

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1 is new material that adds a new section of Chapter 10 NMSA 1978 (Public Officers and Employees) to be named the “Nondisclosure of Sensitive Personal Information Act.”

Section 2 is a new section of the Act entitled “Definitions” to define “sensitive personal information” as (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 which includes an individual tax identification number.

Section 3 is a new section of the Act entitled “Sensitive Personal Information – Exceptions” that provides that a state agency employee shall not intentionally disclose sensitive personal information acquired by virtue of that employee’s position with a state agency to anyone outside the state agency except when the disclosure is (A) necessary to carry out a function of the state agency; (B) necessary to comply with an order or subpoena by a New Mexico court 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 the contractor’s obligations under the contract, and as agreed in writing to be bound by the same restrictions as imposed on state employees under this section; (G) made pursuant to the Whistleblower Protection Act; (H) expressly permitted by the federal Health Insurance Portability and Accountability Act of 1996; or (I) made with the written consent of the person whose information would be disclosed.

Section 4 is a new section of the Act entitled “Enforcement – Penalties” which provides that 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 Act. Penalties for a violation of the act shall be a civil penalty of \$250 for each violation not to exceed \$5000.

Section 5 amends Section 66-2-7.1 entitled “Motor Vehicle-Related Records – Confidential” of the Motor Vehicle Code. This section makes it unlawful for any department or bureau employee or contractor or former employee to disclose any personal information about an individual obtained by the department or bureau in connection with a driver’s license or permit, the administration of the Ignition Interlock Licensing Act with eleven specified exceptions.

Subsection B is added as new material to provide that it is unlawful for a department or bureau employee or contractor to disclose to a federal, state or local governmental agency or nongovernmental entity for purposes of enforcing federal immigration laws any personal information about an individual obtained by the department or bureau in connection with a driver’s license or permit, the titling or registration of a vehicle, the administration of the

Ignition Interlock Act and the interlock device fund or an identification card issued by the department pursuant to the Motor Vehicle Code.

Subsection C is added as new material to provide that whenever the department or the division enters into a contract with a nongovernmental entity for the disclosure of personal information pursuant to Subsection A, the department or division shall require that the nongovernmental entity that receives or has access to records or information from the department or division shall certify in writing, before receiving the information and as a condition or renewal of any agreement for receipt, that the entity shall not use or disclose the information for the purposes of enforcing federal immigration law.

Section 6 provides the effective date for these provisions as July 1, 2025.

Amendments

Section 3, Subsection E is changed from “made to or by a court in the course of a judicial proceeding or made in a court record” to “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.”

Section 5, Subsections B and C change the language of “federal immigration laws” to “the federal Immigration and Nationality Act, except felony criminal provisions of that act.”

Subsection C also adds this language: “If the director of the motor vehicle division of the department determines a nongovernmental entity has used or disclosed records or information for the purpose of enforcing the federal Immigration and Nationality Act other than felony criminal provisions of that act, the director may revoke the nongovernmental entity’s access to personal information pursuant to Subsection A of this section.”

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

Section 4 of the bill increases the obligations of the attorney general, district attorney, and state ethics commission to enforce civil penalties under the act. This could require funds for training, new staff, and/or IT resources to implement.

SIGNIFICANT ISSUES

Section 5 of the Act imposes misdemeanor criminal liability on employees and contractors of the Motor Vehicle Department to disclose any personal information for purposes of enforcing federal immigration laws. The section contains no mens rea; that is, it does not require the person to knowingly disclose it for the purpose of enforcing federal immigration laws.

Such a prohibition may also be contrary to federal law. 8 USCS § 1373(a) which provides:

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.

See also City of Albuquerque v. Barr, 515 F.Supp.3d 1163, 1178 (D.N.M. 2021) (noting that § 1373 “declares that a state or local government may not prohibit or restrict its own officials from communicating information regarding the citizenship or immigration status of any individual to the INS.”); 8 USCS § 1644 (“Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.”).

Amendments

None noted.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 87 seeks to prohibit adopting any law that prohibits or restricts use of resources or personnel to assist in enforcement of federal immigration laws or that interferes with such federal immigration laws.

TECHNICAL ISSUES

n/a

OTHER SUBSTANTIVE ISSUES

n/a

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

n/a