

LFC Requester:

Joseph Simon

### 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: 1/30/2025

Check all that apply:

Bill Number: SB36

Original  Correction   
Amendment  Substitute

Sponsor: Sen. Sedillo Lopez and Rep. Parajón

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

Person Writing

Short Title: Sensitive Personal Information Nondisclosure

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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
<b>Total</b>						

(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:

Senate Bill 36, the “Nondisclosure of Sensitive Personal Information Act,” (“Act”) prohibits state employees from disclosing sensitive personal data, including but not limited to disability, sexual orientation, and social security numbers, with exceptions for legal and agency functions or with consent. It enforces penalties through civil action by the Attorney General or District Attorneys. The bill also amends the Motor Vehicle Code to ban sharing personal data for federal immigration enforcement, requiring contractors to certify compliance.

Section 1. provides the short title for Senate Bill 36 which is the “Nondisclosure of Sensitive Personal Information Act,” (“Act”). The Act provides for the protection of “sensitive personal information” held by state agencies by prohibiting a state agency employee from intentionally disclosing “sensitive personal information.”

Section 2. defines “sensitive personal information” as a person’s “status as a recipient of public assistance or as a crime victim,” “sexual orientation, gender identity, physical or mental disability, medical condition, immigration status, national origin or religion,” and a social security number or tax identification number.

Section 3. establishes exceptions to the prohibition of disclosure of sensitive personal information by a state employee or a contractor, such as when disclosure is necessary “to carry out a function of the state agency” or to comply with a court order or subpoena, where disclosure is “required by federal statute” or the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019), and in circumstances where the person whose information would be disclosed consents in writing to the disclosure.

Section 4. establishes enforcement and a civil monetary penalty. The Act would be civilly enforceable in District Court by the Attorney General or a District Attorney.

Section 5. amends Section 66-2-7.1 of the Motor Vehicle Code to make it unlawful for a department or bureau employee or a contractor to disclose to federal, state or local government or nongovernmental agencies any personal information about an individual in connection with a drivers’ license or permit, car registration and/or titling, or the administration of the Ignition Interlock Licensing Act for the purposes of enforcing federal immigration laws. The new section also includes that any nongovernmental entity entering a contract with the department shall

certify in writing that the entity shall not use or disclose the information for the purpose of enforcing federal immigration law.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

There may be confusion as to what authority law enforcement agents – local, state or federal – legitimately possess in the process of obtaining or providing information from the state necessary to implement federal policy. Likewise, it may be unclear what information state employees are required to share.

While recent caselaw states “[t]he federal power to determine immigration policy is well settled,” Arizona v. U.S., 567 U.S. 387, 395 (2012), confusion may exist regarding the cooperation and/or collaboration between federal law enforcement and state police powers.

Recent policy changes in the federal government requiring the execution of US immigration law may be interpreted as preemption by the federal executive branch over state police powers. See Executive Order 14159 (2025).

However, police power is granted to the states by the 10<sup>th</sup> Amendment wherein, “[T]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” U.S. Const. amend. X. “The police power allows state and local governments to adopt any law that is not prohibited by the Constitution.” Erwin Chemerinsky, Constitutional Law Principles and Policies, 248, Wolters Kluwer, 6<sup>th</sup> ed. 2019.

Congress, based on Article I powers, retains powers over immigration policies, and the state of New Mexico, is authorized to regulate the issuance of drivers’ licenses and identification cards through the Motor Vehicle Department, in addition to developing limitations on what information in their possession shall not be disclosed.

There will likely be confusion amongst Motor Vehicle Department (“MVD”) employees, and other state employees and/or contractors about what authority lies where and what must be shared with local, state, or federal agents requesting information. This may increase the need for agency counsel to aid their colleagues by providing training to ensure the protection of individuals sensitive information.

## **PERFORMANCE IMPLICATIONS**

The Act may create confusion on the part of state agencies and employees. While the bill would prevent agency employees from disclosing certain information, the exemptions may cause confusion – especially in relation to the Inspection of Public Records Act (“IPRA”). In addition, since IPRA declares that providing information to the public is “an integral part of the routine duties of public officers and employees,” Section 14-2-5.

## **ADMINISTRATIVE IMPLICATIONS**

According to the Act, the Attorney General may institute civil action to enforce the Act. This may impose an additional workload on the New Mexico Department of Justice.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

IPRA always requires disclosure in the absence of an exception as enumerated under Section 14-2-1, and is permissive in regard to redaction of personal identifier information, which, as defined in IPRA includes: all but the last four digits of a tax identification number, financial account number, credit/debit card number, or driver's license number; all but the year of a person's date of birth, a social security number and the address of an employee's home street address.

### **TECHNICAL ISSUES**

N/A

### **OTHER SUBSTANTIVE ISSUES**

As public employees, as defined in pursuant to the Tort Claims Act, NMSA 1978, Section 41-4-3(F), it is unclear if the proposed Act is in conflict with protections provided to employees of the state for actions that might fall within the scope of their job duties, or in response to an IPRA request.

### **ALTERNATIVES**

N/A

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

### **AMENDMENTS**

N/A