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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Sen. Sedillo Lopez/Rep. Parajon</u> Sensitive Personal Information	<b>LAST UPDATED</b> <u>2/6/2025</u> <b>ORIGINAL DATE</b> <u>2/5/2025</u>
<b>SHORT TITLE</b> <u>Nondisclosure</u>	<b>BILL NUMBER</b> <u>Senate Bill 36</u>
<b>ANALYST</b> <u>Simon</u>	

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		Up to \$100.0	Up to \$100.0		Recurring	Public Liability Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Agency Analysis Received From  
 General Services Department (GSD)  
 Health Care Authority (HCA)  
 Administrative Office of the District Attorneys (AODA)  
 Department of Public Safety (DPS)  
 State Ethics Commission (SEC)  
 State Personnel Office (SPO)  
 Crime Victims Reparation Commission (CVRC)

Agency Analysis was Solicited but Not Received From  
 Taxation and Revenue Department (TRD)

## SUMMARY

### Synopsis of Senate Bill 36

Senate Bill 36 (SB36) would prohibit a state employee from intentionally disclosing sensitive personal information to anyone outside the state agency, except in certain circumstances. Sensitive personal information includes a person’s status as a recipient of public assistance or as a crime victim; a person’s sexual orientation, gender identity, physical or mental disability, medical condition, immigration status, national origin or religion; or a person’s social security number.

The bill authorizes the New Mexico Attorney General, a district attorney or the State Ethics Commission to institute a civil action if a state employee violates the act. The penalty would be \$250 per violation, with a maximum of \$5,000.

The bill also prohibits an employee or contractor of the Taxation and Revenue Department (TRD) or the Traffic Safety Bureau of the Department of Transportation (NMDOT) from disclosing personal information about an individual for the purposes of enforcing federal immigration law.

The effective date of this bill is July 1, 2025.

## FISCAL IMPLICATIONS

Agencies responding to requests for analysis did not report a large fiscal impact from SB36, but some agencies noted additional need for training. The General Services Department (GSD) reported the Risk Management Division (RMD) must defend current and former employees for most actions for civil damages. RMD estimates the bill could result in payments from GSD's public liability fund of \$10 thousand per violation, with half of the costs due to defense attorney costs. While the department notes the possible number of violations per year is unknowable, the department estimated an operating budget impact of up to \$100 thousand.

## SIGNIFICANT ISSUES

The bill would create the Nondisclosure of Sensitive Personal Information Act to prohibit the intentional disclosure of sensitive personal information by state employees except in the following circumstances:

- To carry out a function of the state agency for which the person is employed,
- To comply with a court order or subpoena,
- To comply with the Inspection of Public Records Act,
- To comply with federal law,
- When participating in a judicial proceeding,
- When working with a state contractor that has agreed to be bound by the restrictions of the bill,
- When disclosure would be covered by the Whistleblower Protection Act,
- When disclosure is permitted by the federal Health Insurance Portability and Accountability Act, or
- If the person authorizes the disclosure.

In addition, the bill would amend the Motor Vehicle Code to make disclosure of personal information by employees or contractors of TRD or Traffic Safety Bureau of NMDOT for the purposes of enforcing federal immigration laws a misdemeanor under New Mexico law. It does not appear the proposed changes to the Motor Vehicle Code would provide the same exceptions as those provided in the Nondisclosure of Sensitive Personal Information Act, including allowing for a disclosure to comply with federal law. Analysis from the Administrative Office of the District Attorneys (AODA) notes federal law specifically prohibits a federal, state, or local government entity or official from restricting any other government entity or official from sending information on a person's citizenship or immigration status to the Immigration and Naturalization Service. However, the Health Care Authority states:

Judicial decisions from other jurisdictions generally indicate that jurisdictions are operating within their constitutionally prescribed bounds when they refuse to cooperate with federal immigration authorities. *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 890 (N.D. Ill.

2018); *United States v. California*, 314 F. Supp. 3d 1077, 1101, (E.D. Cal. 2018); *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 328–331 (E.D. Pa. 2018)

The State Ethics Commission notes federal case law from a New Jersey case suggests SB36 could be permissible. That analysis states:

The Fourth Circuit explains that for a federal law to preempt state law, the federal law must (1) represent the exercise of a power conferred on Congress by the Constitution, and (2) the law must be one that regulates private actors and not states. *Id.* at 181 (citing *Murphy v. N.C.A.A.*, 584 U.S. 453, 455 (2018)). The court does not discuss the first requirement but determines that the federal statutes do not satisfy the second requirement. *Id.* at 181. Section 1373 requires that a “State. . . entity or official may not prohibit, or in any way restrict, any government entity or official,” similarly Section 1644 states “no State or local government entity may be prohibited, or in any way restricted,” from communicating personal information to the federal government. *Id.* at 181–82 (citing 8 U.S.C. §§ 1373, 1644) (emphasis original). Because the federal law in question regulates states, and not individuals, it falls short of what is required of a federal law to preempt state law.

Analysis from the Department of Public Safety (DPS) notes the limitations on disclosure could create challenges in some investigations or other public safety activities and suggests a law enforcement exception. Additionally, the department notes the bill could impact current data-sharing agreements that require the department to share information for law enforcement purposes. The department states it does not participate in enforcing immigration laws, but it does maintain close working relationships with federal law enforcement agencies. The bill could present challenges in terms of cooperation between state and federal law enforcement agencies.

## ADMINISTRATIVE IMPLICATIONS

Analysis from DPS notes the bill would require additional training and policies to ensure compliance. Additionally, the bill could impact the department response to requests for public records under the Inspection of Public Records Act, which could potentially result in delays in records requests.

## OTHER SUBSTANTIVE ISSUES

The State Personnel Office notes:

Intentional disclosure of certain protected information already exists in law, and this overlap could lead to confusion. Numerous existing state laws (NMSA Sections 7-1-8; 10-16-3(A); 10-16-6; 14-3A; 43-1-19; IPRA) and federal laws (Health Insurance Portability and Accountability Act (HIPPA), the Americans with Disability Act, and the Family Educational Rights and Privacy Act, United States Social Security Act) provide protections and enforcement to certain categories of data deemed confidential by law.