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FISCAL IMPACT REPORT

ORIGINAL DATE 1/21/08

SPONSOR Madalena LAST UPDATED _____ HB 210

SHORT TITLE Indian Arts & Crafts Act Penalties SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Indian Affairs Department (IAD)

SUMMARY

Synopsis of Bill

House Bill 210 amends the Indian Arts & Crafts Sales Act to enhance the penalties associated with misrepresentation, false or fraudulent sales of Indian handmade or authentic Indian arts and crafts. The legislation will increase the civil penalty from the current maximum of \$500 to a maximum of \$5,000 per violation.

In addition, the amendment will increase the three-stepped criminal penalties in current law and add two new ones – Second and Third Degree Felonies. Violations will be prosecuted by the attorney general or a district attorney.

The increased penalties will apply to any person who willfully and knowingly violates the provisions of the Indian Arts & Crafts Sales Act, and are based on the value of the property, as follows:

- A petty misdemeanor involving property valued at less than \$250 instead of current law's \$2,500 will be a fine of not less than \$100 per violation per day, up to maximum fine of \$500, or imprisonment in the county jail for a term not to exceed six months, or both;

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- A misdemeanor involving property valued at \$250-\$499 instead of current law's \$2,500-\$19,999) will be a fine of not less than \$100 per violation per day, up to maximum fine of \$1,000, or imprisonment in county jail for not more than one year, or both;
- A fourth Degree Felony involving property valued at \$500-\$2,499 instead of current law's in excess of \$20,000 will be a fine of not less than \$100 per violation per day, up to maximum of \$5,000, or up to 18 months imprisonment in county jail, or both;
- A third Degree Felony involving property valued at \$2,500-\$19,999 will be a fine of not less than \$200 per violation per day, up to maximum fine of \$5,000, or up to three years imprisonment, or both; and•
- A second Degree Felony involving property valued at or exceeding \$20,000 will be a fine of not less than \$500 per violation per day, up to maximum fine of \$10,000, or up to nine years imprisonment, or both.

FISCAL IMPLICATIONS

Increased penalties cases take up a considerable amount of judicial time. Any fiscal impact on the judiciary will be proportional to the enforcement of this law, related case filings, and commenced prosecutions. There will be an increase in the amount of work that needs to be done by the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

State law has long established penalties for unfair or fraudulent sales of Indian goods. However, the existing penalties have not been updated since 1991, and may not be a strong enough deterrent to prevent these types of crimes. Fraudulent arts and crafts compete daily with authentic Indian arts and crafts in the marketplace. With the current popularity of Indian-made goods, especially in New Mexico, there are powerful incentives for people to make money off unsuspecting customers. This consumer fraud not only hurts buyers, it also erodes the livelihood and culture of Native American artists, craftspeople, and tribes and pueblos.

The AOC understands that HB 210 is an initiative from the Attorney General's office, and one of its priorities. The purpose of the bill is to make the penalties under the Indian Arts and Crafts Sale Act consistent with the civil penalties established in the state's Unfair Practices Act (Sec. 57-12-2 NMSA 1978) and the criminal penalties in existing state law relating to other general property crimes, such as fraud and embezzlement in Chapter 30.

IAD provided the following:

It is a criminal offense in the State of New Mexico for anyone to sell or offer for sale any products represented to be Indian handmade or authentic Indian arts and crafts unless such projects are in fact Indian handmade or authentic Indian arts and crafts and are in fact Indian crafted. It is also unlawful for any person to represent that any Indian arts and crafts product is made of a material, including natural material, e.g., turquoise, unless it is made of that material; to fail to disclose in writing that any Indian arts and crafts product is made of treated material, reconstructed material or synthetic materials; or to solicit or buy for resale as authentic Indian arts and crafts any products that are know in fact not to

be authentic. Lastly, it is unlawful for any person to prepare, disseminate or otherwise engage in any unfair or deceptive trade practice, including any false misleading or deceptive advertising, or any unconscionable trade practice, regarding Indian arts and crafts. Any person found to be in violation of the Act will face fines or imprisonment, or both.

In August of 2007, a former dealer of Indian arts and crafts was found guilty of fraud by a Gallup jury. A Massachusetts tourist to the Gallup area claimed that a bracelet sold to her by a former co-owner of the Silver Bear Trading Co. in Gallup, New Mexico, “had been sold to her as being made by Preston Monongye, one of the most acclaimed Navajo silversmiths working today.” However, this was found to be untrue. This was an important case for McKinley County and Gallup because they depend heavily on the Native American arts industry. The winning District Attorney stated that anything that hurts the industry’s credibility hurts Gallup.

According to the federal Indian Arts and Crafts Board, “fraud in the [Indian] arts and crafts industry is becoming rampant and the area where it is the most rampant is in Arizona and New Mexico.”

ADMINISTRATIVE IMPLICATIONS

There could be an administrative impact on the courts resulting from added judicial time needed to dispose of these types of cases in the manner provided under the law.

TECHNICAL ISSUES

The AOC notes that clean up language inserts “by” on page 2, line 14, in amending subsection C of 30-33-9. Subsection E should also insert “by” on page 3, line 9, after the word “or” and before the word “up”.

OTHER SUBSTANTIVE ISSUES

The federal Indian Arts and Crafts Board is tasked to promote the economic development of American Indians and Alaska Natives through the expansion of the Indian arts and crafts market. The Board serves as a resource where consumers can get information on how to buy genuine Native American arts, as well as report fake Native American arts and crafts. The Board is also a source for artisans to get professional business advice, information on the Act and related marketing issues, fundraising assistance and promotional opportunities. The Board’s top priority, however, is the implementation and enforcement of the Federal Indian Arts and Crafts Act of 1990. The Federal Act is a truth-in-advertising law that provides criminal and civil penalties for marketing products as “Indian made” when such products are not made by an Indian artisan, as defined by the Act.

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.