| LFC Requester: | Emily Hilla |
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# 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**: 02/20/2025

**Bill Number:** SB420

*Check all that apply:*

Original X Correction ____

Amendment ____ Substitute ____

**Sponsor:** Sen. Katy Dunhigg; Sen. Angel M. Charley.

**Short Title:** Community Privacy & Safety Act

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

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## SECTION II: FISCAL IMPACT

### APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|
| **FY25** | **FY26** | | |
| N/A | N/A | N/A | N/A |
| N/A | N/A | N/A | N/A |

(Parenthesis ( ) indicate expenditure decreases)

### REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|
| **FY25** | **FY26** | **FY27** | | |
| N/A | N/A | N/A | N/A | N/A |
| N/A | N/A | N/A | N/A | N/A |

(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** | N/A | N/A | N/A | N/A | N/A | N/A |

(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: SB 420 establishes data privacy regulations for internet services. It restricts the processing, collecting, and transferring of personal data, particularly sensitive data, without explicit consumer consent. The bill also prohibits discriminatory data use, requires transparency from service providers, and grants consumers rights to access, correct, and delete their data. Enforcement measures include civil penalties and injunctive relief, with specific protections for minors and safeguards against retaliatory service denials.

Section 1: Short title.

Section 2: Definitions section.

Section 3: Establishes mandatory privacy protections for online platforms. It requires default privacy settings to be set at the highest level, mandates clear disclosures of terms of service, and requires accessible tools for consumers to report privacy concerns. It also imposes specific design and operational requirements to ensure platforms protect consumer data by default.

Section 4**:** Imposes restrictions on how online services process consumer data. It prohibits:

- Profiling consumers by default unless necessary for the service's core functionality,
- Processing personal data beyond what is required for the requested service,
- Tracking and processing consumers' geolocation data without consent,
- Designing user interfaces in ways that manipulate or impair consumer autonomy,
- Allowing third parties to monitor consumer location data without notifying them,
- Using or distributing personal data in a way that discriminates 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.
- Processing sensitive data for targeted advertising.

Section 5: Establishes consumer rights over their personal data. Consumers have the right to:

- Access all personal data collected about them,
- Know what entities their data has been shared with,
- Request corrections to inaccurate personal data, and
- Request deletion of their personal data collected by online services.

Section 6**:** Requires third-party data processors that handle consumer data on behalf of an online

service to process and store data in compliance with this act.

Section 7: Prohibits online platforms from requiring consumers to waive their rights under the act. It also bars platforms from retaliating against consumers who exercise their privacy rights, such as by denying service, charging higher fees, or reducing service quality.

Section 8: Grants enforcement authority. As discussed below, the bill would give the NMDOJ some role in enforcing the Act. Affected individuals may seek damages and equitable relief in district court. Small businesses are given a three-year grace period, during which they must be notified of violations and allowed 60 days to remedy them before legal action can proceed.

Section 9: Provides that covered entities who comply with federal laws governing data privacy are "deemed to be in compliance with the requirements of the [Act]" only with respect to data covered by federal law.

Section 10: Limits the Act to not "impose liability in a manner that is inconsistent with federal law," cover data processed by governments, or restrict certain necessary actions.

Section 11: Grants rulemaking authority to the NMDOJ to implement the Act and requires the NMDOJ to periodically report to an interim legislative committee.

**FISCAL IMPLICATIONS**

The Act would grant several new duties to the NMDOJ, including rulemaking authority, a reporting requirement, and possibly administrative enforcement of the Act. In order to effectively discharge these responsibilities, the NMDOJ may require additional funding for additional full-time employee positions.

**SIGNIFICANT ISSUES**

The enforcement mechanism in Section 8(A) is unclear. It empowers the NMDOJ to promulgate rules, and then provides a list of remedies. But the bill does not state whether the NMDOJ, private individuals, or other entities are actually responsible for bringing an action or assessing these penalties. It is further unclear whether proceedings under Section 8(A) are intended to be brought in court or administratively before the NMDOJ pursuant to its rules. If it is intended to create an administrative process, it is unclear whether NMDOJ has the power to issue injunctive relief. Further, the process for appealing an adverse administrative judgement is undefined.

Section 2(Z)(1) exempts "an obscene visual depiction, as defined by state law" from the definition of "publicly available information." It is unclear what this means. Obscenity has a narrow technical definition under federal constitutional law, and no single state statute defines or bans obscene visual depictions per se. NMSA 1978, § 30-38-1 (1977) defines "obscene films" and NMSA 1978, § 30-6A-3 (2016) prohibits the various acts involving "obscene visual or print" media that portrays both a minor and a "prohibited sexual act or simulation of such act[.]" Because the language in Section 2(Z)(1) does not precisely track either definition, its meaning is unclear.

To the extent that the Act would require covered entities to make certain statements or regulate the content of their communications or advertisements, it would raise potential First Amendment concerns. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 562-63 (1980) (stating that, although the First Amendment applies to commercial speech, it

provides less protection than to other forms of protected expression).

Section 3(C)(2) requires covered entities, when they have actual knowledge that a user is a minor, to disable notifications between 10:00pm and 6:00am mountain time "pursuant to federal law." It is unclear what this is a reference to.

The bill could raise preemption concerns under federal data privacy statutes and their implementation regulations. "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." *Id*. In addition, "[where Congress occupies an entire field . . . even complementary state regulation is impermissible." *Arizona v. United States*, 567 U.S. 387, 401 (2012).

**PERFORMANCE IMPLICATIONS**

Because the bill would assign new duties to the NMDOJ without a matching appropriation, the NMDOJ's performance in its existing areas of responsibility could degrade until it received additional resources.

**ADMINISTRATIVE IMPLICATIONS**

See above.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 307: Is an identical act introduced in the House.

HB 410: Provides similar protections and rights but is focused on consumer health data, such as tracking consumers near or around mental health or reproductive health facilities.

HB 430: would regulate health data privacy.

**TECHNICAL ISSUES**

The definition of "actual knowledge" to mean that a covered entity "knows that a consumer is a minor," but the term "actual knowledge" is only used in sentences expressly providing that a covered entity must have "actual knowledge that a consumer . . . is a minor." Accordingly, the definition is redundant.

**OTHER SUBSTANTIVE ISSUES**

None.

**ALTERNATIVES**

None.

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

Status quo.

**AMENDMENTS**

None.