A bill to be entitled

An act relating to prescription drug wholesale regulations; amending s. 499.003, F.S.; revising the definitions of the terms "distribute" or "distribution," "drug," "establishment," and "prescription drug"; amending s. 499.01, F.S.; deleting provisions relating to an exemption from nonresident prescription drug manufacturer permit requirements; deleting provisions relating to an exemption from out-of-state prescription drug wholesale distributor permit requirements for intracompany sale or transfer of prescription drugs; providing an exemption from permit requirements for the distribution into this state of prescription drug active pharmaceutical ingredients for incorporation into prescription drugs in finished dosage form; requiring a distributor claiming such exemption to maintain a valid license, permit, or registration in the state from which the prescription drug was distributed; requiring compliance with certain recordkeeping requirements; exempting compliance with pedigree paper requirements; providing an exemption from permit requirements for distribution into this state of limited quantities of a prescription drug that has not been repackaged, for research and development or to a holder of a letter of exemption issued by the Department of Business and Professional Regulation for research, teaching, or testing;

granting the department authority to define "limited quantities" by rule and limit therein the number of transactions and amount of prescription drugs distributed into the state; requiring a distributor claiming such exemption to maintain a valid license, permit, or registration in the state from which the prescription drug was distributed; requiring all purchasers and recipients of such prescription drugs to ensure the products are not resold or used on humans except in lawful clinical trials and biostudies; requiring compliance with certain recordkeeping requirements; exempting compliance from pedigree paper requirements; providing labeling requirements for active pharmaceutical ingredients distributed within the state for teaching, testing, research, and development; exempting from out-of-state prescription drug wholesale distributor permit requirements intracompany transactions or the sale of prescription drugs from an out-of-state distributor to a distributor in this state if both distributors conduct wholesale distributions under the same business name; requiring compliance with recordkeeping and pedigree paper requirements; allowing distributors and recipients of prescription drugs claiming exemption from certain permitting requirements to maintain on file their FDA registration number, resident state distributor license or permit number, and most recent resident state or FDA inspection

report; providing that persons claiming such exemptions are subject to part I of chapter 499, F.S., the Florida Drug and Cosmetic Act; requiring persons claiming such exemptions to make all records regarding prescription drug distribution available to the department, upon request, within 48 hours; requiring submission of a report of mishandled or adulterated prescription drugs within 14 days after receipt of such drugs; authorizing the department to adopt rules; providing that failure to comply with requirements or rules governing such exemptions constitutes unlawful purchase or receipt of a prescription drug from a person not authorized to distribute prescription drugs to that purchaser or recipient; providing that knowing failure to comply with such requirements constitutes unlawful sale, distribution, purchase, trade, holding, or offering of a drug; providing penalties; providing construction with respect to federal and state laws relating to controlled substances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (17), (19), (20), and (43) of section 499.003, Florida Statutes, are amended to read:

499.003 Definitions of terms used in this part.—As used in this part, the term:

(17) "Distribute" or "distribution" means to sell; offer

to sell; give away; transfer, whether by passage of title, physical movement, or both; deliver; or offer to deliver. The term does not mean to administer or dispense and does not include the billing and invoicing activities that commonly follow a wholesale distribution transaction.

(19) "Drug" means an article that is:

(a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those publications;

(b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;

(c) Intended to affect the structure or any function of the body of humans or other animals; or

(d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), and includes active pharmaceutical ingredients, but does not include devices or their components, parts, or accessories. For purposes of this paragraph, an "active pharmaceutical ingredient" includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.

(20) "Establishment" means a place of business which is at one general physical location and may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common exclusive ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. For purposes of permitting, each suite, unit, floor, or building must be identified in the most recent permit application.

