

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 75

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO GOVERNMENTAL CONDUCT; PROHIBITING DISCLOSURE OF SENSITIVE PERSONAL INFORMATION BY STATE AGENCY EMPLOYEES; PROVIDING EXCEPTIONS; PRESCRIBING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 10 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.-- Sf11→**This**←Sf11

.220093.2AIC March 3, 2021 (9:04am)

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Sfll→Sections 1 through 4 of this←Sfll act may be cited as the "Nondisclosure of Sensitive Personal Information Act".

SECTION 2. A new section of Chapter 10 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Nondisclosure of Sensitive Personal Information Act:

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

B. "social security number" includes an individual tax identification number."

SECTION 3. A new section of Chapter 10 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SENSITIVE PERSONAL INFORMATION--EXCEPTIONS.--A state agency employee shall not intentionally disclose sensitive personal information acquired by virtue of the employee's position with a state agency to anyone outside the state agency except when such disclosure is:

A. necessary to carry out a function of the state agency;

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B. necessary to comply with an order or subpoena issued by a court of this state or a United States district court;

C. required by the Inspection of Public Records Act;

D. required by federal statute;

E. made to or by a court in the course of a judicial proceeding or made in a court record;

F. 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 are imposed on state employees by this section;

G. made pursuant to the Whistleblower Protection Act;

H. expressly permitted by the federal Health Insurance Portability and Accountability Act of 1996 and associated regulations; or

I. made with the written consent of the person whose information would be disclosed."

SECTION 4. A new section of Chapter 10 NMSA 1978 is enacted to read:

"[NEW MATERIAL] ENFORCEMENT--PENALTIES.--The attorney general, a district attorney and the state ethics commission may institute a civil action in district court if a violation has occurred or to prevent a violation of the Nondisclosure of Sensitive Personal Information Act. Penalties for a violation

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of that act shall be a civil penalty of two hundred fifty dollars (\$250) for each violation, but not to exceed five thousand dollars (\$5,000)."

Sf11→SECTION 5. Section 10-16G-9 NMSA 1978 (being Laws 2019, Chapter 86, Section 9) is amended to read:

"10-16G-9. COMMISSION JURISDICTION--COMPLIANCE PROVISIONS.--

A. The commission has jurisdiction to enforce the applicable civil compliance provisions for public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers of:

- (1) the Campaign Reporting Act;
- (2) the Financial Disclosure Act;
- (3) the Gift Act;
- (4) the Lobbyist Regulation Act;
- (5) the Voter Action Act;
- (6) the Governmental Conduct Act;
- (7) the Procurement Code;
- (8) the Nondisclosure of Sensitive Personal

Information Act;

~~(8)~~ (9) the State Ethics Commission Act; and

~~(9)~~ (10) Article 9, Section 14 of the constitution of New Mexico.

B. All complaints filed with a public agency regarding the statutes listed in Subsection A of this section shall be forwarded to the commission.

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C. The commission may choose to act on some or all aspects of a complaint and forward other aspects of a complaint to another state or federal agency with jurisdiction over the matter in accordance with Subsection E of this section.

D. If the commission decides not to act on a complaint, whether the complaint was filed with the commission or forwarded from another public agency, or decides only to act on part of a complaint, the commission shall promptly forward the complaint, or any part of a complaint on which it does not wish to act, to the public agency that has appropriate jurisdiction within ten days of the decision. The complainant and respondent shall be notified in writing when the complainant's request has been forwarded to another agency unless otherwise provided pursuant to Subsection H of Section ~~[10 of the State Ethics Commission Act]~~ 10-16G-10 NMSA 1978.

E. The commission may share jurisdiction with other public agencies having authority to act on a complaint or any aspect of a complaint. Such shared jurisdiction shall be formalized through an agreement entered into by all participating agencies involved with the complaint and the director. The commission may also investigate a complaint referred to the commission by the legislature, or a legislative committee, in accordance with an agreement entered into pursuant to policies of the New Mexico legislative council or rules of the house of representatives or senate.

F. The commission may file a court action to

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enforce the civil compliance provisions of an act listed in Subsection A of this section. The court action shall be filed in the district court in the county where the respondent resides."←Sf11

SECTION Sf11→5.←Sf11 Sf11→6.←Sf11 EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.

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