or its staff exclusively for the evaluation of grant applications. The
197 exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in
198 furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

199 In order for the information specified in this subdivision to be excluded from the provisions of this
200 chapter, the applicant shall make a written request to the Commission:

201 a. Invoking such exclusion upon submission of the data or other materials for which protection from
202 disclosure is sought;

203 b. Identifying with specificity the data, information or other materials for which protection is sought;
204 and

205 c. Stating the reasons why protection is necessary.

206 The Commission shall determine whether the requested exclusion from disclosure is necessary to
207 protect the trade secrets, financial information, or research-related information of the applicant. The
208 Commission shall make a written determination of the nature and scope of the protection to be afforded
209 by it under this subdivision.

210 24. a. Information held by the Commercial Space Flight Authority relating to rate structures or
211 charges for the use of projects of, the sale of products of, or services rendered by the Authority if
212 disclosure of such information would adversely affect the financial interest or bargaining position of the
213 Authority or a private entity providing the information to the Authority; or

214 b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of
215 such information would (i) reveal (a) trade secrets of the private entity; (b) financial information of the
216 private entity, including balance sheets and financial statements, that are not generally available to the
217 public through regulatory disclosure or otherwise; or (c) other information submitted by the private
218 entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private
219 entity.

220 In order for the information specified in clauses (a), (b), and (c) of subdivision 24 b to be excluded
221 from the provisions of this chapter, the private entity shall make a written request to the Authority:

222 (1) Invoking such exclusion upon submission of the data or other materials for which protection from
223 disclosure is sought;

224 (2) Identifying with specificity the data or other materials for which protection is sought; and

225 (3) Stating the reasons why protection is necessary.

226 The Authority shall determine whether the requested exclusion from disclosure is necessary to protect
227 the trade secrets or financial information of the private entity. To protect other information submitted by
228 the private entity from disclosure, the Authority shall determine whether public disclosure would
229 adversely affect the financial interest or bargaining position of the Authority or private entity. The
230 Authority shall make a written determination of the nature and scope of the protection to be afforded by
231 it under this subdivision.

232 25. Information of a proprietary nature furnished by an agricultural landowner or operator to the
233 Department of Conservation and Recreation, the Department of Environmental Quality, the Department
234 of Agriculture and Consumer Services, or any political subdivision, agency, or board of the
235 Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part
236 of a state or federal regulatory enforcement action.

237 26. Trade secrets provided to the Department of Environmental Quality pursuant to the provisions of
238 § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the
239 submitting party shall (i) invoke this exclusion upon submission of the data or materials for which
240 protection from disclosure is sought, (ii) identify the data or materials for which protection is sought,
241 and (iii) state the reasons why protection is necessary.

242 27. Information of a proprietary nature furnished by a licensed public-use airport to the Department
243 of Aviation for funding from programs administered by the Department of Aviation or the Virginia
244 Aviation Board, where if such information was made public, the financial interest of the public-use

245 airport would be adversely affected.

246 In order for the information specified in this subdivision to be excluded from the provisions of this
247 chapter, the public-use airport shall make a written request to the Department of Aviation:

248 a. Invoking such exclusion upon submission of the data or other materials for which protection from
249 disclosure is sought;

250 b. Identifying with specificity the data or other materials for which protection is sought; and

251 c. Stating the reasons why protection is necessary.

252 28. Information relating to a grant, loan, or investment application, or accompanying a grant, loan, or
253 investment application, submitted to the Commonwealth of Virginia Innovation Partnership Authority
254 (the Authority) established pursuant to Article 11 (§ 2.2-2351 et seq.) of Chapter 22, an advisory
255 committee of the Authority, or any other entity designated by the Authority to review such applications,
256 to the extent that such records would (i) reveal (a) trade secrets; (b) financial information of a party to a
257 grant, loan, or investment application that is not a public body, including balance sheets and financial
258 statements, that are not generally available to the public through regulatory disclosure or otherwise; or
259 (c) research-related information produced or collected by a party to the application in the conduct of or
260 as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly
261 issues, when such information has not been publicly released, published, copyrighted, or patented, and
262 (ii) be harmful to the competitive position of a party to a grant, loan, or investment application; and
263 memoranda, staff evaluations, or other information prepared by the Authority or its staff, or a reviewing
264 entity designated by the Authority, exclusively for the evaluation of grant, loan, or investment
265 applications, including any scoring or prioritization documents prepared for and forwarded to the
266 Authority.

