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SENATE BILL 240

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Michael S. Sanchez

AN ACT

**RELATING TO COURTS; EXPANDING THE JURY POOL TO INCLUDE PERSONAL
INCOME TAX FILERS; UPDATING LANGUAGE ON RANDOM SELECTION OF
JURORS TO REFLECT NEW TECHNOLOGY; RECONCILING MULTIPLE
AMENDMENTS FROM LAWS 2003.**

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

**Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965,
Chapter 248, Section 13, as amended by Laws 2003, Chapter 398,
Section 5 and by Laws 2003, Chapter 439, Section 1) is amended
to read:**

**"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
INFORMATION.--It is unlawful for an employee of the department
or a former employee of the department to reveal to an
individual other than another employee of the department
information contained in the return of a taxpayer made pursuant**

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1 to a law subject to administration and enforcement under the
2 provisions of the Tax Administration Act or any other
3 information about a taxpayer acquired as a result of ~~[his]~~ the
4 employee's employment by the department and not available from
5 public sources, except:

6 A. to an authorized representative of another
7 state; provided that the receiving state has entered into a
8 written agreement with the department to use the information
9 for tax purposes only and that the receiving state has enacted
10 a confidentiality statute similar to this section to which the
11 representative is subject;

12 B. to a representative of the secretary of the
13 treasury or the secretary's delegate pursuant to the terms of a
14 reciprocal agreement entered into with the federal government
15 for exchange of the information;

16 C. to the ~~multistate tax commission~~ or its
17 authorized representative; provided that the information is
18 used for tax purposes only and is disclosed by the ~~multistate~~
19 ~~tax commission~~ only to states that have met the requirements of
20 Subsection A of this section;

21 D. to a district court, an appellate court or a
22 federal court:

23 (1) in response to an order thereof in an
24 action relating to taxes to which the state is a party and in
25 which the information sought is about a taxpayer who is party

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1 to the action and is material to the inquiry, in which case
2 only that information may be required to be produced in court
3 and admitted in evidence subject to court order protecting the
4 confidentiality of the information and no more;

5 (2) in an action in which the department is
6 attempting to enforce an act with which the department is
7 charged or to collect a tax; or

8 (3) in any matter in which the department is a
9 party and the taxpayer has put ~~his~~ the taxpayer's own
10 liability for taxes at issue, in which case only that
11 information regarding the taxpayer who is party to the action
12 may be produced, but this shall not prevent the disclosure of
13 department policy or interpretation of law arising from
14 circumstances of a taxpayer who is not a party;

15 E. to the taxpayer or to the taxpayer's authorized
16 representative; provided, however, that nothing in this
17 subsection shall be construed to require any employee to
18 testify in a judicial proceeding except as provided in
19 Subsection D of this section;

20 F. information obtained through the administration
21 of a law not subject to administration and enforcement under
22 the provisions of the Tax Administration Act to the extent that
23 release of that information is not otherwise prohibited by law;

24 G. in a manner, for statistical purposes, that the
25 information revealed is not identified as applicable to an

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1 individual taxpayer;

2 H. with reference to information concerning the tax
3 on tobacco imposed by Sections 7-12-1 through 7-12-13 and
4 Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of the
5 legislature for a valid legislative purpose or to the attorney
6 general for purposes of Section 6-4-13 NMSA 1978 and the master
7 settlement agreement defined in Section 6-4-12 NMSA 1978;

8 I. to a transferee, assignee, buyer or lessor of a
9 liquor license, the amount and basis of an unpaid assessment of
10 tax for which [~~his~~] the transferor, assignor, seller or lessee
11 is liable;

12 J. to a purchaser of a business as provided in
13 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis
14 of an unpaid assessment of tax for which the purchaser's seller
15 is liable;

16 K. to a municipality of this state upon its request
17 for a period specified by that municipality within the twelve
18 months preceding the request for the information by that
19 municipality:

20 (1) the names, taxpayer identification numbers
21 and addresses of registered gross receipts taxpayers reporting
22 gross receipts for that municipality under the Gross Receipts
23 and Compensating Tax Act or a local option gross receipts tax
24 imposed by that municipality. The department may also release
25 the information described in this paragraph quarterly or upon

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1 such other periodic basis as the secretary and the municipality
2 may agree; and

3 (2) information indicating whether persons
4 shown on a list of businesses located within that municipality
5 furnished by the municipality have reported gross receipts to
6 the department but have not reported gross receipts for that
7 municipality under the Gross Receipts and Compensating Tax Act
8 or a local option gross receipts tax imposed by that
9 municipality.

