

LFC Requestor: Self Assigned

**2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS**

Section I: General

Chamber: Senate

Category: Bill

Number: SB36

Type: Introduced

Date (of THIS analysis): 2/7/2025

Sponsor(s): Antoinette Sedillo Lopez and Cristina Parajon

Short Title: Sensitive Personal Information Nondisclosure

Reviewing Agency: Agency 665 - Department of Health

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$0	\$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$0	\$0	\$0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	N/A	N/A

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: SB250 (concerning state enforcement of federal immigration laws)

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

SB36, the "Nondisclosure of Sensitive Personal Information Act", proposes to create new provisions within Chapter 10 NMSA to prohibit state employees from "intentionally disclosing sensitive personal information acquired by virtue of the employee's position with a state agency to anyone outside the state agency". "Sensitive personal information" is defined in the bill as an individual's: (1) status as a recipient of public assistance or as a crime victim; (2) sexual orientation, gender identity, physical or mental disability, medical condition, immigration status, national origin or religion; and (3) social security number or individual tax I.D. number.

The bill identifies a series of exceptions to the non-disclosure requirement, including:

- 1) Disclosures necessary to carry out the functions of the governmental agency;
- 2) Disclosures necessary to comply with an order or subpoena issued by a court of this state or a United States district court;
- 3) Disclosures required by the Inspection of Public Records Act (IPRA);
- 4) Disclosures required by federal statute;
- 5) Disclosures made to or by a court in the course of a judicial proceeding or made in a court record;
- 6) Disclosures made to a state contractor that needs the sensitive personal information to perform its obligations under the contract and has agreed in writing to be bound by the same restrictions on disclosure that would be imposed on state employees under the bill;
- 7) Disclosures made pursuant to the Whistleblower Protection Act;
- 8) Disclosures expressly permitted by the federal Health Insurance Portability and Accountability Act (HIPAA); and
- 9) Disclosures made with the written consent of the person whose information would be disclosed.

SB36 would also require that the Taxation and Revenue Department not disclose personal information about an individual obtained in connection with a driver's license or permit to

a federal, state, or local governmental or non-governmental entity for the purpose of enforcing federal immigration laws.

SB36 would authorize the Attorney General, a district attorney, and the State Ethics Commission to institute a civil action in district court for violation of the statute. Penalties could include fines of up to \$250 for each violation, not to exceed \$5,000 in total.

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

SB36 contains an exception for disclosures required by federal law but does not contain an exception for disclosures expressly *permitted* by federal confidentiality laws. This omission could present difficulties for state agencies. For example, federal drug and alcohol treatment rules at 42 CFR Part 2 permit (but do not require) various disclosures of health information to be made, including disclosures to qualified researchers for research purposes. SB36 may effectively prohibit those otherwise permissible disclosures from being made. Although SB36 contains an exception for disclosures “necessary to carry out the functions of the agency”, not all disclosures permitted by federal laws fit within that description. For example, medical research to be conducted by a third party would not necessarily be conducted on behalf of the Department of Health and could not realistically be portrayed as “necessary” to carry out the agency’s functions.

SB36 could prohibit state agencies that are bound by the confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA) from making educational record disclosures that are permitted, but not required, by that federal law. The Department of Health follows FERPA while operating a school within Sequoyah Adolescent Treatment Center. FERPA permits (but does not require) various disclosures, without an authorization from the affected person, to be made to students’ parents; to other schools, in certain circumstances; and for financial aid purposes. SB36 may effectively prohibit FERPA-covered state agencies from disclosing a social security numbers, a statement of a student’s medical condition, etc., to these recipients. Here again, not all these disclosures would necessarily be considered “necessary to carry out the function of a state agency”.

Similarly, the fact that SB36 does not include an exception to its nondisclosure requirement for disclosures that are either permitted or required by state law could have unforeseen adverse impacts.

SB36 would create an exception to the non-disclosure requirement for disclosures “required by the Inspection of Public Records Act”. However, there are no disclosures required by IPRA, other than the disclosure of “public records” that are not otherwise made confidential by applicable laws. Since the purpose of SB36 is to make certain records non-public, it’s unclear what the effect of this IPRA exception would be. This text could give the misimpression that if a request is made via IPRA, the requested sensitive personal information may be disclosed.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

Yes No

SB36 could effectively prohibit NMDOH from sharing information concerning persons enrolled in drug and alcohol treatment programs with qualified researchers who request that information for research purposes. The bill could also have other unforeseen impacts on the Department's ability to disclose health information and other "sensitive personal information".

- Is this proposal related to the NMDOH Strategic Plan? Yes No

Goal 1: We expand equitable access to services for all New Mexicans

Goal 2: We ensure safety in New Mexico healthcare environments

Goal 3: We improve health status for all New Mexicans

Goal 4: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?
 Yes No N/A
- If there is an appropriation, is it included in the LFC Budget Request?
 Yes No N/A
- Does this bill have a fiscal impact on NMDOH? Yes No

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? Yes No

See "Significant Issues" and "Performance Implications", above.

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

SB36 relates to SB250, a bill that would more directly prohibit state and local agencies from assisting federal government officials to identify, apprehend, arrest, or detain a person based on a suspicion that the individual has entered the United States in violation of federal immigration laws.

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? Yes No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? Yes No
- Does this bill conflict with federal grant requirements or associated regulations?
 Yes No

- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? Yes No

See “Significant Issues”, above.

8. DISPARITIES ISSUES

None.

9. HEALTH IMPACT(S)

None.

10. ALTERNATIVES

SB250 is a related bill that would more directly prohibit state and local agencies from assisting federal government officials in their efforts to identify, apprehend, arrest, or detain a person based on a suspicion that the individual has entered the United States in violation of federal immigration laws. SB250 does not present the same practical complications for state agencies that SB36 presents and might accomplish the same objectives.

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If SB36 is not enacted, the Nondisclosure of Sensitive Personal Information Act will not be adopted to prohibit the disclosure of various personal information by state government employees.

12. AMENDMENTS

None.