267 29. Proprietary information, voluntarily provided by a private business pursuant to a promise of
268 confidentiality from a public body, used by the public body for a solar services agreement, where
269 disclosure of such information would (i) reveal (a) trade secrets of the private business; (b) financial
270 information of the private business, including balance sheets and financial statements, that are not
271 generally available to the public through regulatory disclosure or otherwise; or (c) other information
272 submitted by the private business and (ii) adversely affect the financial interest or bargaining position of
273 the public body or private business.

274 In order for the information specified in clauses (i) (a), (b), and (c) to be excluded from the
275 provisions of this chapter, the private business shall make a written request to the public body:

276 a. Invoking such exclusion upon submission of the data or other materials for which protection from
277 disclosure is sought;

278 b. Identifying with specificity the data or other materials for which protection is sought; and

279 c. Stating the reasons why protection is necessary.

280 30. Information contained in engineering and construction drawings and plans submitted for the sole
281 purpose of complying with the Building Code in obtaining a building permit if disclosure of such
282 information would identify specific trade secrets or other information that would be harmful to the
283 competitive position of the owner or lessee. However, such information shall be exempt only until the
284 building is completed. Information relating to the safety or environmental soundness of any building
285 shall not be exempt from disclosure.

286 31. Trade secrets, including, but not limited to, financial information, including balance sheets and
287 financial statements that are not generally available to the public through regulatory disclosure or
288 otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the
289 Virginia Department of Transportation for the purpose of an audit, special investigation, or any study
290 requested by the Virginia Department of Transportation in accordance with law.

291 In order for the records specified in this subdivision to be excluded from the provisions of this
292 chapter, the private or nongovernmental entity shall make a written request to the Department:

293 a. Invoking such exclusion upon submission of the data or other materials for which protection from
294 disclosure is sought;

295 b. Identifying with specificity the data or other materials for which protection is sought; and

296 c. Stating the reasons why protection is necessary.

297 The Virginia Department of Transportation shall determine whether the requested exclusion from
298 disclosure is necessary to protect trade secrets or financial records of the private entity. The Virginia
299 Department of Transportation shall make a written determination of the nature and scope of the
300 protection to be afforded by it under this subdivision.

301 32. Information related to a grant application, or accompanying a grant application, submitted to the
302 Department of Housing and Community Development that would (i) reveal (a) trade secrets, (b)
303 financial information of a grant applicant that is not a public body, including balance sheets and
304 financial statements, that are not generally available to the public through regulatory disclosure or
305 otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or

306 as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly
 307 issues, when such information has not been publicly released, published, copyrighted, or patented, and
 308 (ii) be harmful to the competitive position of the applicant. The exclusion provided by this subdivision
 309 shall only apply to grants administered by the Department, the Director of the Department, or pursuant
 310 to § 36-139, Article 26 (§ 2.2-2484 et seq.) of Chapter 24, or the Virginia Telecommunication Initiative
 311 as authorized by the appropriations act.

312 In order for the information submitted by the applicant and specified in this subdivision to be
 313 excluded from the provisions of this chapter, the applicant shall make a written request to the
 314 Department:

315 a. Invoking such exclusion upon submission of the data or other materials for which protection from
 316 disclosure is sought;

317 b. Identifying with specificity the data, information, or other materials for which protection is sought;
 318 and

319 c. Stating the reasons why protection is necessary.

