

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

553N0410

SENATE HEALTH AND HUMAN SERVICES  
COMMITTEE ENGROSSED NO. **HB 1155** -  
02/26/2007

Introduced by: Representatives Van Etten, Boomgarden, Heineman, Jerke, Kirkeby, Lucas, Miles, Rave, Steele, and Weems and Senators Hansen (Tom), Dempster, Gant, Maher, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning wholesale drug  
2 distributors.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 36-11A-1 be amended to read as follows:

5 36-11A-1. Terms used in this chapter mean:

6 (1) "Authentication," to affirmatively verify before any wholesale distribution of a  
7 prescription drug occurs that each transaction listed on the pedigree has occurred;

8 (2) "Board," the State Board of Pharmacy;

9 (3) "Chain pharmacy warehouse," a physical location for prescription drugs that acts as  
10 a central warehouse and performs intracompany sales or transfers of such drugs to  
11 a group of chain pharmacies that have the same common ownership and control;

12 (4) Co-licensed partner," a party that, with another party or parties, has the right to  
13 engage in the manufacturing or marketing, or both, of a co-licensed product;

14 (5) "Co-licensed product," a prescription drug in which two or more parties have the



1 right to engage in the manufacturing or marketing, or both, of a drug consistent with  
2 the federal Food and Drug Administration's implementation of the Prescription Drug  
3 Marketing Act (21 C.F.R. Parts 203 and 205);

4 ~~(2)(6)~~ "Drug," "prescription drug," any ~~human~~ drug, including any biological product,  
5 except for blood and blood components intended for transfusion or biological  
6 products that are also medical devices required by federal law or federal regulation  
7 to be dispensed only by a prescription, including finished dosage forms and active  
8 ingredients bulk drug substances subject to § 503(b) of the Federal Food, Drug and  
9 Cosmetic Act ~~as amended through January 1, 1991;~~

10 ~~(3)(7)~~ "Drug coupon," a form which may be redeemed at no cost or at reduced cost for a  
11 prescription drug;

12 ~~(8)~~ "Drug Enforcement Administration," the Drug Enforcement Administration of the  
13 United States Department of Justice;

14 ~~(4)(9)~~ "Drug sample," a unit of a prescription drug that is not intended to be sold and is  
15 intended to promote the sale of the drug;

16 ~~(10)~~ "Facility," a facility of a wholesale distributor where prescription drugs are stored,  
17 handled, repackaged, or offered for sale;

18 ~~(5)(11)~~ "Manufacturer," ~~anyone who is engaged in manufacturing, preparing,~~  
19 ~~propagating, compounding, processing, packaging, repackaging or labeling of~~  
20 ~~a prescription drug~~ as defined by the federal Food and Drug Administration's  
21 regulations implementing the Prescription Drug Marketing Act (21 C.F.R.  
22 Parts 203 and 205);

23 ~~(6)(12)~~ "Out-of-state wholesale drug distributor," a wholesale drug distributor with no  
24 physical facilities located in this state;

(7)(13) "Pharmacy," a place registered by the board under chapter 36-11 in which prescription drugs are sold at retail;

(14) "Pedigree," a document or electronic file containing information that records each wholesale distribution of any given prescription drug;

(15) "Repackage," repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug excluding that completed by the pharmacist responsible for dispensing the drug to the patient;

(16) "Repackager," a person who repackages.

Section 2. That chapter 36-11A be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, an authorized distributor of record is a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in Section 1504 of the Internal Revenue Code, complies with both of the following:

(1) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and

(2) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

Section 3. That chapter 36-11A be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, drop shipment is the sale of a prescription drug to a wholesale

1 distributor by the manufacturer of the prescription drug, or that manufacturer's co-licensed  
2 product partner, that manufacturer's third party logistics provider, or that manufacturer's  
3 exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title  
4 but not physical possession of such prescription drug and the wholesale distributor invoices the  
5 pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or  
6 administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other  
7 authorized person receives delivery of the prescription drug directly from the manufacturer, or  
8 that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.

