

LFC Requester:

Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/6/25

Check all that apply:

Bill Number: HB307

Original x Correction
Amendment Substitute

Sponsor: Rep. Pamelya Herndon
Rep. Angelica Rubio

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: Internet Privacy & Safety Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: House Bill 307 (“HB307”) would enact a new, comprehensive law, the Internet Privacy and Safety Act that provides consumer rights and imposes restrictions on covered entities’ use of personal information.

Section 2 contains an extensive list of statutory definitions.

Section 3 imposes requirements on “covered entities,” which Section 2 defines as “a sole proprietorship, partnership, limited liability company, corporation, association, affiliate or other legal entity” that is organized for profit and offers online features, products, or services to consumers in New Mexico. Covered entities must ensure high levels of security on online platforms, publicly provide privacy information and accessible privacy tools, and establish mechanisms to safeguard personal data. Additional default settings must be used when a covered entity has actual knowledge that a consumer using the covered entity’s online platform is a minor. These include disabling contact by unknown users unless the consumer first initiates contact and disabling notifications between 10:00pm and 6:00am.

Section 4 further restricts covered entities that provide an online feature, product or service from processing personal data except in limited circumstances. This section also restricts monitoring of a consumer’s online activity or precise geolocation without providing notice to the consumer, restricts the use of sensitive personal data for targeted advertising, and prohibits the “process or transfer personal data in a manner that discriminates in or otherwise makes unavailable the equal enjoyment of goods or services on the basis of childbirth or condition related to pregnancy or childbirth, color, disability, gender, gender identity, mental health, national origin, physical health condition or diagnosis, race, religion, sex life or sexual orientation.”

Section 5 outlines consumer rights that covered entities must provide to consumers, including access to the consumer’s personal data that has been processed or collected, information on when and why a consumer’s personal information is disclosed, and the ability for a consumer to request a covered entity stop collecting and processing the consumer’s personal data. Covered entities must provide consumers with a reasonable means to exercise their consumer rights.

Section 6 provides that “service providers,” which Section 2 defines as “a person who collects, processes, retains or transfers personal data on behalf of, and at the direction of, a

covered entity or a service provider” that process personal data, “or a third party that receives personal data from a covered entity shall enter into a written data processing agreement with the covered entity ensuring that the data will continue to be processed consistent with the Internet Privacy and Safety Act.” This section further specifies what must be included in a data processing agreement and requires that covered entities must ensure that “adequate data protection safeguards” are in place prior to transferring personal data to a third party located outside of New Mexico.

Section 7 prohibits a covered entity from retaliating against a consumer for exercising their rights under this law. This section also states that contracts, agreements, or terms of service cannot waive, limit, or undermine the rights provided by this law.

Section 8 provides that upon NMDOJ’s promulgation of rules to implement this Act, a covered entity that violates the provisions of the Act shall be subject to injunctive relief to cease or correct the violation as well as liable for a civil penalty of up to \$2,500 per affected consumer for each negligent violation and up to \$7,500 per affected consumer for each intentional violation. This section also permits a consumer to bring an action in district court for a claimed violation of the Act.

Section 9 explains that a covered entity in compliance with federal privacy laws shall be deemed to be in compliance with this Act “solely and exclusively with respect to data subject to the requirements of federal law.” Likewise, an online feature, product or service that is regulated by federal information security law shall be deemed to be in compliance with the requirements of this Act “solely and exclusively with respect to data subject to the requirements of federal law.” This section also clarifies that the Act does not apply to the delivery or use of a physical product that is not an online feature, product or service.

Section 10 contains limitations, including that the Act: shall not be construed to impose liability in a manner that is inconsistent with federal law; does not apply to information processed by the government; and does not restrict a covered entity’s ability to comply with law or subpoenas, cooperate with law enforcement, investigate or defend legal claims, take action to protect life or safety in an emergency, respond to security incidents, prevent or detect fraud or other illegal activity, or transfer assets to a third party in a merger or similar transaction.