320 The Department shall determine whether the requested exclusion from disclosure is necessary to
 321 protect the trade secrets or confidential proprietary information of the applicant. The Department shall
 322 make a written determination of the nature and scope of the protection to be afforded by it under this
 323 subdivision.

324 33. Financial and proprietary records submitted with a loan application to a locality for the
 325 preservation or construction of affordable housing that is related to a competitive application to be
 326 submitted to either the U.S. Department of Housing and Urban Development (HUD) or the Virginia
 327 Housing Development Authority (VHDA), when the release of such records would adversely affect the
 328 bargaining or competitive position of the applicant. Such records shall not be withheld after they have
 329 been made public by HUD or VHDA.

330 34. *Information of a proprietary or confidential nature disclosed by a health carrier or pharmacy
 331 benefits manager pursuant to § 38.2-3407.15:6, a wholesale distributor pursuant to § 54.1-3436.1, or a
 332 manufacturer pursuant to § 54.1-3442.02.*

333 **§ 32.1-23.3. Prescription drug price transparency; civil penalty.**

334 A. *As used in this section, "nonprofit data services organization" means the nonprofit organization
 335 with which the Commissioner has negotiated and entered into a contract or agreement for the
 336 compilation, storage, analysis, and evaluation of data submitted by health care providers pursuant to §
 337 32.1-276.4.*

338 B. *The Department shall negotiate and enter into a contract or agreement with a nonprofit data
 339 services organization to annually collect, compile, and make available on its website publicly available
 340 information about prescription drug prices submitted by health carriers and pharmacy benefits managers
 341 pursuant to § 38.2-3407.15:6, wholesale distributors pursuant to § 54.1-3436.1, and manufacturers
 342 pursuant to § 54.1-3442.02. Such data and information shall be made available in aggregate in a form
 343 and manner that does not disclose or tend to disclose proprietary or confidential information of any
 344 health carrier, pharmacy benefits manager, wholesale distributor, or manufacturer.*

345 C. *A health carrier, pharmacy benefits manager, wholesale distributor, or manufacturer that fails to
 346 report information required to be reported pursuant to this section or § 38.2-3407.15:6, 54.1-3436.1, or
 347 54.1-3442.02, respectively, shall be subject to a civil penalty not to exceed \$2,500 per day from the date
 348 on which such reporting is required, to be collected by the Commissioner and deposited into the
 349 Literary Fund. However, the Commissioner may reduce or waive a civil penalty imposed pursuant to
 350 this section if he determines that the violation was reasonable or resulting from good cause.*

351 D. *The Department shall adopt regulations to implement the provisions of this section, which shall
 352 include (i) provisions related to the specification of prescription drugs for the purpose of data collection
 353 and procedures for auditing information provided by health carriers, pharmacy benefits managers,
 354 wholesale distributors, and manufacturers and (ii) a schedule of civil penalties for failure to report
 355 information required pursuant to this section or § 38.2-3407.15:6, 54.1-3436.1, or 54.1-3442.02, which
 356 shall be based on the level of severity of the violation.*

357 E. *All information submitted by a health carrier or pharmacy benefits manager pursuant to
 358 § 38.2-3407.15:6, a wholesale distributor pursuant to § 54.1-3436.1, or a manufacturer pursuant to
 359 § 54.1-3442.02 shall be confidential and exempt from disclosure under the Virginia Freedom of
 360 Information Act (§ 2.2-3700 et seq.), except to the extent that such information is included in an
 361 aggregated form in the report required pursuant to this section.*

362 **§ 38.2-3407.15:6. Prescription drug price transparency.**

363 A. *As used in this section:*

364 *"Carrier" has the same meaning as set forth in § 38.2-3407.10.*

365 *"Health benefit plan" has the same meaning as set forth in § 38.2-3438.*

366 *"Manufacturer" has the same meaning as set forth in § 54.1-3401.*

367 *"Nonprofit data services organization" has the same meaning as set forth in § 32.1-23.3.*

368 "Pharmacy benefits management" has the same meaning as set forth in § 38.2-3407.15:4.

