

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 and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Sapient ORIGINAL DATE 02/16/15  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Fiduciary Duty to Spouses SB 206  
ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 206 codifies in the domestic relations statutes a court-recognized fiduciary duty of spouses in the management of personal property that is owned by the community, and in incurring debt. One spouse may be solely liable for a debt incurred in violation of that duty, and the other spouse's share of community property is not subject to liability for such a debt.

### FISCAL IMPLICATIONS

No fiscal impact on the State is anticipated.

### SIGNIFICANT ISSUES

A fiduciary means "[a] person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking." Black's Law Dictionary 625 (6th ed. 1990). Under SB 206, each spouse is a fiduciary when dealing with the community property of the marriage: each spouse owes the marital community duties of disclosure, honesty, and fairness, and must not place personal interests over those of the community.

AOC advises that New Mexico's appellate courts recognize and have applied a fiduciary duty to a spouse's care and management of the marital community. *See Roselli v. Rio Communities Serv.*

*Station, Inc.*, 109 N.M. 509 (1990); *Irwin v. Irwin*, 121 NM 266 (Ct. App. 1996). When one spouse incurred a debt against the community in secret and contrary to the other spouse's express wishes, the court of appeals affirmed the liability for that debt against the sole property of the spouse who undertook the loan. *Fernandez v. Fernandez*, 111 N.M. 442 (Ct. App. 1991).

Like SB 206 does, AOC notes that other community property states have codified the principle of fiduciary duty owed to the marital community. *See* California Family Code section 1100(e). Even states that do not attest to following community property policies, known as equitable distribution states, recognize a spouse's fiduciary duty over marital property. *See Crawford v. Crawford*, 524 NW 2<sup>d</sup> 833 (ND 1994).

### **OTHER SUBSTANTIVE ISSUES**

Generally, both spouses must join in all transfers, conveyances or mortgages of any interest in real property owned by the community, and any attempt to transfer, convey or mortgage with such joinder is void and of no effect. *See* Section 40-3-13, NMSA 1978.

MD/bb