

LFC Requester:	Simon
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/29/2025 *Check all that apply:*
Bill Number: SB 36 Original Correction
 Amendment Substitute

Sponsor: Sen. Antoinette Sedillo Lopez **Agency Name and Code** State Ethics Commission (410)
Short Title: Sensitive Personal Information Nondisclosure **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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

Synopsis: Senate Bill 36, generally, modifies the types of information that public bodies may disclose. The bill proposes to do this in two significant ways. First, it creates a new section in NMSA 1978, Section 10. Second, it adds two subsections to NMSA 1978, Section 66-2-7.1.

Senate Bill 36 would create a new section in NMSA 1978, Chapter 10 that would protect what the bill deems “sensitive personal information.” Senate Bill 36 defines “sensitive personal information” to mean an individual’s:

- (1) status of 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, including a tax identification number.

To protect this information, Senate Bill 36 proposes a blanket prohibition on state employees intentionally disclosing sensitive personal information. However, the bill includes nine exceptions, generally permitting disclosure when it is either necessary by law, or otherwise disclosed in some public manner.

Senate Bill 36 assigns enforcement duties related to these provisions to the Attorney General, district attorneys, and the State Ethics Commission, granting these agencies authority to institute civil actions in district court if a violation has occurred, or, if possible, to prevent a violation. Senate Bill 36 additionally assigns a penalty of \$250.00 per violation, not to exceed \$5,000.00.

Separate from the creation of a new section in Chapter 10, Senate Bill 36 also amends NMSA 1978, 66-2-7.1. This section of statute relates to the duty of nondisclosure employees of the Department of Motor Vehicles and Traffic Safety Bureau have for information obtained in connection to properly licensing and permitting individuals. Senate Bill 36 would add two subsections that would prohibit such employees and related non-governmental contractors from disclosing personal information to assist the federal government in enforcing federal immigration law.

FISCAL IMPLICATIONS

The addition of another law for enforcement by the Commission will likely increase the agency’s current workload. However, the Commission does not anticipate significant fiscal implications stemming from this change.

SIGNIFICANT ISSUES

The amendments to Section 66-2-7.1 may prove to be problematic. As of January 21, 2025, the policy of the United States Department of Justice (DOJ) is that the Supremacy Clause in the United States Constitution “require state and local actors to comply with the Executive Branch’s immigration enforcement initiatives,” that “federal law prohibits state and local actors

from resisting, obstructing and otherwise failing to comply with lawful immigration-related commands,” and that failure to comply with federal policy may lead to an investigation into “incidents involving any such misconduct for protentional prosecutions.” Memorandum from the Action Deputy Attorney General to All Department of Justice Employees (Jan. 21, 2025) https://www.washingtonpost.com/documents/2f9af176-72c5-458a-adc4-91327aa80d11.pdf?itid=hp-top-table-high_p001_f002. The DOJ partially bases this policy on 8 U.S.C. 1373(a), which states:

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

Of course, a memorandum outlining immigration policy is not law, and federal case law suggests that prohibitions like those in Senate Bill 36 are permissible, at least in relation to 8 U.S.C. 1373. For example, in 2021, there was federal litigation over a similar law in New Jersey. There, the New Jersey Attorney General issued a directive that prohibited state agencies from assisting federal law enforcement in immigration procedures and sharing non-public personal information. *Ocean County Board of Commissioners v. Attorney General of the State of New Jersey*, 8 F.4th 176, 178 (4th Cir. 2021). In response, Ocean County sued the state attorney general claiming that the directive was preempted by 8 U.S.C. Sections 1373 and 1644. *Id.* at 179. 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. *Id.* at 182.

Turning back to the DOJ memo, if the federal government is relying on 8 U.S.C. 1373 to coerce state actors with complying in federal immigration policy, it may be that Senate Bill 36 would not be preempted based on the analysis described in the Fourth Circuit case above. However, that case is from the Fourth Circuit Court of Appeals and New Mexico sits in the Tenth Circuit Court of Appeals. Because of the difference in circuits, *Ocean County Board of Commissioners v. Attorney General of the State of New Jersey* is not binding on the New Mexico U.S. District Court. It is impossible that if a similar legal challenge is initiated in New Mexico a federal court could determine this law is preempted by federal law.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Subsection A of the definitions section of Senate Bill 36 states:

A. "sensitive personal information" means 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; and

There is no fourth item in this list. Having the final item include "and" as its last word is confusing and grammatically suggests the second definition is subsumed into the first definition. Additionally, the definition for "social security number" to include a "tax identification number" is not intuitive as the two numbers serve different functions. IPRA for example in NMSA 1978, § 14-2-6 defines "protected personal identifier information" to separate "social security number" from "taxpayer identification number" with only all but the last four digits of the taxpayer identification number being protected but including the entire social security number. Thus, Senate Bill 36 would make confidential information that is likely accessible under IPRA.

OTHER SUBSTANTIVE ISSUES

Senate Bill 36's prohibition on intentionally disclosing personal information only applies to state agency employees. If passed as written, public officers and employees of counties, municipalities, and other political subdivisions of the state would not be subject to the prohibition.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. Individuals who have their information intentionally disclosed by public officials will not be able to turn to civil law enforcement agencies in New Mexico for assistance.

AMENDMENTS