369 "Pharmacy benefits manager" has the same meaning as set forth in § 38.2-3407.15:4.

370 B. Every carrier offering a health benefit plan shall report annually by April 1 to the nonprofit data
371 services organization with which the Department of Health has entered into a contract or agreement
372 pursuant to § 32.1-23.3 the following information on spending on prescription drugs in total, before
373 enrollee cost sharing, for each health benefit plan offered by the carrier in the Commonwealth:

374 1. For covered outpatient prescription drugs that were prescribed to enrollees during the calendar
375 year, the names of (i) the 25 most frequently prescribed outpatient prescription drugs, (ii) the names of
376 the 25 outpatient prescription drugs covered at the greatest cost, calculated using the total annual
377 spending by such health benefit plan for each outpatient prescription drug covered by the health benefit
378 plan; and (iii) the 25 outpatient prescription drugs that experienced the greatest year-over-year increase
379 in cost, calculated using the total annual spending by such health benefit plan for each outpatient
380 prescription drug covered by the health benefit plan;

381 2. The percent increase in annual net spending for prescription drugs after accounting for
382 aggregated rebates, discounts, or other reductions in price;

383 3. The percent increase in premiums that were attributable to each health care service, including
384 prescription drugs;

385 4. The percentage of specialty drugs with utilization management requirements; and

386 5. The premium reductions that were attributable to specialty drug utilization management.

387 C. A report submitted by a carrier pursuant to this section shall not disclose the identity of a specific
388 health benefit plan or the price charged for a specific prescription drug or class of prescription drugs.

389 D. Every carrier offering a health benefit plan shall require each pharmacy benefits manager with
390 which it enters into a contract for pharmacy benefits management to report annually by April 1 to the
391 nonprofit data services organization with which the Department has entered into a contract or
392 agreement pursuant to § 32.1-23.2 the following information for each drug specified by the Department
393 of Health:

394 1. The aggregate amount of rebates received by the pharmacy benefits manager;

395 2. The aggregate amount of rebates distributed to the relevant health benefit plan; and

396 3. The aggregate amount of rebates passed on to enrollees of each health benefit plan at the point of
397 sale that reduced the enrollees' applicable deductible, copayment, coinsurance, or other cost-sharing
398 amount.

399 E. A report submitted by a pharmacy benefits manager pursuant to subsection D shall not disclose
400 the identity of a specific health benefit plan or covered person, the price charged for a specific
401 prescription drug or class of prescription drugs, or the amount of any rebate or fee provided for a
402 specific prescription drug or class of prescription drugs.

403 **§ 38.2-3407.22. Option for rebates to enrollees; protected information.**

404 A. As used in this section:

405 "Carrier" has the same meaning as set forth in § 38.2-3407.10; however, "carrier" also includes any
406 person required to be licensed pursuant to this title that offers or operates a managed care health
407 insurance plan subject to the requirements of Chapter 58 (§ 38.2-5800 et seq.) or that provides or
408 arranges for the provision of health care services, health plans, networks, or provider panels that are
409 subject to regulation as the business of insurance. "Carrier" also includes any health insurance issuer
410 that offers health insurance coverage, as defined in § 38.2-3431.

411 "Enrollee" means any person entitled to health care services from a carrier.

412 "Health care services" means items or services furnished to any individual for the purpose of
413 preventing, alleviating, curing, or healing human illness, injury, or physical disability.

414 "Health plan" means any individual or group health care plan, subscription contract, evidence of
415 coverage, certificate, health services plan, medical or hospital services plan, accident or sickness
416 insurance policy or certificate, managed care health insurance plan, or other similar certificate, policy,
417 contract, or arrangement, and any endorsement or rider thereto, to cover all or a portion of the cost of
418 persons receiving covered health care services, that is subject to state regulation and that is required to
419 be offered, arranged, or issued in the Commonwealth by a carrier licensed under this title. "Health
420 plan" includes a state or local government employer plan. "Health plan" does not mean (i) coverages
421 issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX
422 of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), Title XXI of the Social Security Act, 42
423 U.S.C. § 1397aa et seq. (CHIP), 5 U.S.C. § 8901 et seq. (federal employees), or 10 U.S.C. § 1071 et
424 seq. (TRICARE); or (ii) accident only, credit or disability insurance, long-term care insurance,
425 TRICARE supplement, Medicare Supplement, or workers' compensation coverages.