9 Section 4. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 For the purposes of this Act, a manufacturer's exclusive distributor is any person who  
12 contracts with a manufacturer to provide or coordinate warehousing, distribution, or other  
13 services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug,  
14 but who does not have general responsibility to direct the sale or disposition of the  
15 manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as  
16 a wholesale distributor under this Act, and to be considered part of the normal distribution  
17 channel must also be an authorized distributor of record.

18 Section 5. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 For the purposes of this Act, a normal distribution channel is a chain of custody for a  
21 prescription drug that goes from a manufacturer of the prescription drug, or from that  
22 manufacturer to that manufacturer's co-licensed partner, or from that manufacturer to that  
23 manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's  
24 exclusive distributor, directly or by drop shipment, to:

- 1       (1)    A pharmacy to a patient or other designated persons authorized by law to dispense  
2            or administer such drug to a patient;
- 3       (2)    A wholesale distributor to a pharmacy to a patient or other designated persons  
4            authorized by law to dispense or administer such drug to a patient;
- 5       (3)    A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy  
6            warehouse's intracompany pharmacy to a patient or other designated persons  
7            authorized by law to dispense or administer such drug to a patient; or
- 8       (4)    A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany  
9            pharmacy to a patient or other designated persons authorized by law to dispense or  
10           administer such drug to a patient.

11       Section 6. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
12 as follows:

13       For the purposes of this Act, a third party logistics provider is any person who contracts with  
14 a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other  
15 services on behalf of a manufacturer, but does not take title to the prescription drug or have  
16 general responsibility to direct the prescription drug's sale or disposition. Such third party  
17 logistics provider must be licensed as a wholesale distributor under this Act, and to be  
18 considered part of the normal distribution channel must also be an authorized distributor of  
19 record.

20       Section 7. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
21 as follows:

22       For the purposes of this Act, a wholesale distributor is any person engaged in the wholesale  
23 distribution of prescription drugs, including manufacturers; repackagers; own-label distributors;  
24 private-label distributors; jobbers; brokers; warehouses, including manufacturers' and

distributors' warehouses; manufacturer's exclusive distributors; authorized distributors of record; drug wholesalers or distributors; independent wholesale drug traders; specialty wholesale distributors; third party logistics providers; retail pharmacies that conduct wholesale distribution; hospital pharmacies; reverse distributors; and chain pharmacy warehouses that conduct wholesale distribution. To be considered part of the normal distribution channel such wholesale distributor must also be an authorized distributor of record.

Section 8. That chapter 36-11A be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, wholesale distribution is distribution of prescription drugs to persons other than a consumer or patient, but does not include:

- (1) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between co-licensees of a co-licensed product;
- (2) The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons;
- (3) The distribution of prescription drug samples by manufacturers' representatives;
- (4) Drug returns, when conducted by a hospital, health care entity, or charitable institution in accordance with 21 C.F.R. § 203.23;
- (5) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use;
- (6) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

- 1       (7)    The sale, transfer, merger, or consolidation of all or part of the business of a  
2            pharmacy or pharmacies from or with another pharmacy or pharmacies, whether  
3            accomplished as a purchase and sale of stock or business assets;
- 4       (8)    The sale, purchase, distribution, trade, or transfer of a prescription drug from one  
5            authorized distributor of record to one additional authorized distributor of record  
6            when the manufacturer has stated in writing to the receiving authorized distributor  
7            of record that the manufacturer is unable to supply such prescription drug and the  
8            supplying authorized distributor of record states in writing that the prescription drug  
9            being supplied had until that time been exclusively in the normal distribution  
10          channel;
- 11      (9)    The delivery of, or offer to deliver, a prescription drug by a common carrier solely  
12          in the common carrier's usual course of business of transporting prescription drugs,  
13          and such common carrier does not store, warehouse, or take legal ownership of the  
14          prescription drug;
- 15      (10)   The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired,  
16          damaged, returned, or recalled prescription drugs to the original manufacturer or to  
17          a third party returns processor.

18       Section 9. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
19 as follows:

20       Any wholesale distributor who engages in the wholesale distribution of prescription drugs  
21 in this state must be licensed by the board, in accordance with this Act, before engaging in  
22 wholesale distributions of wholesale prescription drugs. The board shall exempt manufacturers  
23 distributing their own FDA-approved drugs and devices from any qualifications required for  
24 licensing, to the extent not required by federal law or regulation, including the requirements in

subdivisions (7) and (8) of section 10 of this Act, and sections 11 to 13, inclusive, of this Act.