10 The employees of municipalities receiving information as
11 provided in this subsection shall be subject to the penalty
12 contained in Section 7-1-76 NMSA 1978 if that information is
13 revealed to individuals other than other employees of the
14 municipality in question or the department;

15 L. to the commissioner of public lands for use in
16 auditing that pertains to rentals, royalties, fees and other
17 payments due the state under land sale, land lease or other
18 land use contracts; the commissioner of public lands and
19 employees of the commissioner are subject to the same
20 provisions regarding confidentiality of information as
21 employees of the department;

22 M the department shall furnish, upon request by
23 the child support enforcement division of the human services
24 department, the last known address with date of all names
25 certified to the department as being absent parents of children

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1 receiving public financial assistance. The child support
2 enforcement division personnel shall use such information only
3 for the purpose of enforcing the support liability of the
4 absent parents and shall not use the information or disclose it
5 for any other purpose; the child support enforcement division
6 and its employees are subject to the provisions of this section
7 with respect to any information acquired from the department;

8 N. the department shall furnish to the information
9 systems division of the general services department, by
10 electronic media, a database containing New Mexico personal
11 income tax filers by county, which shall be updated quarterly.
12 The database information shall be used only for the purpose of
13 producing the random jury list for the selection of petit or
14 grand jurors for the district and magistrate courts pursuant to
15 Section 38-5-3 NMSA 1978;

16 [~~N.~~] 0. with respect to the tax on gasoline imposed
17 by the Gasoline Tax Act, the department shall make available
18 for public inspection at monthly intervals a report covering
19 the number of gallons of gasoline and ethanol blended fuels
20 received and deducted, and the amount of tax paid by each
21 person required to file a gasoline tax return or pay gasoline
22 tax in the state of New Mexico;

23 [~~0.~~] P. the identity of a rack operator, importer,
24 blender, supplier or distributor and the number of gallons
25 reported on returns required under the Gasoline Tax Act,

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1 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a
2 rack operator, importer, blender, distributor or supplier, but
3 only when it is necessary to enable the department to carry out
4 its duties under the Gasoline Tax Act, the Special Fuels
5 Supplier Tax Act or the Alternative Fuel Tax Act;

6 ~~[P.]~~ Q. the department shall release upon request
7 only the names and addresses of all gasoline or special fuel
8 distributors, wholesalers and retailers to the New Mexico
9 department of agriculture, the employees of which are thereby
10 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
11 that information is revealed to individuals other than
12 employees of either the New Mexico department of agriculture or
13 the department;

14 ~~[Q.]~~ R. the department shall answer all inquiries
15 concerning whether a person is or is not a registered taxpayer
16 for tax programs that require registration, but nothing in this
17 subsection shall be construed to allow the department to answer
18 inquiries concerning whether a person has filed a tax return;

19 ~~[R.]~~ S. upon request of a municipality or county of
20 this state, the department shall permit officials or employees
21 of the municipality or county to inspect the records of the
22 department pertaining to an increase or decrease to a
23 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
24 1978 for the purpose of reviewing the basis for the increase or
25 decrease. The municipal or county officials or employees

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1 receiving information provided in this subsection shall not
2 reveal that information to any person other than another
3 employee of the municipality or the county, the department or a
4 district court, an appellate court or a federal court in a
5 proceeding relating to a disputed distribution and in which
6 both the state and the municipality or county are parties.
7 Information provided pursuant to provisions of this subsection
8 that is revealed other than as provided in this subsection
9 shall subject the person revealing the information to the
10 penalties contained in Section 7-1-76 NMSA 1978;

11 ~~[S.]~~ T. to a county of this state that has in
12 effect a local option gross receipts tax imposed by the county
13 upon its request for a period specified by that county within
14 the twelve months preceding the request for the information by
15 that county:

16 (1) the names, taxpayer identification numbers
17 and addresses of registered gross receipts taxpayers reporting
18 gross receipts either for that county in the case of a local
19 option gross receipts tax imposed on a countywide basis or only
20 for the areas of that county outside of any incorporated
21 municipalities within that county in the case of a county local
22 option gross receipts tax imposed only in areas of the county
23 outside of any incorporated municipalities. The department may
24 also release the information described in this paragraph
25 quarterly or upon such other periodic basis as the secretary

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1 and the county may agree;

2 (2) in the case of a local option gross
3 receipts tax imposed by a county on a countywide basis,
4 information indicating whether persons shown on a list of
5 businesses located within the county furnished by the county
6 have reported gross receipts to the department but have not
7 reported gross receipts for that county under the Gross
8 Receipts and Compensating Tax Act or a local option gross
9 receipts tax imposed by that county on a countywide basis; and

10 (3) in the case of a local option gross
11 receipts tax imposed by a county only on persons engaging in
12 business in that area of the county outside of incorporated
13 municipalities, information indicating whether persons on a
14 list of businesses located in that county outside of the
15 incorporated municipalities but within that county furnished by
16 the county have reported gross receipts to the department but
17 have not reported gross receipts for that county outside of the
18 incorporated municipalities within that county under the Gross
19 Receipts and Compensating Tax Act or a local option gross
20 receipts tax imposed by the county only on persons engaging in
21 business in that county outside of the incorporated
22 municipalities.

