

**BILL ANALYSIS AND FISCAL IMPACT REPORT**  
**Taxation and Revenue Department**

**February 7, 2025**

**Bill:** SB-36

**Sponsor:** Senator Antoinette Sedillo Lopez and Representative Cristina Parajon

**Short Title:** Sensitive Personal Information Nondisclosure

**Description:** SB36 would prohibit the disclosure of sensitive personal information by state agency employees, with specific exceptions, and amend the Motor Vehicle Code to align with these provisions. It also prescribes penalties for violations. Key provisions include:

- Definitions:
  - "Sensitive personal information" includes:
    - 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.
    - Social security number (including individual tax identification number).
- Prohibition on Disclosure:
  - State agency employees are prohibited from intentionally disclosing sensitive personal information acquired through their position, except under specific circumstances:
    - Necessary for state agency functions.
    - Compliance with court orders or subpoenas.
    - Required by the Inspection of Public Records Act or federal statute.
    - Judicial proceedings or court records.
    - State contractors need the information for contractual obligations, with a written agreement to confidentiality.
    - Whistleblower Protection Act disclosures.
    - Permitted by the Health Insurance Portability and Accountability Act (HIPAA).
    - With written consent from the individual.
- Enforcement and Penalties:
  - The attorney general, district attorney, and state ethics commission can institute civil actions for violations.
    - Civil penalties are set at \$250 per violation, not exceeding \$5,000.
- Amendments to the Motor Vehicle Code:
  - Prohibits disclosure of personal information obtained in connection with driver's licenses, vehicle titling/registration, Ignition Interlock Licensing Act, and identification cards, except under specific conditions.

- Prohibits disclosure of personal information for enforcing federal immigration laws.
- Requires nongovernmental entities receiving personal information to certify non-use for federal immigration law enforcement.

**Effective Date:** July 1, 2025

**Taxation and Revenue Department Analyst:** Htet Gonzales and Sean Bulian – Motor Vehicle Division

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		

\* In thousands of dollars. Parentheses ( ) indicate a revenue loss. \*\* Recurring (R) or Non-Recurring (NR).

**Methodology for Estimated Revenue Impact:** None.

**Policy Issues:**

- MVD is currently not required to ask the requestor for the purpose of a records request. To ensure compliance with SB36, MVD would be required to begin requesting the purpose of a records request. However, SB36 does not require requestors to disclose such information to MVD, making it unclear how MVD personnel would ensure records are not being requested for unlawful purposes.

**Technical Issues:**

- Tax & Rev recommends the following revisions to the bill's current language:
  - Section 3, Page 3, lines 1 and 2 (Chapter 10, Section 3 (E)) - revised to read: “made to or by a court or administrative tribunal in the course of a judicial or administrative proceeding or made in a court or administrative tribunal record.”
    - Social Security numbers and tax identification numbers are commonly used in tax hearings conducted by the Administrative Hearings Office.
- Section 66-2-7.1 (B) liability:
  - SB36 will subject Tax & Rev staff to criminal liability based on the purpose of requests for information. As currently written, SB36 provides Tax & Rev staff no right to or way of knowing the requestor’s purpose.
  - Currently, if a law enforcement agency makes an IPRA request for information or documents maintained by MVD, Tax & Rev staff cannot force the requester to disclose the purpose of the request.
    - The Inspection of Public Records Act 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.
    - Prohibiting the disclosure of personal information for purposes of enforcing

“federal immigration laws” may be unenforceable as too vague or overbroad.

- Section 66-2-7.1 (C):
  - SB36 does not clearly identify whether it is intended to apply prospectively (to contracts that have not been executed before the effective date of the legislation) or whether it would affect any existing contracts.
    - MVD recommends revising SB36 to clearly indicate whether its provisions apply to contracts executed after SB36’s effective date.
  - MVD recommends providing safe harbor protection for the department or division’s compliance with the written certification required under subsection (C).
    - No criminal liability should be attached if the records or information provided are ultimately used or disclosed for the purposes of enforcing federal immigration law.

### **Other Issues:**

- Personal Information v. Sensitive Personal Information:
  - SB36 provides a new definition for “Sensitive Personal Information” and makes it unlawful to disclose sensitive personal information. However, it is unclear what, if any, relationship “Sensitive Personal Information” has with “Personal Information.”
    - Under SB36, MVD and its contractors are prohibited from disclosing “personal information,” not “sensitive personal information.” SB36 does not state that "personal information" includes "sensitive personal information,"
- Federal Immigration and Nationality Act (INA):
  - SB36’s changes to NMSA § 66-2-7.1 likely violate the Federal Immigration and Nationality Act (INA)
    - Under 8 U.S.C. § 1373 prohibits any governmental entity from restricting the receipt, maintenance, or exchange of information regarding the citizenship or immigration status of any individual.
    - Unlike SB36’s prohibition on disclosure of “Sensitive Personal Information,” which explicitly exempts disclosure “required by federal statute,” the changes to NMSA § 66-2-7.1 do not include a similar savings exemption.

### **Administrative & Compliance Impact:**

- MVD will provide training to employees to ensure that if a request for MVD records is related to the enforcement of federal immigration laws, the data request will be denied. The MVD manual will require updates to include the new and amended sections of SB36.
- SB36 requires that any nongovernmental entity that contracts with MVD shall certify in writing, prior to receiving access to records or information, that the entity will not use or disclose records

or information for the purpose of enforcing federal immigration law.

- New Mexico Interactive (NMI) is currently contracted with MVD to facilitate the exchange of MVD data allowable under state and federal law. However, NMI's contract would require amendment, and NMI 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.

**Related Bills:** SB75 (2021)