Section 10. That chapter 36-11A be amended by adding thereto a NEW SECTION to read as follows:

The board shall require the following minimum information from each wholesale distributor applying to obtain a license under section 9 of this Act:

- (1) The name, full business address, and telephone number of the licensee;
- (2) Any trade or business name used by the licensee;
- (3) The address, telephone number, and the name of any contact person for any facilities used by the licensee for the storage, handling, and distribution of prescription drugs;
- (4) The type of ownership or operation;
- (5) The name of the owner and the operator of the licensee, including:
  - (a) If a person, the name of the person;
  - (b) If a partnership, the name of each partner, and the name of the partnership;
  - (c) If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and
  - (d) If a sole proprietorship, the full name of the sole proprietor and the name of the business entity;
- (6) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs;
- (7) The name of the applicant's designated representative for the facility, together with the personal information statement and fingerprints, required pursuant to subdivision (8) for such person;
- (8) Each person required by subdivision (7) to provide a personal information statement and fingerprints, if required, shall provide the following information to the board:



- 1 (a) The person's places of residence for the past seven years;
- 2 (b) The person's date and place of birth;
- 3 (c) The person's occupations, positions of employment, and offices held during  
4 the past seven years;
- 5 (d) The principal business and address of any business, corporation, or other  
6 organization in which each such office of the person was held or in which each  
7 such occupation or position of employment was carried on;
- 8 (e) Whether the person has been, during the past seven years, the subject of any  
9 proceeding for the revocation of any license or any criminal violation and, if  
10 so, the nature of the proceeding and the disposition of the proceeding;
- 11 (f) Whether, during the past seven years, the person has been enjoined, either  
12 temporarily or permanently, by a court of competent jurisdiction from  
13 violating any federal or state law regulating the possession, control, or  
14 distribution of prescription drugs or had any criminal violations of such laws,  
15 together with details concerning any such event;
- 16 (g) A description of any involvement by the person with any business, including  
17 any investments, other than the ownership of stock in a publicly traded  
18 company or mutual fund, during the past seven years, which manufactured,  
19 administered, prescribed, distributed, or stored pharmaceutical products and  
20 any lawsuits in which such businesses were named as a party;
- 21 (h) A description of any misdemeanor or felony criminal offense of which the  
22 person, as an adult, was found guilty, regardless of whether adjudication of  
23 guilt was withheld or whether the person pled guilty or nolo contendere. If the  
24 person indicates that a criminal conviction is under appeal and submits a copy

1 of the notice of appeal of that criminal offense, the applicant shall, within  
2 fifteen days after the disposition of the appeal, submit to the board a copy of  
3 the final written order of disposition; and

4 (i) A photograph of the person taken in the previous one hundred eighty days.

5 The information required pursuant to this section shall be provided under oath.

6 Section 11. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 The board may not issue a wholesale distributor license to an applicant, unless the board or  
9 a nationally recognized accreditation program approved by the board:

10 (1) Conducts a physical inspection of the facility at the address provided by the applicant  
11 as required in subdivision (1) of section 10 of this Act; and

12 (2) Determines that the designated representative meets the following qualifications:

13 (a) Is at least twenty-one years of age;

14 (b) Has been employed full time for at least three years in a pharmacy or with a  
15 wholesale distributor in a capacity related to the dispensing and distribution  
16 of, and recordkeeping relating to, prescription drugs;

17 (c) Is employed by the applicant full time in a managerial level position;

18 (d) Is actively involved in and aware of the actual daily operation of the wholesale  
19 distributor;

20 (e) Is physically present at the facility of the applicant during regular business  
21 hours, except when the absence of the designated representative is authorized,  
22 including sick leave and vacation leave;

23 (f) Is serving in the capacity of a designated representative for only one applicant  
24 at a time, except where more than one licensed wholesale distributor is co-

1 located in the same facility and such wholesale distributors are members of an  
2 affiliated group, as defined in Section 1504 of the Internal Revenue Code;

3 (g) Does not have any convictions under any federal, state, or local laws relating  
4 to wholesale or retail prescription drug distribution or distribution of  
5 controlled substances; and

6 (h) Does not have any felony convictions under federal or state laws.

