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

SPONSOR HJC **DATE TYPED** 2/16/04 **HB** CS111/aHJC

SHORT TITLE Addition of Substances to Drug Precursor List **SB**

ANALYST Gilbert

REVENUE

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

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB 160

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Pharmacy Board (NMPB)

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 111 amends the Drug Precursor Act, NMSA 1978, § 30-31B, to set New Mexico Pharmacy Board (NMPB) standards for adding certain substances to the Act's drug precursors list.

Duty to Administer, §03-31B-4B NMSA 1978, was amended to add the following new language:

> B. In determining whether to add to the list of drug precursors a substance, material, compound, mixture or preparation that is generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or that has been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act, the board shall consider:
>
> 1) whether the substance, material, compound, mixture or preparation is:
>
> (a) a source of a substance already controlled under the Controlled Substances Act; or

(b) subject to being easily converted to an immediate precursor of a substance already controlled under the Controlled Substances Act;

(2) the relative ease by which use of the substance, material, compound, mixture or preparation can facilitate the manufacture of a controlled substance;

(3) legitimate uses that would be unduly hampered by listing the substance, material, compound, mixture or preparation as a drug precursor;

(4) whether the substance, material, compound, mixture or preparation is formulated to effectively prevent its conversion into an immediate precursor of a substance already controlled under the Controlled Substances Act; and

(5) any other factors relevant to and consistent with the public health and safety.

The definition of "*transfer*", NMSA 1978, § 30-31B-2(T) is modified to strike "*controlled substance*" and replace it with "*drug precursor*."

NMSA 1978, § 30-31B-6 is amended to specify that license fees to manufacture, possess, transfer or transport drug precursors shall not exceed $250. Currently, the *minimum* fee for a license to manufacture, possess, transfer or transport drug precursors is $250, with no specified maximum fee.

Fees for a retail distributor's license shall not be more than $50 for business with 10 or more employees and not be more than $25 with fewer than 10employees.

The bill also revises penalties specified in NMSA 1978, § 30-31B-12 from a misdemeanor to a fourth degree felony for a first offense and from a third degree felony to a fourth degree felony for a third or subsequent offenses.

Categories of persons, who need not be licensed under the Drug Precursor Act, §30-31B-6D, and may lawfully possess drug precursors were expanded to include the following:

(5) a consumer who uses a drug precursor for its intended purpose and who does not use the drug precursor to manufacture a substance controlled under the Controlled Substances Act;

(6) a pharmacy, an agent or employee of a pharmacy or a contractor for a pharmacy;

(7) a pharmacist, an agent or employee of a pharmacist or a contractor for a pharmacist; or

(8) an agent or employee of a licensed retail establishment or a contractor for a licensed retail establishment.

The following language was added to §30-31B-12 to protect owners of retail establishments when drug precursors are illegally sold by their employees:

- When a person owns or operates a retail establishment where drug precursors are sold by an employee in violation of the provisions of this section, it is an affirmative defense to a prosecution of that owner or operator if he furnishes documentation that he provided the employee with a training program regarding state and federal laws and regulations regarding drug precursors; provided that, if the owner or operator knew or should have known of the employee's violation, the owner or operator shall also be in violation of the provisions of this section."

FISCAL IMPLICATIONS

There will be minimal administrative costs associated with statewide update, distribution, and documentation of statutory and NMPB regulatory changes.

Revenue could be impacted either positively or negatively, based upon the license fee structure established by the NMPB. Theoretically, revenue could go down since the NMPB must currently impose a minimum fee of $250. Under this bill, which sets a *maximum* fee of $250, there is no minimum fee.

ADMINISTRATIVE IMPLICATIONS

The NMPB must adopt regulations under which a drug precursor (as an approved drug) may be possessed for legitimate medical use, and in what quantities. The NMPB must also adopt regulations necessary for implementation of the licensure provisions of the Act.

OTHER SUBSTANTIVE ISSUES

According to the NMPB, the control of substances used in the manufacture of controlled substances, or analogs of controlled substances, will enhance law enforcement and the NMPB efforts to reduce substance abuse and to diminish the availability and exposure of toxic drug precursors to unsuspecting persons (including minor children) who come into contact with them at clandestine labs.

RLG/yr:lg