

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

<b>SPONSOR</b> Sharer _____	<b>ORIGINAL DATE</b> 01/24/09	<b>LAST UPDATED</b> 03/02/09	<b>HB</b> _____
<b>SHORT TITLE</b> Correct Pawnbrokers Act _____			<b>SB</b> 143/aSPAC/aSJC _____
			<b>ANALYST</b> Ortiz _____

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AOC)  
 Department of Public Safety (DPS)  
 Administrative Office of the Courts (AOC)

### SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment creates a new subsection indicating that the more specific provisions of the Pawnbrokers Act shall supersede the more general provisions of Chapter 55, Article 9, NMSA 1978, the Uniform Commercial Code.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amends the citing reference from 55-9-501 to Chapter 55, Article 9.

Synopsis of Original Bill

Senate Bill 143 amends § 56-12-11 by changing the citing reference from § 55-9-504 – indication of collateral- to citing reference to Chapter 55, Article 9. SB 143 also amends § 56-12-11 by adding words and changing words.

Summary: SB 143 provides gender neutral term by changing “his” to “the pawnbroker’s.” SB 143 adds the words “the provisions” to Subsection (B) and (C). SB 143 changes the word “must” to the word “shall.” As previously note, SB 143 changes the citing reference to Chapter 55, Article 9.

## **SIGNIFICANT ISSUES**

The amendment to Subsection A broadens the scope of requirements placed on pawnbrokers. As previously written, disposition of pledged goods by a pawnbroker had to conform only to the requirements of Sections 55-9-501 through 55-9-507 NMSA 1978. The Administrative Office of the Courts explains that by changing the reference to Chapter 55, Article 9, more requirements are imposed on the disposition of defaulted pledged property by pawnbrokers because the amended statute does not limit its reference to specific statutes within Chapter 55, Article 9. Some of these additional requirements specifically cover default and enforcement of security interest under Chapter 55, Article 9, Part 6, Subpart 1, such as Section 55-9-601 governing judicial enforcement of rights after default, and Section 55-9-609 providing for a secured party's right to take possession after default including pursuant to judicial process.

Adding the words “the provisions” to Subsection B and C makes it clear that reference to Subsection A means the provisions contained in Subsection A.

## **TECHNICAL ISSUES**

The Attorney General's Office points out that word “must” is not always replaced by “shall.” This suggests that “shall” is synonymous to the word “must.” For example, the word “must” is simply omitted before the word “notify” from the following clause “if a surplus remains after sale of the pledged property, the pawn broker [~~must~~] shall make a record of the sale and the amount of the surplus and [~~must~~] notify the . . .” Thus by omitting the word “must” and not replacing it with the word “shall”- this omission without substitution of the word “shall” may mean that the words are synonymous - if the omission is intended not to require pawnbroker to actually notify the pledgor.

EO/mt:svb