F I S C A L I M P A C T R E P O R T

SPONSOR HJC **ORIGINAL DATE** 02/15/10 **LAST UPDATED** **HB** 175/HJCS

SHORT TITLE Uniform Debt Management Services Act **SB**

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	**FY11**		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
	*Indeterminate	*Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

*****See **Fiscal Impact**

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$200.0	$200.0	$400.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Attorney General's Office (AGO)

SUMMARY

Synopsis HJC Substitute

The House Judiciary Committee Substitute for House Bill 175 enacts the Uniform Debt-Management Services Act (Act) and repeals the Debt Adjuster Statutes, Sections 56-2-1 through 56-2-4 NMSA 1978.

Under the Act, debt management servicers must register with the Financial Institutions Division. A debt management service provider creates a program or strategy in which the provider furnishes debt-management services to an individual in the form of an "agreement" which includes a schedule of payments to be made on behalf of the individual and used to pay debts owed by the individual. The consumer has the right to terminate the agreement at any time. The Act does not apply to an agreement with an individual if a provider has no reason to know that the individual resides in New Mexico at the time of the agreement.

A debt management service provider must be registered pursuant to the Act, however an employee or agent of the provider does not need to be registered. The Bill provides for original registration and annual renewals.

Registration requires a $1000 application fee, a surety bond of $50,000 or other amount as determined by the Administrator based on the financial condition of the applicant, and insurance in the amount of $250,000. Substitutions are allowed for the surety bond (insurance, letter of credit, bonds held at a bank). Timeframes are established for the approval or denial by the Administrator, of both original and renewal registration applications. Renewal registrations applications will be accompanied by a $1000.00 renewal fee and the bond required under Section 12 of the bill. If an application is denied outside of the timeframe, the applicant may appeal and request a hearing. Information in the application would be considered public information.

The Administrator of the Act is the director of the Financial Institutions Division. The Administrator must approve certifying organizations and training programs for "certified counselors" and "certified debt specialists". The Administrator prescribes the application form. The Administrator may issue a temporary certificate of registration or renewal registration if the applicant has made a timely effort to obtain the information required by Subsection N of Section 6, but the information has not been received. The Administrator has the power to investigate, examine in New Mexico or elsewhere, by subpoena or otherwise, activities related to the providing of debt-management services to determine compliance with the Act. Reasonable expenses may be charged to conduct an examination. The Administrator may adopt rules to implement provisions of the Act.

There are prerequisites and disclosures that must be provided by the registrant provider to the consumer. HB 175 delineates the format and timeframe of both the disclosures and the agreement between the provider and the consumer. The disclosures may be provided electronically or via the Internet with the consumer's consent, if certain conditions are met, including the ability to present the form that is capable of being accurately reproduced for later reference.

On page 16, lines 1 and 2, the Administrator is given additional authority to deny registration if the application is not accompanied by the fee established by the administrator.

Beginning on page 46, line 24, and ending on page 49, line 1, settlement fee limits are established for compensation for services in connection with settling a debt.

On page 54, lines 15 through 22 language is added to an existing prohibited practice in section 27 (A) (11) whereby a provider shall not, directly or indirectly settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, which upon completion will result in full settlement of the debt.

FISCAL IMPLICATIONS

Fiscal implications are indeterminate because there is no data available to determine the number of Debt-Management Service providers located in New Mexico. The substitute requires a $1000 registration fee for original registrations and $100 fee for renewals. However, since it is not known how many Debt-Management Service providers are doing business in New Mexico, it is not possible to accurately estimate the amount of revenue that would be generated.

According to RLD, the registration, investigation, examination, supervision and administration of the Act will require additional staff and related facilities/equipment and administrative costs. Without an appropriation, the Division would not be able to carry out the new additional duties required by the Act. The Division estimates that it would cost approximately $150,000 per year to administer the licensing provisions of the bill.

SIGNIFICANT ISSUES

The House Judiciary Committee Substitute for House Bill 175 repeals the New Mexico Debt Adjusters Act, which does not allow for-profit businesses to conduct debt-management services in the state. One of the stronger arguments for non-profit debt-management businesses is the requirement for an educational component which must be approved by the United States Internal Revenue Service. Currently, most if not all, for-profit debt settlement companies do not meet the standards for the educational requirement by the IRS. Although Section 16 (B) (1) requires a provider to provide reasonable education regarding personal finance prior to providing debt-management services, what constitutes "reasonable" is left to the discretion of the Financial Institutions Division.