23 The officers and employees of counties receiving
24 information as provided in this subsection shall be subject to
25 the penalty contained in Section 7-1-76 NMSA 1978 if the

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1 information is revealed to individuals other than other
2 officers or employees of the county in question or the
3 department;

4 ~~[F.]~~ U. to authorized representatives of an Indian
5 nation, tribe or pueblo, the territory of which is located
6 wholly or partially within New Mexico, pursuant to the terms of
7 a reciprocal agreement entered into with the Indian nation,
8 tribe or pueblo for the exchange of that information for tax
9 purposes only; provided that the Indian nation, tribe or pueblo
10 has enacted a confidentiality statute similar to this section;

11 ~~[U.]~~ V. information with respect to the taxes or
12 tax acts administered pursuant to Subsection B of Section 7-1-2
13 NMSA 1978, except that:

14 (1) information for or relating to a period
15 prior to July 1, 1985 with respect to Sections 7-25-1 through
16 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only
17 to a committee of the legislature for a valid legislative
18 purpose;

19 (2) except as provided in Paragraph (3) of
20 this subsection, contracts and other agreements between the
21 taxpayer and other parties and the proprietary information
22 contained in those contracts and agreements shall not be
23 released without the consent of all parties to the contract or
24 agreement; and

25 (3) audit workpapers and the proprietary

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1 information contained in the workpapers shall not be released
2 except to:

3 (a) the minerals management service of
4 the United States department of the interior, if production
5 occurred on federal land;

6 (b) a person having a legal interest in
7 the property that is subject to the audit;

8 (c) a purchaser of products severed from
9 a property subject to the audit; or

10 (d) the authorized representative of any
11 of the persons in Subparagraphs (a) through (c) of this
12 paragraph. This paragraph does not prohibit the release of
13 proprietary information contained in the workpapers that is
14 also available from returns or from other sources not subject
15 to the provisions of this section;

16 [~~V.~~] W. information with respect to the taxes,
17 surtaxes, advance payments or tax acts administered pursuant to
18 Subsection C of Section 7-1-2 NMSA 1978;

19 [~~W.~~] X. to the public regulation commission,
20 information with respect to the Corporate Income and Franchise
21 Tax Act required to enable the commission to carry out its
22 duties;

23 [~~X.~~] Y. to the state racing commission, information
24 with respect to the state, municipal and county gross receipts
25 taxes paid by [~~race tracks~~] racetracks;

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1 ~~[Y.-]~~ Z. upon request of a corporation authorized to
2 be formed under the Educational Assistance Act, the department
3 shall furnish the last known address and the date of that
4 address of every person certified to the department as an
5 absent obligor of an educational debt due and owed to the
6 corporation or that the corporation has lawfully contracted to
7 collect. The corporation and its officers and employees shall
8 use that information only to enforce the educational debt
9 obligation of the absent obligors and shall not disclose that
10 information or use it for any other purpose;

11 ~~[Z.-]~~ AA. a decision and order made by a hearing
12 officer pursuant to Section 7-1-24 NMSA 1978 with respect to a
13 protest filed with the secretary on or after July 1, 1993;

14 ~~[AA.-]~~ BB. information required by a provision of
15 the Tax Administration Act to be made available to the public
16 by the department;

17 ~~[BB.-]~~ CC. upon request by the Bernalillo county
18 metropolitan court, the department shall furnish the last known
19 address and the date of that address for every person the court
20 certifies to the department as a person who owes fines, fees or
21 costs to the court or who has failed to appear pursuant to a
22 court order or a promise to appear;

23 ~~[CC.-]~~ DD. upon request by a magistrate court, the
24 department shall furnish the last known address and the date of
25 that address for every person the court certifies to the

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1 department as a person who owes fines, fees or costs to the
2 court or who has failed to appear pursuant to a court order or
3 a promise to appear;

4 ~~[DD-]~~ EE. to the national tax administration
5 agencies of Mexico and Canada, provided the agency receiving
6 the information has entered into a written agreement with the
7 department to use the information for tax purposes only and is
8 subject to a confidentiality statute similar to this section;

9 ~~[EE-]~~ FF. to a district attorney, a state district
10 court grand jury or federal grand jury for an investigation of
11 or proceeding related to an alleged criminal violation of the
12 tax laws;

13 ~~[FF-]~~ GG. to a third party subject to a subpoena or
14 levy issued pursuant to the provisions of the Tax
15 Administration Act, the identity of the taxpayer involved, the
16 taxes or tax acts involved and the nature of the proceeding;

17 [~~and~~

18 ~~GG-]~~ HH. to the gaming control board, tax returns
19 of license applicants and their affiliates as defined in
20 Subsection E of Section 60-2E-14 NMSA 1978; and

21 II. any written ruling on questions of evidence or
22 procedure made by a hearing officer pursuant to Section 7-1-24
23 NMSA 1978; provided that the name and identification number of
24 the taxpayer requesting the ruling shall not be provided."

