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## FISCAL IMPACT REPORT

SPONSOR: Carraro DATE TYPED: 03/10/01 HB \_\_\_\_\_  
 SHORT TITLE: Limit Prescription Drug Prices to Providers SB 678  
 ANALYST: Valdes

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Attorney General, General Services Department, Board of Pharmacy, State Agency on Aging, Department of Health

### SUMMARY

#### Synopsis of Bill

The Bill would prohibit the sale in New Mexico of prescription drugs at a price higher than the price for which the prescription drug is sold in a foreign country. Provides for treble damages, costs, and attorney fees for willful violation of the act.

#### Significant Issues

According to the Attorney General, it is questionable whether New Mexico has the authority to regulate interstate commerce under Article I, Section 8 of the United States Constitution. In PharMa v. Maine, United States District Court, district of Maine, Civil No. OO-157-B-H, the Court granted a request for a preliminary injunction to prevent the operation of a Maine program, which attempted to regulate the price of prescription drugs sold in Maine. The Court held that Maine had no authority to regulate interstate commerce under Article I, Section 8 of the United States Constitution. The Court, citing a long line of cases, noted that a state has no authority to regulate commerce that takes place outside of the State's borders, whether or not the commerce has effects within the State. The Court held that the practical effect of what Maine had done was to limit the revenue an out-of-state manufacturer can obtain when it sells prescription drugs to out-of-state distributors that ultimately send or bring the drugs to Maine. To the extent that this decision correctly states the law, this Bill would violate the interstate commerce clause of the United States Constitution.

General Services Department states the bill would require the state's Prescription Drug Manager (PBM) to sell or provide prescription drugs to the group health plan at a price that does not exceed the price the seller sold the same prescription drug to a drug distributor in a foreign country.

According to the Department of Health, in New Mexico, an estimated 24 percent of the population is uninsured and nearly as many are insured but are without prescription benefits. Many of these citizens without a prescription drug benefit are senior citizens. There is a significant lack of access and affordability of prescription drugs for many of New Mexico's citizens and senior citizens. Medicare reimbursement for insurance companies and health maintenance organization managed care providers is now nonexistent leaving many of New Mexico's citizens and senior citizens without prescription drug benefits. The monthly cost for senior citizens prescription drugs averages four hundred fifty dollars (\$450) per month. Most senior citizens are on a fixed income and are unable to afford prescription drugs; some go without food and other essentials to buy drugs.

Many New Mexico citizens, especially those in the southern half of the state, travel to Mexico on a regular basis to obtain their prescription drugs at substantial savings. In Mexico, no prescription is required for drugs which would require a prescription in the United States, excluding controlled drugs, and quantities allowed across the border depend on who is the border inspector at the time of the inspection.

### **FISCAL IMPLICATIONS**

According to General Services Department, there would be substantial savings in the state employees drug benefit plan unless the prescription drug manager increases the cost of prescriptions in foreign countries. As it is now, an employee on maintenance medication can go across the border to Mexico or Canada and purchase the same FDA approved drug at several times less than purchasing the same drug here in the US.

According to the State Agency on Aging, gross receipts tax revenues may be reduced by reduced prescription drug prices, however, lower prices might allow for increased sales

### **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

Several other bills have been introduced in the House and the Senate that would have the effect of limiting prescription drug prices in New Mexico. Those dealing with prescription drug prices include HB 300, SB 143, HB 301, SB 141, HB 302.

### **OTHER SUBSTANTIVE ISSUES**

Entities in countries such as Canada and Mexico are able to purchase and resell pharmaceuticals at lower prices than similar entities in New Mexico. SB678 would disallow sales of pharmaceuticals in New Mexico at prices that were higher than those listed in foreign countries. A mechanism to track prices in both foreign countries and New Mexico would need to be established.

RAE/njw