426 "Pharmacy benefits manager" has the same meaning as set forth in § 38.2-3407.15:4.

427 "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to
428 the carrier, health plan, or pharmacy benefits manager in the event of an increase in the wholesale

429 acquisition cost of a drug above a specified threshold.

430 "Rebate" has the same meaning as set forth in § 38.2-3465.

431 B. When contracting with a carrier or health plan to administer pharmacy benefits, a pharmacy
432 benefits manager shall offer the carrier or health plan the option of extending point-of-sale rebates to
433 enrollees of the plan.

434 C. The provisions of this section shall only apply to a carrier, health plan, or pharmacy benefits
435 manager to the extent permissible under applicable law.

436 D. In complying with the provisions of this section, a carrier, health plan, pharmacy benefits
437 manager, or its respective agents shall not publish or otherwise reveal information regarding the actual
438 amount of rebates a carrier, health plan, or pharmacy benefits manager receives on a product-specific,
439 manufacturer-specific, or pharmacy-specific basis. Such information shall be protected as a trade secret
440 and shall not be public record or disclosed, directly or indirectly. A carrier, health plan, or pharmacy
441 benefits manager shall require any vendor or third party with which the carrier, health plan, or
442 pharmacy benefits manager contracts for health care or administrative services on behalf of the carrier,
443 health plan, or pharmacy benefits manager that may receive or have access to rebate information to
444 comply with the provisions of this subsection related to protection of information regarding the amount
445 of rebates a carrier, health plan, or pharmacy benefits manager receives on a product-specific,
446 manufacturer-specific, or pharmacy-specific basis.

447 E. The Commission may, pursuant to the provisions of § 38.2-223, adopt such rules and regulations
448 as may be necessary to implement and enforce the provisions of this section.

449 **§ 54.1-3436.1. Prescription drug price transparency.**

450 A. As used in this section:

451 "Brand-name drug" means a prescription drug approved under 21 U.S.C. § 355(b) or 42 U.S.C.
452 § 262.

453 "Generic drug" means a prescription drug approved under 21 U.S.C. § 355(j).

454 "Nonprofit data services organization" has the same meaning as set forth in § 32.1-23.3.

455 "Pharmacy benefits manager" has the same meaning as set forth in § 38.2-3407.15:4.

456 "Wholesale acquisition cost" has the same meaning as set forth in 42 U.S.C. § 1395w-3a(c)(6)(B).

457 B. To ensure data that is useful, relevant, and not duplicative, the Department of Health may request
458 wholesale distributors to report to the nonprofit organization with which the Department of Health has
459 entered into a contract or agreement pursuant to § 32.1-23.3 the following information on the 25
460 costliest drugs in the Commonwealth upon a determination by the Department of Health that data
461 received from health carriers, pharmacy benefits managers, and manufacturers is insufficient:

462 1. The wholesale acquisition cost that the wholesale distributor has negotiated directly with the
463 manufacturer in the last calendar year, related to the 25 costliest drugs dispensed in the
464 Commonwealth;

465 2. The wholesale acquisition cost that the wholesale distributor has negotiated directly with the
466 manufacturer in the current calendar year for the 25 costliest drugs dispensed in the Commonwealth;

467 3. Aggregate total rebates, discounts, and price concessions negotiated directly with the manufacturer
468 for the 25 costliest drugs dispensed in the Commonwealth in the last calendar year, for business in the
469 Commonwealth, in total; and

470 4. Aggregate total discounts, dispensing fees, and other fees negotiated in the last calendar year with
471 pharmacies, for the 25 costliest drugs dispensed in the Commonwealth, in total.

