

N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure 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

BILL SUMMARY

House Bill 410 (HB410), the Consumer Information and Data Protection Act, provides processes for the collection and protection of the personal data of residents of New Mexico, exemptions to those processes, investigative authority to the Attorney General, and civil penalties for violations. This act applies to certain entities that conduct business in New Mexico or that produce products or services that are targeted to residents of New Mexico.

The New Mexico Higher Education Department's (NMHED) analysis of this bill focuses on the higher education implications of the proposed legislation. Additional insight may be obtained from other agencies' analyses.

FISCAL IMPLICATIONS

HB410 does not provide an appropriation.

SIGNIFICANT ISSUES

HB410 provides processes for the collection and protection of the personal and sensitive data of consumers - residents of New Mexico, excepting when they are acting in a commercial or employment context. HB410 defines personal data as any information that that is linked or reasonably linkable to an identified or identifiable individual and sensitive data as personal data

that includes data that reveals racial or ethnic origin, religious beliefs, mental or physical health condition or diagnosis, sex life, sexual orientation, or citizenship or immigration status; health data; data concerning an individual's status as a victim of a crime; precise geolocation data; and more.

HB410 applies to certain entities - individuals, associations, companies, limited liability companies, corporations, partnerships, sole proprietorships, trusts, or other legal entities - that conduct business in New Mexico or that produce products or services that are targeted to residents of New Mexico.

HB410 defines two categories of data processors. Controllers are the entities in the previous paragraph who alone or jointly with others determine the purpose and means of processing personal data. Processors are those same entities who process personal data on behalf of a controller.

The first batch of consumer protections center around protecting personal health data, including protections around identifying individuals' locations when in proximity to a mental health facility or reproductive or sexual health facility, and also including protections against selling or offering to sell personal health data without consent.

The provisions of HB410 do not apply to, among others, any body, authority, board, bureau, commission, district, or agency of the state or of any political subdivision of the state; and any institution of higher education.

Information and data that covered by certain other laws are exempted from the protections in HB410. Some of these exemptions apply to information and data already protected by the Health Insurance Portability and Accountability Act (HIPAA) and other laws protecting human subjects involved in research. Information and data regulated by the Family Educational Rights and Privacy Act (FERPA) are also exempted.

HB410 also provides consumer rights related to personal data, including the right to confirm whether or not a controller is processing the consumer's personal data and to access such data, to correct inaccuracies in the consumer's personal data, to delete personal data provided by or obtained about the consumer, to obtain a copy of the consumer's personal data that the consumer previously provided to the controller, and to opt out of the processing of the personal data for purposes of targeted advertising, the sale of personal data, or profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer.

HB410 gives the Attorney General exclusive authority to enforce its provisions, including initiating civil penalties of up to ten thousand dollars (\$10,000) per violation.

HB410 provides a range of consumer data protections along with controller and processor responsibilities. NMHED and public higher education institutions (HEIs) in New Mexico appear to be exempted from HB410's provisions as groups directly specified as exempt, and FERPA- and HIPAA-protected data, two categories of data that NMHED and HEIs work with, are also

exempted. An assumption is that FERPA- and HIPAA-protected data are exempted from HB410's provisions since those data are already covered under their respective laws.

Higher education students, faculty, and staff, along with NMHED staff, could benefit from HB410's provisions to protect personal and sensitive information outside of their roles in a commercial or employment context, including as employees, owners, directors, contractors, and other roles.

HB410 speaks about controllers and processors working with third parties. NMHED and HEIs may share information with third parties, specifically third parties who are not state agencies or HEIs. If they share FERPA- or HIPAA-protected data, then, following the assumption in a previous paragraph, those data will remain protected by their respective laws, so HB410 does not need to provide further protections. But NMHED or HEIs may share other information that is not exempted from HB410, and it is unclear how HB410's protections apply once a third party who is not exempted as a group receives that data.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

NMHED or HEIs may need additional administrative staff familiar with HB410 in the situation where third parties they work with become subject to HB410's provisions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

2022 House Joint Resolution 8 proposed to amend the Constitution of New Mexico to create an Office of Consumer Affairs to promote and protect the interests of the consumers of New Mexico. This joint resolution was postponed indefinitely. This office could have overseen consumer information and data similar to what we see in HB410.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

Agencies, HEIs, and other groups who are referenced in HB410 could elect to implement provisions similar to those in HB410 as part of larger data confidentiality and security practices.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Consumer Information and Data Protection Act will not exist in law, and its processes, protections, exemptions, and other provisions will not protect consumer information and data for New Mexico residents.

AMENDMENTS

N/A