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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/10

SPONSOR Lovejoy & Madalena LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Indian Arts & Crafts Crime Consistencies SB 107

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	No Appropriation		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Indian Affairs Department (IAD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 107 would increase the penalties for willful violations of the Act under § 30-33-9 NMSA 1978 for subsections (C) through (E). Under these sections threshold dollar amounts for property that would result in violations would be substantially lowered and new subsections (F) and (G) would be added to create third and second degree felony violations respectively under the Act that did not exist before.

### SIGNIFICANT ISSUES

Under subsection (C) of the Act, petty misdemeanors convictions would result for violations involving property valued less than \$250.00 instead of \$2,500.00. Subsection (D) would amend the dollar range for property involved in misdemeanor violations from \$250.00 to not more than \$500.00. Subsection (E) would amend the dollar range for fourth degree felony violations from \$250.00 to not more than \$2,500.00.

New subsection (F) would create a category of third degree felonies for property involved in violations valued between \$2,500.00 to not more than \$20,000.00.

Lastly new subsection (G) would create a category of second degree felonies for property involved in violations valued in excess of \$20,000.00.

## PERFORMANCE IMPLICATIONS

According to the AGO, SB107 will enhance criminal prosecutions of violations of the Indian Arts and Crafts Sales Act by the Attorney General and district attorneys by setting the felony threshold at a level that makes such prosecutions realistic.

## TECHNICAL ISSUES

The AGO explains that the proposed amendments will eliminate existing penalty conflicts with § 30-16-6 and § 57-12-11.

## OTHER SUBSTANTIVE ISSUES

The Indian Affairs Department offers the following information:

Despite the deterrents, the forging of Indian art is a thriving business. The AG's Office stated to the 2008 Interim Indian Affairs Committee that the sale of Native American arts and crafts is a multimillion dollar industry in New Mexico, but that fraudulently represented arts and crafts in this market could make up at least 50%.<sup>1</sup> According to the federal Indian Arts and Crafts Board, "fraud in the [Indian] arts and crafts industry is becoming rampant and the area where is the most rampant is in Arizona and New Mexico."<sup>2</sup> This fraudulent activity is detrimental to the Native community through the loss of culture and personal income for many Native American artists.<sup>3</sup> In a June 2005 report by the Inspector General for the US Department of the interior, the annual loss in revenue to Indian artisans as a result of fraudulent Indian arts and crafts is between \$400-500 million or up to half the total value of the Indian arts and crafts market.<sup>4</sup> Fraudulent sales also raise consumer doubt in the products being sold and erode the market for authentic Indian work.<sup>5</sup>

New Mexico is host to the yearly Southwestern Association for Indian Arts "Santa Fe Indian Market," which is estimated to bring more than 80,000 people and over \$100 million in revenues to the state and region.<sup>6</sup>

EO/mew

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<sup>1</sup> New Mexico State Legislature, Interim Indian Affairs Committee. Hearing on the Sale of Indian Arts and Crafts (8/11/2008). Text from: Attorney General of New Mexico, <http://www.nmag.gov/>.

<sup>2</sup> Donovan, Bill. "Man who bogus bracelet avoids jail," Gallup Independent, Dec. 10, 2007. Retrieved Jan. 22, 2008, [http://www.gallupindependent.com/2007/december/121007bd\\_bogusman.html](http://www.gallupindependent.com/2007/december/121007bd_bogusman.html).

<sup>3</sup> Council for Indigenous Arts and Culture. *Which is Authentic Indian Handmade?*, Brochure, 2000. Retrieved Jan. 22, 2008, [www.ciaccouncil.org](http://www.ciaccouncil.org).

<sup>4</sup> US House of Representatives Committee on Natural Resources. Legislative Hearing on the Indian Arts and Crafts Amendments Act of 2009 (H.R. 725). Testimony of Michael "NaNa Ping" Garcia. Retrieved January 21, 2010, 2, [http://resourcescommittee.house.gov/index.php?option=com\\_jcalpro&Itemid=54&extmode=flyer&date=2009-12-01](http://resourcescommittee.house.gov/index.php?option=com_jcalpro&Itemid=54&extmode=flyer&date=2009-12-01).

<sup>5</sup> US Department of the Interior. "Federal and State Collaboration Results in Crackdown on Marketing of Fake Indian Arts and Crafts," *US Department of the Interior News*, September 21, 2007.

<sup>6</sup> "About SWAIA: The History of Santa Fe Indian Market and the Southwestern Association for Indian Arts," SWAIA website <http://www.swaia.org/history.php>, last accessed January 19, 2008.

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AN ACT

RELATING TO CRIMINAL LAW; AMENDING THE INDIAN ARTS AND CRAFTS SALES ACT TO PROVIDE FOR PENALTIES CONSISTENT WITH PENALTIES FOR OTHER PROPERTY CRIMES; INCREASING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-33-9 NMSA 1978 (being Laws 1977, Chapter 334, Section 6, as amended) is amended to read:

"30-33-9. VIOLATION OF ACT--PENALTIES.--

A. In an action brought by the attorney general or a district attorney for a violation under the provisions of the Indian Arts and Crafts Sales Act, the district court may order temporary or permanent injunctive relief. The district court shall order restitution and such other relief as may be necessary to redress injury to any person resulting from the violation.

B. In any action brought under this section, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Indian Arts and Crafts Sales Act, the attorney general or district attorney, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty not to exceed five thousand dollars (\$5,000) per violation.

C. Any person willfully and knowingly violating the provisions of the Indian Arts and Crafts Sales Act where

1 the violation involves property valued at two hundred fifty  
2 dollars (\$250) or less is guilty of a petty misdemeanor.

3 D. Any person willfully and knowingly violating  
4 the provisions of the Indian Arts and Crafts Sales Act where  
5 the violation involves property valued in excess of two  
6 hundred fifty dollars (\$250) but not more than five hundred  
7 dollars (\$500) is guilty of a misdemeanor.

8 E. Any person willfully and knowingly violating  
9 the provisions of the Indian Arts and Crafts Sales Act where  
10 the violation involves property valued in excess of five  
11 hundred dollars (\$500) but not more than two thousand five  
12 hundred dollars (\$2,500) is guilty of a fourth degree felony.

13 F. Any person willfully and knowingly violating  
14 the provisions of the Indian Arts and Crafts Sales Act where  
15 the violation involves property valued in excess of two  
16 thousand five hundred dollars (\$2,500) but not more than  
17 twenty thousand dollars (\$20,000) is guilty of a third degree  
18 felony.

19 G. Any person willfully and knowingly violating  
20 the provisions of the Indian Arts and Crafts Sales Act where  
21 the violation involves property valued in excess of twenty  
22 thousand dollars (\$20,000) is guilty of a second degree  
23 felony."

24 Section 2. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2010. \_\_\_\_\_