7 Section 12. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 The board may require the applicant to submit the fingerprints provided by a person with  
10 a license application for a statewide criminal record check and for forwarding to the Federal  
11 Bureau of Investigation for a national criminal record check of the person.

12 Section 13. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 The board shall require every wholesale distributor applying for a license to submit a bond  
15 of at least one hundred thousand dollars, or other equivalent means of security acceptable to the  
16 board, such as an irrevocable letter of credit or a deposit in a trust account or financial  
17 institution, payable to a fund established by the board. The board shall establish a fund, separate  
18 from its other accounts, in which to deposit the wholesale distributor bonds. Any chain  
19 pharmacy warehouse that is not engaged in wholesale distribution is exempt from the bond  
20 requirement. The purpose of the bond is to secure payment of any fines or penalties imposed by  
21 the board and any fees and costs incurred by the board regarding that license, which are  
22 authorized pursuant to statute and which the licensee fails to pay thirty days after the fines,  
23 penalties, or costs become final. The board may make a claim against such bond or security until  
24 one year after the licensee's license ceases to be valid. A single bond may suffice to cover all

1 facilities operated by the applicant in the state.

2 If a wholesale distributor distributes prescription drugs from more than one facility, the  
3 wholesale distributor shall obtain a license for each facility.

4 Section 14. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 In accordance with each licensure renewal, the board shall send to each wholesale distributor  
7 licensed under section 9 of this Act a form setting forth the information that the wholesale  
8 distributor provided pursuant to section 10 of this Act. Within thirty days of receiving such  
9 form, the wholesale distributor shall identify and state under oath to the board any changes or  
10 corrections to the information that was provided pursuant to section 10 of this Act. Changes in,  
11 or corrections to, any information in section 10 of this Act shall be submitted to the board as  
12 required by such authority. The board may suspend or revoke the license of a wholesale  
13 distributor if such authority determines that the wholesale distributor no longer qualifies for the  
14 license issued under section 10 of this Act.

15 Section 15. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 The designated representative identified pursuant to subdivision (7) of section 10 of this Act  
18 shall receive and complete continuing training in applicable federal and state laws governing  
19 wholesale distribution of prescription drugs.

20 The information provided under section 10 of this Act may not be disclosed to any person  
21 or entity other than a state board or agency, government board, or government agency,  
22 determined to be comparable by the board, provided such licensing authority, government  
23 board, or agency needs such information for licensing or monitoring purposes.

24 Section 16. That chapter 36-11A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A wholesale distributor shall receive prescription drug returns or exchanges from a  
3 pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the agreement  
4 between the wholesale distributor and the pharmacy or chain pharmacy warehouse. Returns of  
5 expired, damaged, recalled, or otherwise nonsaleable pharmaceutical products shall be  
6 distributed by the receiving wholesale distributor only to either the original manufacturer or a  
7 third party returns processor. The returns or exchanges of prescription drugs, saleable or  
8 otherwise, including any redistribution by a receiving wholesaler, are not subject to the pedigree  
9 requirement of section 21 of this Act, so long as they are exempt from pedigree under the  
10 Federal Food and Drug Administration's currently applicable Prescription Drug Marketing Act  
11 guidance. Wholesale distributors and pharmacies shall be held accountable for administering  
12 their returns process and ensuring that the aspects of this operation are secure and do not permit  
13 the entry of adulterated and counterfeit product.

14 Section 17. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 A manufacturer or wholesale distributor shall furnish prescription drugs only to a person or  
17 entity licensed by the appropriate board. Before furnishing prescription drugs to a person or  
18 entity not known to the manufacturer or wholesale distributor, the manufacturer or wholesale  
19 distributor shall affirmatively verify that the person or entity is legally authorized to receive the  
20 prescription drugs by contacting the appropriate board.

21 Section 18. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 Prescription drugs furnished by a manufacturer or wholesale distributor shall be delivered  
24 only to the premises listed on the license. However, the manufacturer or wholesale distributor

1 may furnish prescription drugs to an authorized person or agent of that person at the premises  
2 of the manufacturer or wholesale distributor if:

3 (1) The identity and authorization of the recipient is properly established; and

4 (2) This method of receipt is employed only to meet the immediate needs of a particular  
5 patient of the authorized person.

