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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/12

SPONSOR King LAST UPDATED \_\_\_\_\_ HB 296

SHORT TITLE Crime of Drug Precursor Possession SB \_\_\_\_\_

ANALYST Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 93

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 296 would amend Section 30-31B-12 NMSA 1978, Drug Precursor Act, to add possession of substances, materials, compounds, mixtures or preparation with the intent to unlawfully manufacture a controlled substance or controlled substance analog in violation of the Controlled Substances Act, Section 30-31-1 NMSA 1978. This bill would also clarify that a person otherwise permitted to possess a drug precursor without a license pursuant to §30-31B-6(D) NMSA may also do so without running afoul of §30-31B-12(A)(8) NMSA.

The provisions of the bill are effective July 1, 2012.

### FISCAL IMPLICATIONS

According to the Attorney General's Office, if enacted into law, this bill could result in additional criminal investigations and prosecutions. This, in turn, would result in higher court caseloads and larger populations of persons incarcerated while pending trial or serving a custodial sentence. Additionally, if this bill becomes law, it could impose an added burden on law enforcement agencies to store and test applicable substances and could also impose an added burden on probation and parole authorities to ensure that their charges are not possessing substances banned pursuant to this bill.

## **SIGNIFICANT ISSUES**

The AGO reports in its response that as currently written, the Drug Precursor Act contains provisions in §§30-31B-4(B) and (C), which can be used by the New Mexico Board of Pharmacy to add non-enumerated substances to the drug precursor list. This bill seems to circumvent that process, but does not stop the Board from engaging in it on its own. However, having a Board enumeration process or at least enumerating named substances as drug precursors, as in §30-31B-3 NMSA, lends scientific credibility to any amendment to the Act list of drug precursors.

The most likely challenge to this bill is that it could criminalize conduct without providing any sort of notice. However, since it ties the prohibited activity with the intent to manufacture of an enumerated controlled substance or analog thereof, the bill does not appear to be overly vague. It seems unlikely that a person could accidentally violate this bill.

## **OTHER SUBSTANTIVE ISSUES**

The National Conference of State Legislatures (NCSL) recognizes that methamphetamine is a significant drug threat in the United States. State legislatures are sensitive to the fact that the manufacture and use of methamphetamine presents a plethora of social, child welfare, environmental, criminal justice and economic challenges. States also recognize the need to prevent the unlawful use of precursor substances such as pseudoephedrine, the main ingredient of methamphetamine. Pursuant to the enactment of the Combat Methamphetamine Epidemic Act of 2005 (Title 7 of the USA PATRIOT Improvement and Reauthorization of 2005 P.L. 109-177), state laws regarding the sale of pseudoephedrine have been preempted by federal law. Following the passage of this law, states have encountered obstacles in automating transaction records and documenting and tracking the movement of individuals involved in domestic manufacture of methamphetamine and purchase of and trafficking in precursor substances, including interstate activity.

NCSL supports the federal government's role of providing adequate funding and training to states in the struggle to eradicate the methamphetamine epidemic including clean-up of methamphetamine sites in states. NCSL supports federal legislation that would provide funding to assist states in automating and integrating precursor transaction logs and related enhancements that facilitate methamphetamine enforcement. NCSL opposes any further federal mandates on states with regard to methamphetamine precursor substances and records of transactions. NCSL encourages the federal government to take a proactive role to enforce our borders against methamphetamine products entering the States.

ABS/amm