F I S C A L I M P A C T R E P O R T

SPONSOR SFC **DATE TYPED** 2/14/04 **HB**

SHORT TITLE Revise Pharmaceutical Business License Fees **SB** 536/SFCS

ANALYST Dunbar

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	Indeterminate			

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)/Board of Pharmacy
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Finance Committee Substitute for Senate Bill 536 increases the license fee for a wholesale drug distributor, drug manufacturer or drug warehouse from the current annual fee of "not to exceed $300" to a new annual fee that will not exceed $5,000, provided the annual fee shall not exceed $1,000 upon the implementation of Medicare prescription drug benefit program as provided under Public Law 108-173, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

The bill eliminates the registration fee charged by the Board to pharmaceutical sales representatives who carry dangerous drugs. It is proposed that pharmaceutical sales representative shall provide the Board with a written statement from the representative's employer that describes the employer's policy relating to the safety and security of the handling of dangerous drugs and to the employer's compliance with the federal Prescription Drug Marketing Act of 1987.

Significant Issues

The bill would allocate amounts paid into the pharmacy fund pursuant to Paragraph (2) of Subsection C of Section 61-11-14 NMSA 1978. The increased fees for wholesale drug distributor, drug manufacture or drug warehouses shall be used for a prescription drug program for persons over the age of sixty-five, provided that the Board enters into an arrangement with a state agency or a state-created entity for the operation of the program.

Although the bill does not contain an emergency clause, the "applicability" section provides for the provisions of Paragraph (2) of Subsection C of Section 61-11-14 NMSA to become effective in calendar year 2004.

FISCAL IMPLICATIONS

The current level of funds generated from wholesale licenses (distributors, manufacturers and their reps,) and non-resident pharmacies is approximately $350,000 a year.

According to the NM Medical Insurance (a non-profit entity) indicates this bill will have a positive fiscal impact on the General Fund of $1.5 million a year in 2004 and 2005. Absent legislation contained in this bill, the prescription drug program referred to in this bill will be funded by assessments to insurance companies who will receive a 50% credit on the premium taxes. The program is estimated to cost around $3.0M a year in 2004 and 2005.

Approximately 598 drug manufacturers, wholesalers and warehouses will be assessed $5000 for each license which has the potential to generate $2.9 million in additional fee revenue.

ADMINISTRATIVE IMPLICATIONS

The Board of Pharmacy would have to amend regulations relating to wholesale drug distribution and manufacturers' representatives including changes in fees.

TECHNICAL ISSUES

The Board of Pharmacy is in the process of converting all licenses to 2-year options. Wholesale drug licensees were converted last year and given 2-year licenses effective 1/1/2004 and expiring 12/31/2005. RLD indicates the Legislature would need to grant an emergency provision allowing the collection of the balance owed if fees are increased to $5,000/year.

OTHER SUBSTANTIVE ISSUES

RLD reports the number of instate (small businesses) wholesale licenses issued by the Board are likely to decrease. The number of wholesale distribution licenses issued to instate operators is 36. Several of those instate licensees do not have the volume of prescription drug distribution business to support a licensee fee increase. They typically offer durable medical supplies and other health related items to practitioners in this state.

However, the LFC understands that the sponsor is considering a friendly amendment (appeal process) to address the above issue.

The Board has had several instances with prescription drug samples being left in open trash containers and other places and was unable to determine their source. The Board recently adopted stricter record keeping requirements for sales representatives in order to remedy any such occurrences in the future. Reference "Amendments" below.

The cost of prescription drugs is a major obstacle for senior citizens. The bill would attempt to support the funding of programs to provide relief to this group by significantly raising the pharmacy licensing fees of three specific types of facilities: wholesale drug distributors, drug manufacturers, or drug warehouses. DOH acknowledges SB356 is written in such a manner to not adversely impact in-state retail pharmacies or other smaller pharmacy operations.

AMENDMENTS

RLD suggests the following language addition:

- NMSA 61-11-14K (line 14) "Pharmaceutical sales representatives must maintain appropriate receipt and distribution records of dangerous drugs as required by the Board."

However, the legislation as per the handling of dangerous drugs refers to the compliance with the federal "Prescription Drug Marketing Act of 1987".

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