25 Section 2. Section 38-5-3 NMSA 1978 (being Laws 1991,

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1 Chapter 71, Section 2) is amended to read:

2 "38-5-3. SOURCE FOR JUROR SELECTION. --

3 A. Each county clerk shall make available to the
4 secretary of state a database of registered voters of ~~[his]~~ the
5 clerk's county. The secretary of state shall preserve and make
6 available to the information systems division of the general
7 services department, by electronic media, a database of New
8 Mexico registered voters, by county, which shall be updated
9 monthly. The director of the motor vehicle division of the
10 taxation and revenue department shall make available by
11 electronic media to the information systems division of the
12 general services department a database of driver's license
13 holders in each county, which shall be updated monthly. The
14 secretary of taxation and revenue shall make available to the
15 information systems division of the general services
16 department, by electronic media, a database of New Mexico
17 personal income tax filers by county, which shall be updated
18 quarterly.

19 B. The information systems division of the general
20 services department shall program the merger of the registered
21 voter, ~~[and]~~ driver's license and personal income tax filer
22 databases from each county to form a master jury database and
23 write a computer program so that a random selection of jurors
24 can be made. ~~[No]~~ A discrimination shall not be exercised
25 except for the elimination of persons who are not eligible for

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1 jury service. The administrative office of the courts shall
2 provide specifications for the merging of the registered voter,
3 [~~and~~] driver's license and personal income tax filer databases.
4 The merged database information shall be the data base that
5 produces the random jury list for the selection of petit or
6 grand jurors for the district and magistrate courts.

7 C. The district or magistrate court shall, by
8 order, designate the number of potential jurors to be selected
9 and the date on which the jurors are to report for empaneling.
10 Within fifteen days after receipt of a copy of the order, the
11 administrative office of the courts shall provide the random
12 jury list to the court. The information systems division of
13 the general services department shall print the random jury
14 list and jury summons mailer forms within ten days after
15 receiving the request from the administrative office of the
16 courts. Upon issuance of the order, the information systems
17 division of the general services department shall draw from the
18 most current registered voter, [~~and~~] driver's license and
19 personal income tax filer databases to create the random jury
20 list.

21 D. The information systems division of the general
22 services department may transfer the master jury database to a
23 district or magistrate court that has compatible equipment to
24 accept such a transfer. The court accepting the master jury
25 database shall transfer the information to a programmed

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1 computer used for the random selection of petit or grand
2 jurors. "

3 Section 3. Section 38-5-13 NMSA 1978 (being Laws 1969,
4 Chapter 222, Section 13, as amended) is amended to read:

5 "38-5-13. [~~JURY LOT SLIP CONTAINER~~] DRAWING AND
6 QUALIFYING TRIAL JURY. --

7 [~~A. The district court of each county shall provide~~
8 ~~one jury lot slip container to hold the juror lot slips for the~~
9 ~~selection of trial juries. The container shall be constructed~~
10 ~~in a manner that allows the juror lot slips to be securely~~
11 ~~locked within and shall have a transparent window of sufficient~~
12 ~~size to permit the juror lot slips to be clearly visible. The~~
13 ~~clerk of the district court of each county is responsible for~~
14 ~~the safekeeping of the jury lot slip container.~~

15 B. ~~The lot slips bearing an identification number~~
16 ~~and] The district court of each county shall maintain a list of~~
17 ~~the names of the jurors duly empaneled and present for the~~
18 ~~trial of a case [folded to conceal the name and number, shall~~
19 ~~be placed in a trial jury wheel]. The judge shall cause [the~~
20 ~~lot slips to be drawn singly from the container] names to be~~
21 ~~randomly selected until sufficient names have been drawn to~~
22 ~~provide the number of jurors required for the trial. [The~~
23 ~~container shall be shaken or rotated to cause the lot slips to~~
24 ~~be mixed.] The name and number of each juror shall be~~
25 announced [~~as it is called and recorded~~]. Twelve or six jurors

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1 shall compose a petit jury in the district courts for the trial
2 of civil causes. Twelve jurors shall compose a petit jury in
3 criminal and children's court cases. [~~A programmed computer~~
4 ~~may be used in lieu of a jury lot slip container to randomly~~
5 ~~select trial juries.~~] Magistrate jury court selection shall be
6 conducted in accordance with supreme court rules."

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