Section 11 provides that by April 1, 2026, NMDOJ shall promulgate rules for the implementation of this Act. NMDOJ must also provide annual reports “to the interim legislative committee that is tasked with examining internet-related issues.” The reports must compare the Act and rules to federal laws and regulations and provide recommendations for any changes needed to conform state law with federal law.

FISCAL IMPLICATIONS

The New Mexico Department of Justice (the “NMDOJ”) may have fiscal implications from additional resources needed to fulfill obligations under the proposed legislation, which may be described with detail in Section II, above.

The NMDOJ’s duties to promulgate rules, enforcement, and provide reports to the Legislature would take a considerable number of resources, including attorneys with subject matter expertise, staff, including but not limited to, paralegals, administrative, and clerical personnel. Such duties would obligate a considerable amount of time and effort to meet the statutory

deadline of April 1, 2026.

Should the NMDOJ's duties to promulgate rules, enforcement, and provide reports to the Legislature face any challenges, additional resources would be needed to defend and litigate such challenges.

HB307's proposed language that allows individual consumers to file suit for any claimed violation could result in a significant increase in lawsuits filed in district court which may create additional responsibilities for the NMDOJ for representation and resources.

SIGNIFICANT ISSUES

HB307 list of covered entities, including restrictions on processing personal information, could be subject to First Amendment challenges. *See, e.g., Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011) ("This Court has held that the creation and dissemination of information are speech within the meaning of the First Amendment."); *see also Moody v. NetChoice, LLC*, 603 U.S. 707, 731 (2024) ("[T]he editorial function itself is an aspect of speech. . . . Deciding on the third-party speech that will be included in or excluded from a compilation—and then organizing and presenting the included items—is expressive activity of its own.").

HB307's language specifically requires any entity that operates a website, domain, platform, or other online presence in the state to set strict privacy settings and process, inform the public as a whole, and disable or enable certain features or content based upon consumer usage. Furthermore, the language of HB307 would restrict businesses from processing the language likely necessary to make the determination of such restrictions and provide access to such personal data.

In addition, HB307 is might possibly be preempted by federal laws and regulations developed by the FTC, the FCC, or other federal law. "The Supremacy Clause of the Constitution, art. VI, cl. 2, invalidates state laws that interfere with, or are contrary to laws of Congress, made in pursuance of the Constitution." *United States v. City & Cty. of Denver*, 100 F.3d 1509, 1512 (10th Cir. 1996) (citation omitted). Federal law expressly preempts state law when "the language of the federal statute reveals an express congressional intent to do so." *City & Cty. of Denver*, 100 F.3d at 1512.

PERFORMANCE IMPLICATIONS

NMDOJ will be required to promulgate rules to implement the Act, yearly report to the appropriate legislative committee, and prepare suggestions for statutory changes.

ADMINISTRATIVE IMPLICATIONS

The NMDOJ's duties to promulgate rules, enforcement, and provide reports to the Legislature are likely subject to any challenges. As outlined in the issues above, should such promulgation of rules be challenged or preempted, additional administrative support will be needed.

HB307's proposed language that allows individual consumers to file suit for any claimed violation could result in a significant increase in lawsuits filed in district court which may create additional responsibilities for the NMDOJ for representation and resources. As proposed HB307's allowance for any individual to file suit would likely inundate the courts with frivolous and long litigious actions that would overwhelm the dockets of the already burdened judiciary

system.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

For consistency with the format of the other definitions, Section 2(Z) (“‘publicly available information’ does not include . . .”) should be moved to Section 2(Y) (defining “publicly available information”).

OTHER SUBSTANTIVE ISSUES

The definition of “consumer” as “a natural person who resides or is present in New Mexico” could raise questions about how long a person must be present in the state to receive the protections, as well as questions about how it applies when a New Mexico resident is traveling outside of the state.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A