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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/19/08

SPONSOR Leavell LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Uniform Debt-Management Service Act SB 152

ANALYST Wilson

### APPROPRIATION (dollars in thousands)

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

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 152 enacts the Uniform Debt-Management Services Act which generally regulates credit counseling services which assist debtors in paying off their debts by developing plans for debt payment; and debt settlement and/or consolidation and management services which negotiate with creditors on behalf of debtors to pay a percentage of the debt. Many of those services act as intermediaries between the debtor and the creditor for debt negotiation purposes. The general objective of those services is the payment of debt without resort to bankruptcy. Most of the services collect a percentage of payments to creditors as payment for their services.

This bill is modeled after the "Uniform Debt-Management Services Act" adopted by the National Conference of Commissioners on Uniform State Laws in July, 2005. The bill appears to have adopted the uniform act verbatim.

The bill regulates providers who enter into agreements with individuals to create debt management plans. The act applies if the debtor is a natural person whether or not the debts involved are for business or consumer purposes. A number of businesses, including banks and their regulated affiliates are exempt.

To provide debt management services to a New Mexico resident, the provider must be registered

or licensed within the state. To register, the applicant must provide the Financial Institutions Division of the Regulation and Licensing Department with comprehensive background information, maintain insurance, post a surety bond, and meet levels of competency.

The bill specifies certain disclosures and terms of the agreement between the debt-management service and debtor. Maximum fees for various services are specified. The bill requires services to act in good faith; to maintain toll-free communications that permit clients to speak with a counselor during business hours; and to determine that the debt management plan is suitable for the consumer. Consumer funds must be held in a trust account.

The bill provides for both private and state enforcement including recovery of minimum, actual and punitive damages.

### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### **SIGNIFICANT ISSUES**

The AGO notes that the bill does not repeal or amend NMSA Sections 56-2-1 to 56-2-4 (1978) which regulate debt adjusters, and impose misdemeanor penalties on persons who act as debt adjusters and who perform services authorized and regulated by this act. If existing state law is not repealed or modified, they will be in conflict with the provisions of this act.

Recent amendments to the Federal Bankruptcy Code effective in 2005 require a debtor who wishes to file under Chapter 7 to provide certification that he or she has received assistance from an approved nonprofit credit-counseling agency in preparing a budget analysis and information about credit counseling. The amendments also require the completion of an instructional course concerning personal financial management as a prerequisite to obtaining a discharge. Because the new bankruptcy rules are federal and apply in every state, regulating the consumer credit counseling and debt settlement services in every state must be uniform in character for the new bankruptcy rules to be effective and for consumers to be protected.

DW/nt