6 Section 19. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 Prescription drugs may be furnished to a hospital pharmacy receiving area provided that a  
9 pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing  
10 the type and quantity of the prescription drug so received. Any discrepancy between receipt and  
11 the type and quantity of the prescription drug actually received shall be reported to the  
12 delivering manufacturer or wholesale distributor by the next business day after the delivery to  
13 the pharmacy receiving area.

14 Section 20. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 A manufacturer or wholesale distributor may not accept payment for, or allow the use of,  
17 a person or entity's credit to establish an account for the purchase of prescription drugs from any  
18 person other than the owner of record, the chief executive officer, or the chief financial officer  
19 listed on the license of a person or entity legally authorized to receive prescription drugs. Any  
20 account established for the purchase of prescription drugs must bear the name of the licensee.

21 Section 21. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 Each person who is engaged in wholesale distribution of prescription drugs, including  
24 repackagers, but excluding the original manufacturer of the finished form of the prescription

1 drug that leave, or have ever left, the normal distribution channel shall, before each wholesale  
2 distribution of such drug, provide a pedigree to the person who receives such drug.

3 A retail pharmacy or chain pharmacy warehouse shall comply with the requirements of this  
4 section only if the pharmacy or chain pharmacy warehouse engages in wholesale distribution  
5 of prescription drugs, as defined in section 8 of this Act.

6 Section 22. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 The board shall determine by July 1, 2009, a targeted implementation date for electronic  
9 track and trace pedigree technology. Such a determination shall be based on consultation with  
10 manufacturers, distributors, and pharmacies responsible for the sale and distribution of  
11 prescription drug products in this state. After consultation with interested stakeholders and prior  
12 to implementation of the electronic pedigree, the board shall determine that the technology is  
13 universally available across the entire prescription pharmaceutical supply chain. The  
14 implementation date for the mandated electronic track and trace pedigree technology shall be  
15 no sooner than July 1, 2010, and may be extended by the board in one year increments if it  
16 appears the technology is not universally available across the entire prescription pharmaceutical  
17 supply chain.

18 Section 23. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 Each person who is engaged in the wholesale distribution of a prescription drug including  
21 repackagers, but excluding the original manufacturer of the finished form of the prescription  
22 drug, who is provided a pedigree for a prescription drug and attempts to further distribute that  
23 prescription drug, shall affirmatively verify before any distribution of a prescription drug occurs  
24 that each transaction listed on the pedigree has occurred.

1       Section 24. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
2 as follows:

3       The pedigree shall include all necessary identifying information concerning each sale in the  
4 chain of distribution of the product from the manufacturer, or the manufacturer's third party  
5 logistics provider, co-licensed product partner, manufacturer's exclusive distributor, through  
6 acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy  
7 or other person dispensing or administering the drug. At minimum, the necessary chain of  
8 distribution information shall include:

- 9       (1)   Name, address, telephone number, and if available, the e-mail address, of each owner  
10           of the prescription drug, and each wholesale distributor of the prescription drug;
- 11       (2)   Name and address of each location from which the product was shipped, if different  
12           from the owner's;
- 13       (3)   Transaction dates; and
- 14       (4)   Certification that each recipient has authenticated the pedigree.

15       Section 25. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
16 as follows:

17       In addition to the requirements of section 24 of this Act, the pedigree shall also include the  
18 following minimum requirements:

- 19       (1)   Name and national drug code number of the prescription drug;
- 20       (2)   Dosage form and strength of the prescription drug;
- 21       (3)   Size of the container;
- 22       (4)   Number of containers;
- 23       (5)   Lot number of the prescription drug; and
- 24       (6)   Name of the manufacturer of the finished dosage form.



1       Section 26. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
2 as follows:

3       Each pedigree or electronic file shall be:

- 4       (1)   Maintained by the purchaser and the wholesale distributor for three years from the  
5             date of sale or transfer; and  
6       (2)   Available for inspection or use within two business days upon a request of an  
7             authorized officer of the law.

