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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

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.--Sections 1 through 4 of this 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

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1 individual's:

2 (1) status as a recipient of public assistance
3 or as a crime victim;

4 (2) sexual orientation, gender identity,
5 physical or mental disability, medical condition, immigration
6 status, national origin or religion; and

7 (3) social security number; and

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

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

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

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

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

22 C. required by the Inspection of Public Records
23 Act;

24 D. required by federal statute;

25 E. made to or by a court in the course of a

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1 judicial proceeding or made in a court record;

2 F. made to a state contractor that needs the
3 sensitive personal information to perform its obligations under
4 the contract and has agreed in writing to be bound by the same
5 restrictions on disclosure that are imposed on state employees
6 by this section;

7 G. made pursuant to the Whistleblower Protection
8 Act;

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

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

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

16 "[NEW MATERIAL] ENFORCEMENT--PENALTIES.--The attorney
17 general, a district attorney and the state ethics commission
18 may institute a civil action in district court if a violation
19 has occurred or to prevent a violation of the Nondisclosure of
20 Sensitive Personal Information Act. Penalties for a violation
21 of that act shall be a civil penalty of two hundred fifty
22 dollars (\$250) for each violation, but not to exceed five
23 thousand dollars (\$5,000)."

24 SECTION 5. Section 10-16G-9 NMSA 1978 (being Laws 2019,
25 Chapter 86, Section 9, as amended by Laws 2021, Chapter 21,

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1 Section 33 and by Laws 2021, Chapter 109, Section 16) is
2 amended to read:

3 "10-16G-9. COMMISSION JURISDICTION--COMPLIANCE
4 PROVISIONS.--

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

- 10 (1) the Campaign Reporting Act;
- 11 (2) the Financial Disclosure Act;
- 12 (3) the Gift Act;
- 13 (4) the Lobbyist Regulation Act;
- 14 (5) the Voter Action Act;
- 15 (6) the Governmental Conduct Act;
- 16 (7) the Procurement Code;
- 17 (8) the Nondisclosure of Sensitive Personal
18 Information Act;
- 19 [~~8~~] (9) the State Ethics Commission Act;
- 20 [~~9~~] (10) the Revised Uniform Law on Notarial
21 Acts; and
- 22 [~~10~~] (11) Article 9, Section 14 of the
23 constitution of New Mexico.

24 B. All complaints filed with a public agency
25 regarding the statutes listed in Subsection A of this section

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1 shall be forwarded to the commission.

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

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

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

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rules of the house of representatives or senate.

F. The commission may file a court action to 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 defendant resides."

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2022.