(43) "Prescription drug" means a prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active pharmaceutical ingredients subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act or s. 465.003(8), s. 499.007(13), or subsection (11), subsection (46), or subsection (53), except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

Section 2. Paragraphs (c) and (e) of subsection (2) of section 499.01, Florida Statutes, are amended, and subsection (3) is added to that section, to read:

499.01 Permits.—

(2) The following permits are established:

(c) Nonresident prescription drug manufacturer permit.—A nonresident prescription drug manufacturer permit is required for any person that is a manufacturer of prescription drugs, unless permitted as a third party logistics provider, located

outside of this state or outside the United States and that engages in the wholesale distribution in this state of such prescription drugs. Each such manufacturer must be permitted by the department and comply with all of the provisions required of a wholesale distributor under this part, except s. 499.01212.

1. A person that distributes prescription drugs for which the person is not the manufacturer must also obtain an out-of-state prescription drug wholesale distributor permit or third party logistics provider permit pursuant to this section to engage in the wholesale distribution of such prescription drugs. This subparagraph does not apply to a manufacturer as defined in s. 499.003(31)(e).

2. Any such person must comply with the licensing or permitting requirements of the jurisdiction in which the establishment is located and the federal act, and any product wholesaled into this state must comply with this part. If a person intends to import prescription drugs from a foreign country into this state, the nonresident prescription drug manufacturer must provide to the department a list identifying each prescription drug it intends to import and document approval by the United States Food and Drug Administration for such importation.

~~3. A nonresident prescription drug manufacturer permit is not required for a manufacturer to distribute a prescription drug active pharmaceutical ingredient that it manufactures to a prescription drug manufacturer permitted in this state in limited quantities intended for research and development and not for resale, or human use other than lawful clinical trials and~~

~~biostudies authorized and regulated by federal law. A manufacturer claiming to be exempt from the permit requirements of this subparagraph and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient shall comply with the recordkeeping requirements of s. 499.0121(6), but not the requirements of s. 499.01212. The prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient shall maintain on file a record of the FDA registration number; the out-of-state license, permit, or registration number; and, if available, a copy of the most current FDA inspection report, for all manufacturers from whom they purchase active pharmaceutical ingredients under this section. The department shall specify by rule the allowable number of transactions within a given period of time and the amount of active pharmaceutical ingredients that qualify as limited quantities for purposes of this exemption. The failure to comply with the requirements of this subparagraph, or rules adopted by the department to administer this subparagraph, for the purchase of prescription drug active pharmaceutical ingredients is a violation of s. 499.005(14).~~

(e) Out-of-state prescription drug wholesale distributor permit.—An out-of-state prescription drug wholesale distributor is a wholesale distributor located outside this state which engages in the wholesale distribution of prescription drugs into this state and which must be permitted by the department and comply with all the provisions required of a wholesale distributor under this part. An out-of-state prescription drug wholesale distributor that applies to the department for a new

permit or the renewal of a permit must submit a bond of $100,000, or other equivalent means of security acceptable to the department, such as an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to the Florida Drug, Device, and Cosmetic Trust Fund. The purpose of the bond is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee's license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later.

~~1.~~ The out-of-state prescription drug wholesale distributor must maintain at all times a license or permit to engage in the wholesale distribution of prescription drugs in compliance with laws of the state in which it is a resident.

~~2. An out-of-state prescription drug wholesale distributor permit is not required for an intracompany sale or transfer of a prescription drug from an out-of-state establishment that is duly licensed as a prescription drug wholesale distributor, in its state of residence, to a licensed prescription drug wholesale distributor in this state, if both wholesale distributors conduct wholesale distributions of prescription drugs under the same business name. The recordkeeping requirements of ss. 499.0121(6) and 499.01212 must be followed~~

~~for this transaction.~~

(3)(a) A permit issued under this part is not required to distribute a prescription drug active pharmaceutical ingredient from an establishment located in the United States to an establishment located in this state permitted as a prescription drug manufacturer under this part for use by the recipient in preparing, deriving, processing, producing, or fabricating a prescription drug finished dosage form at the establishment in this state where the product is received under an approved and otherwise valid New Drug Approval Application, Abbreviated New Drug Application, New Animal Drug Application, or Therapeutic Biologic Application, provided that the application, active pharmaceutical ingredient, or finished dosage form has not been withdrawn or removed from the market in this country for public health reasons.

