

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

	Sens. Sedillo Lopez and Stefanics/Reps.	<b>LAST UPDATED</b>	<u>2/18/2025</u>
<b>SPONSOR</b>	<u>Parajon and Herndon</u>	<b>ORIGINAL DATE</b>	<u>2/5/2025</u>
	Sensitive Personal Information	<b>BILL</b>	Senate Bill
<b>SHORT TITLE</b>	<u>Nondisclosure</u>	<b>NUMBER</b>	<u>36/aSTBTC/aSJC</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

Parenttheses ( ) 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)  
 Taxation and Revenue Department (TRD)

#### Agency Analysis was Solicited but Not Received From

Department of Transportation (NMDOT)

## SUMMARY

### Synopsis of SJC Amendment to Senate Bill 36

The Senate Judiciary Committee amendment to Senate Bill 36 (SB36) replaces the term “federal immigration laws” with “the federal Immigration and Nationality Act, except felony criminal provisions of that act.” Additionally, the amendment allows the director of the Motor Vehicle Division to terminate a nongovernmental entity’s access to personal information if the director learns the entity has disclosed information for the purposes of enforcing the Immigration and Nationality Act, other than felony criminal provisions.

### Synopsis of STBTC Amendment to Senate Bill 36

The Tax, Business and Transportation Committee Amendment to Senate Bill 36 (SB36) clarifies that disclosure in the course of a judicial proceeding includes an administrative tribunal.

## Synopsis of Original Bill

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 the Federal Immigration and Nationality Act, except for felony criminal provisions 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 of the unamended bill 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.

TRD notes the Motor Vehicle Division (MVD) does not currently ask for the purpose of a records request and nothing in the bill requires a requestor to disclose the purpose when making

a request. The department states it is unclear how the division would ensure records are not being requested for the purpose of enforcing federal immigration laws. The department notes:

Currently, if a law enforcement agency makes an Inspection of Public Records Act (IPRA) request for information or documents maintained by MVD, TRD staff cannot force the requester to disclose the purpose of the request. IPRA provides, in pertinent part, that, “No person requesting records shall be required to state the reason for inspecting the records.” That provision effectively prohibits department employees from inquiring whether the purpose of an IPRA request is to enforce federal immigration laws.

The department notes it would need to provide training to ensure requests for information related to immigration law enforcement would be denied. Further, the department notes:

New Mexico Interactive is currently contracted with MVD to facilitate the exchange of MVD data allowable under state and federal law. However, the contract would require amendment, and the contractor would need to create and distribute an addendum document requiring all data recipients to agree not to use or disclose records or information to enforce federal immigration law.

Additionally, the department recommends including safe harbor protections for department staff to provide no criminal liability would be attached if a contractor who provided written certification ultimately uses or discloses the information.

## **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.

JWS/hg/sgs