472 C. A report submitted by a wholesale distributor pursuant to subsection B shall not disclose the
473 identity of a specific wholesale distributor, the price charged for a specific prescription drug or class of
474 prescription drugs, or the amount of any price concession, rebate, or fee provided for a specific
475 prescription drug or class of prescription drugs.

476 **§ 54.1-3442.02. Prescription drug price transparency.**

477 A. As used in this section:

478 "Biosimilar" means a drug that is produced or distributed pursuant to a biologics license application
479 approved under 42 U.S.C. § 262(k)(3).

480 "Brand-name drug" means a prescription drug approved under 21 U.S.C. § 355(b) or 42 U.S.C.
481 § 262.

482 "Generic drug" means a prescription drug approved under 21 U.S.C. § 355(j) or 42 U.S.C. 262(k).

483 "New prescription drug" means a drug or biological product receiving initial approval under an
484 original new drug application pursuant to 21 U.S.C. § 355(b) or under a biologics license application
485 under 42 U.S.C. § 262.

486 "Nonprofit data services organization" has the same meaning as set forth in § 32.1-23.3.

487 "Pharmacy benefits manager" has the same meaning as set forth in § 38.2-3407.15:4.

488 "Wholesale acquisition cost" has the same meaning as set forth in 42 U.S.C. § 1395w-3a(c)(6)(B).

489 B. Every manufacturer shall report annually by April 1 to the nonprofit organization with which the
490 Department of Health has entered into a contract or agreement pursuant to § 32.1-23.3, for each (i)

491 brand-name drug and biologic other than a biosimilar with an initial wholesale acquisition cost of \$100
 492 or more for a one-year supply or a single course of treatment or any increase of 15 percent or more in
 493 the wholesale acquisition cost of such brand-name drug or biologic over the preceding calendar year;
 494 (ii) biosimilar with an initial wholesale acquisition cost that is not at least 15 percent less than the
 495 wholesale acquisition cost of the referenced brand biologic at the time the biosimilar is launched; and
 496 (iii) generic drug with a price increase that results in an increase in the wholesale acquisition cost of
 497 such generic drug that is equal to 200 percent or more during the preceding 12-month period, when the
 498 wholesale acquisition cost of such generic drug is equal to or greater than \$100, annually adjusted by
 499 the Consumer Price Index for All Urban Consumers, for a 30-day supply, with such increase defined as
 500 the difference between the wholesale acquisition cost of the generic drug after such increase and the
 501 average wholesale acquisition cost of such generic drug during the previous 12 months, the following
 502 information:

- 503 1. The name of the prescription drug;
- 504 2. Whether the drug is a brand name or generic;
- 505 3. The effective date of the change in wholesale acquisition cost;
- 506 4. Aggregate, company-level research and development costs for the most recent year for which final
 507 audit data is available;
- 508 5. The name of each of the manufacturer's new prescription drugs approved by the U.S. Food and
 509 Drug Administration within the previous three calendar years;
- 510 6. The name of each of the manufacturer's prescription drugs that, within the previous three calendar
 511 years, became subject to generic competition and for which there is a therapeutically equivalent generic
 512 version; and
- 513 7. A concise statement regarding the factor or factors that caused the increase in wholesale
 514 acquisition cost.

515 C. A manufacturer's obligations pursuant to this section shall be fully satisfied by the submission to
 516 the nonprofit data services organization with which the Department of Health has entered into a
 517 contract pursuant to § 32.1-23.3 of information and data that a manufacturer includes in the
 518 manufacturer's annual consolidation report on Securities and Exchange Commission Form 10-K or any
 519 other public disclosure.

- 520 2. That the provisions of the first enactment of this act shall become effective on January 1, 2022.
- 521 3. That the Department of Health and the Bureau of Insurance of the State Corporation
 522 Commission shall promulgate regulations to implement the provisions of this act to be effective
 523 within 280 days of its enactment.