1. Any distributor claiming exemption from permitting requirements pursuant to this paragraph shall maintain a license, permit, or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed.

2. Any distributor claiming exemption from permitting requirements pursuant to this paragraph and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient shall comply with the recordkeeping requirements of s. 499.0121(6), but not the requirements of s. 499.01212.

(b) A permit issued under this part is not required to distribute limited quantities of a prescription drug that has

not been repackaged from an establishment located in the United States to an establishment located in this state permitted as a prescription drug manufacturer under this part for research and development or to a holder of a letter of exemption issued by the department under s. 499.03(4) for research, teaching, or testing. The department shall define "limited quantities" by rule and may include the allowable number of transactions within a given period of time and the amounts of prescription drugs distributed into the state for purposes of this exemption.

1. Any distributor claiming exemption from permitting requirements pursuant to this paragraph shall maintain a license, permit, or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed.

2. All purchasers and recipients of any prescription drugs distributed pursuant to this paragraph shall ensure that the products are not resold or used, directly or indirectly, on humans except in lawful clinical trials and biostudies authorized and regulated by federal law.

3. Any distributor claiming exemption from permitting requirements pursuant to this paragraph, and the purchaser and recipient of the prescription drug, shall comply with the recordkeeping requirements of s. 499.0121(6), but not the requirements of s. 499.01212.

4. The immediate package or container of any active pharmaceutical ingredient distributed into the state that is intended for teaching, testing, research, and development shall bear a label prominently displaying the statement: "Caution:

Research, Teaching, or Testing Only - Not for Manufacturing, Compounding, or Resale."

(c) An out-of-state prescription drug wholesale distributor permit is not required for an intracompany sale or transfer of a prescription drug from an out-of-state establishment that is duly licensed as a prescription drug wholesale distributor in its state of residence to a licensed prescription drug wholesale distributor in this state, if both wholesale distributors conduct wholesale distributions of prescription drugs under the same business name. The recordkeeping requirements of ss. 499.0121(6) and 499.01212 must be followed for such transactions.

(d) Persons receiving prescription drugs from a source claimed to be exempt from permitting requirements under this subsection shall maintain on file:

1. A record of the FDA establishment registration number, if any;

2. The resident state prescription drug wholesale distribution license, permit, or registration number; and

3. A copy of the most recent resident state or FDA inspection report, for all distributors and establishments whom they purchase or receive prescription drugs under this subsection.

(e) All persons claiming exemption from permitting requirements pursuant to this subsection who engage in the distribution of prescription drugs within or into the state are subject to this part, including ss. 499.005 and 499.0051, and shall make available, within 48 hours, to the department on

request all records related to any prescription drugs distributed under this subsection, including those records described in s. 499.051(4), regardless of the location where the records are stored.

(f) A person purchasing and receiving a prescription drug from a person claimed to be exempt from licensing requirements pursuant to this subsection shall report to the department in writing within 14 days after receiving any product that is misbranded or adulterated or that fails to meet minimum standards set forth in the official compendium or state or federal good manufacturing practices for identity, purity, potency, or sterility, regardless of whether the product is thereafter rehabilitated, quarantined, returned, or destroyed.

(g) The department may adopt rules to administer this subsection which are necessary for the protection of the public health, safety, and welfare. Failure to comply with the requirements of this subsection, or rules adopted by the department to administer this subsection, is a violation of s. 499.005(14), and a knowing failure is a violation of s. 499.0051(4).

(h) This subsection does not relieve any person from any requirement prescribed by law with respect to controlled substances as defined in the applicable federal and state laws.

Section 3. This act shall take effect July 1, 2012.