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Although this substitute for H.B. 175 purports to be the "Uniform Debt-Management Services Act" promulgated by the National Conference of Commissioners on Uniform State Laws, it actually includes significant changes to the uniform act, specifically regarding fee limitations. While the uniform act defines the acceptable fee structure and limits, HB 175 allows the debt settlement company to decide between 2 different fee structures and provides for different fee limits.

The Original Uniform Act limits fees to 30% of the amount *actually saved after settlement* of a debt with credit for other fees charged. For example, the actual Uniform Debt-Management Services Act provides fee caps (Section 23 (F)) for plans that "contemplates that creditors will settle an individual's debts for less than the principal amount of the debt, compensation for services in connection with settling a debt **may not exceed**, with respect to each debt: (1) 30 percent of the excess of the principal amount of the debt over the amount paid the creditor pursuant to the plan less (2) to the extent it has not been credited against an earlier settlement fee: (A) the fee charged pursuant to subsection (d)(2)(A); and (B) the aggregate of fees charged pursuant to subsection (d)(2)(B)."

In contrast, the Substitute for H.B. 175 Section 22 (F) has been modified to allow the debt settlement company to charge 15% of the principal amount of the debt as an upfront fee paid monthly over the first half of the contract but *before* any savings have been realized and before settlement of any debt. It also allows the company to have a consumer agree to accelerate the payment of fees into a shorter payment period. The bill allows "… a flat settlement fee based on the overall amount of the original principal debt, the total aggregate amount of fees charged to

any individual pursuant to the Uniform Debt-Management Services Act, including fees charged pursuant to paragraph (2) of Subsection D of this section, shall not exceed fifteen percent of the principal amount of debt included in the agreement at the inception of the agreement. The flat settlement fee authorized pursuant to this paragraph shall be assessed in equal monthly payments amortized over the full term of the contract. The fee shall be paid in monthly payments. After payment of one-third of the total flat settlement fee, additional monthly payments shall be suspended until such time as the percent of the original principal debt settled and released is equal to or greater than the percentage of fees paid. The payment of monthly fees may be resumed and continued on a monthly basis for the remainder of the contract only if the percentage of original principal debt settled and released remains equal to or greater than the percentage of total fees paid. If seventy-five percent of the debt is settled before the end of the contract term, payment of the remainder of fees owed may be accelerated to coincide with the final settlement and release of the final principal debt, but in no event should the percentage of the total fees paid exceed the percentage of debt settled and released;

Section (F) allows for an alternate fee schedule "where fees are calculated as a percentage of the amount *saved* by an individual" with a limit of 30% of the amount saved per outstanding amount of debt as calculated at the time of settlement, with a aggregate of total fees limited to 20% of the principal amount of debt at the time of the inception of the agreement. This would allow individual fees to be assessed at a higher rate (30% of the amount of debt at the time of settlement which would include interest accrued over time) while limiting the total fee that could be charged to 20% of the original debt amount. This would benefit only those who complete the program but would allow higher fees for those 65 % of consumers who find themselves unable to complete the program for financial or other reasons.

Section 16 allows a provider of debt-management services to charge an unknown amount just for disclosing to a prospective debtor the types of goods and services available by the provider if the debtor does not then choose to enter into an agreement for debt management services.

Section 22(C) prohibits a provider from charging a fee for education or counseling services; however, in the same section, it then states that the Director of FID may allow such fees as prescribed by him/her.

Section 22 (D) (4) states that if a debtor does not assent to an agreement after counseling and education services have been provided, a provider may charge a fee of $100 unless the Director of the NM FID allows for a greater fee.

Section 22 (E) states that a provider may keep the fee charged for counseling or education if the debtor does not enter into an agreement within 90-days.

TECHNICAL ISSUES

Page 12 lines 15 and 16 refer to an application requirement of "evidence of accreditation by an independent accrediting organization approved by the administrator". It is not clear if this is different than the certification or authentication required of "certified counselors" and "certified debt specialists" on page 4 lines 1 - 14.

It is unclear who will do the criminal records check including fingerprints, of every officer of the applicant and every employee or agent of the applicant who is authorized access to the trust account, page 13 lines 8 - 14.

The Bill does not identify who the hearing officer would be relevant to hearings regarding denial, renewal, suspension or revocation of a registration.

OTHER SUBSTANTIVE ISSUES

According to the Attorney General's Office, the federal Trade Commission issued a notice of proposed Rule Making on August 19, 2009 to address the many problems with the debt settlement industry. Several States Attorneys General, including New Mexico, responded by submitting comments on October 23, 2009. The FTC has not yet adopted final regulations in this area and the interplay between any state legislation and federal regulation is an issue to consider. To the extent that New Mexico laws allow practices that would be prohibited under the federal regulation, deference to the stricter federal rules is encouraged.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/mt