8       Section 27. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
9 as follows:

10       The board shall issue an order requiring the appropriate person including any distributor or  
11       retailer of the drug to immediately cease distribution of the drug within this state if the board  
12       finds that there is a reasonable probability that:

- 13       (1)   A wholesale distributor, other than a manufacturer, has:  
14             (a)   Violated a provision of this Act; or  
15             (b)   Falsified a pedigree, or sold, distributed, transferred, manufactured,  
16                    repackaged, handled, or held a counterfeit prescription drug intended for  
17                    human use;  
18       (2)   The prescription drug at issue as a result of a violation in subdivision (1) could cause  
19             serious, adverse health consequences or death; and  
20       (3)   Other procedures would result in unreasonable delay.

21       An order under this section shall provide the person subject to the order with an opportunity  
22       for an informal hearing, to be held not later than ten days after the date of the issuance of the  
23       order, on the actions required by the order. If, after providing an opportunity for such a hearing,  
24       the board determines that inadequate grounds exist to support the actions required by the order,

1 the board shall vacate the order.

2 Section 28. That chapter 36-11A be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 It is unlawful for a person to perform or cause the performance of or aid and abet any of the  
5 following acts in this state:

- 6 (1) Failure to obtain a license in accordance with this Act, or operating without a valid  
7 license when a license is required by this Act;
- 8 (2) If the requirements of section 16 of this Act are applicable and are not met, the  
9 purchasing or otherwise receiving a prescription drug from a pharmacy;
- 10 (3) If a state license is required pursuant to section 17 of this Act, the sale, distribution,  
11 or transfer of a prescription drug to a person that is not authorized under the law of  
12 the jurisdiction in which the person receives the prescription drug to receive the  
13 prescription drug;
- 14 (4) Failure to deliver prescription drugs to specified premises, as required by section 18  
15 of this Act;
- 16 (5) Accepting payment or credit for the sale of prescription drugs in violation of section  
17 20 of this Act;
- 18 (6) Failure to maintain or provide pedigrees as required by this Act;
- 19 (7) Failure to obtain, pass, or authenticate a pedigree, as required by this Act;
- 20 (8) Providing the state or any of its representatives or any federal official with false or  
21 fraudulent records or making false or fraudulent statements regarding any matter  
22 within the provisions of this Act;
- 23 (9) Obtaining or attempting to obtain a prescription drug by fraud, deceit,  
24 misrepresentation or engaging in misrepresentation or fraud in the distribution of a

1 prescription drug;

2 (10) Except for the wholesale distribution by manufacturers of a prescription drug that has  
3 been delivered into commerce pursuant to an application approved under federal law  
4 by the Food and Drug Administration, the manufacture, repacking, sale, transfer,  
5 delivery, holding, or offering for sale any prescription drug that is adulterated,  
6 misbranded, counterfeit, suspected of being counterfeit, or has otherwise been  
7 rendered unfit for distribution;

8 (11) Except for the wholesale distribution by manufacturers of a prescription drug that has  
9 been delivered into commerce pursuant to an application approved under Federal law  
10 by the Food and Drug Administration, the adulteration, misbranding, or  
11 counterfeiting of any prescription drug;

12 (12) The receipt of any prescription drug that is adulterated, misbranded, stolen, obtained  
13 by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or  
14 proffered delivery of such drug for pay or otherwise; and

15 (13) The alteration, mutilation, destruction, obliteration, or removal of the whole or any  
16 part of the labeling of a prescription drug or the commission of any other act with  
17 respect to a prescription drug that results in the prescription drug being misbranded.

18 Any person who violates this section is guilty of a Class 1 misdemeanor for the first  
19 conviction and a Class 6 felony for any subsequent conviction.

20 Section 29. That § 36-11A-3 be repealed.

21 ~~— 36-11A-3. A wholesale drug distributor is any person engaged in the wholesale distribution~~  
22 ~~of prescription drugs, including manufacturers, repackagers, own-label distributors, private-~~  
23 ~~label distributors, reverse distributors, jobbers, brokers, warehouses, including manufacturers'~~  
24 ~~and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses;~~

- 1 ~~independent wholesale drug traders, and retail and hospital pharmacies that conduct wholesale~~
- 2 ~~distributions, including pharmacy distributors. A wholesale drug distributor does not include~~
- 3 ~~a common carrier or an individual hired solely to transport prescription drugs.~~