



## Senate Bill 977

### *State and Local Agencies - Enforcement of Federal Immigration Law - Restrictions on Access to Information (Maryland Data Privacy Act)*

MACo Position:

To: Judicial Proceedings Committee

### **LETTER OF INFORMATION**

Date: February 19, 2025

From: Sarah Sample

The Maryland Association of Counties (MACo) takes **NO POSITION** on **SB 977** but offers this **LETTER OF INFORMATION**. Counties do not take issue with the intent of the bill to protect the private information of an individual that is not legally required to be shared with Immigration and Customs Enforcement (ICE), or any other federal agency for that matter. SB 977 appears to make existing standards more stringent regarding the protection of information that shall be denied in an instance where immigration enforcement may or may not be the cause for the request. To that end, the challenges the bill presents are numerous and this letter of information is intended to add to the conversation as lawmakers consider next steps, if inclined to advance this bill. Broadly, county concerns touch on three areas which cover bookended penalties, perception of intent, and responsibility for fines.

The intersections of federal, state, and local immigration laws have been the subject of extended and nuanced debate across governments and the courts. The areas of concern cover constitutionality, enforcement, information handling, sanctuary policies, and court procedure to name just a few. Under more common circumstances, counties can appreciate that the letter of the law will not always foresee perfectly the contradiction, consequences, and potential new liabilities additional requirements can provoke in the courts. Unfortunately, the reality of the current political and policy climate around immigration presents a high likelihood that federal and State agencies are proactively and aggressively intending to hold even good faith actors accountable for errors. Any faltering, intentional or not, as these policies are rapidly evolving and competing has the potential to result in increased claims and significant disruption to local government workforces and functions.

#### *Bookended Penalties*

The bill creates a counter penalty in conjunction with penalties that currently exist under federal law, thus creating a scenario where an accidental violation is bookended with consequences regardless of the denial or disclosure of information. The area of SB 977 that

elicits the most urgent and immediate concern that could lead to penalties is the new language that says, "OR APPEARS TO BE seeking access for the purpose of enforcing federal immigration law." This explicitly exposes local government employees to potential liability for making guesses in a necessarily gray area. It is important to note that these challenges will not only exist for official record custodians but any employees and managers across all divisions with access to an electronic database in a public or private area of a facility.

The consequence in its most basic form is that if an employee does not provide data, pending certain circumstances, they can be charged with a violation of federal law. If an employee does provide information because it didn't appear to be private or for the purpose of immigration enforcement, they could be subject to a \$1000 fine and, depending on how the bill is interpreted, also have their employment terminated. This illustrates that exposure to penalties is not limited to the circumstances outlined in SB 977 but is extended to both federal and state agencies. Without all employees understanding the exact nuances of the rapidly evolving intersections of local, state, and federal immigration law there will, very likely, be no way to avoid increased liability.

#### *Perception of Intent*

It is unclear how an employee of a county or state government could accurately perceive the intention and nature of a request to determine whether a request for data is going to be used for immigration. This is especially a concern in situations where the identification and expression of intent of an ICE agent is not required. This determination can also be complicated by the fact that law enforcement can misrepresent their intentions when making certain requests. The bill almost assumes a scenario where all information would be denied without a warrant. This is even more precarious when the information requested is required to be disclosed without a warrant.

As an example, this could be the case for a request of an I-9 document of an employee. When immigration enforcement agents work in conjunction with the U.S. Department of Labor, the requirement to hand off I-9 information is mandatory, with or without notice or a warrant. An employee who fails to cooperate with federal law enforcement in this instance is likely to be found in violation of federal law. This could expose the employee to civil and/or criminal liability, if in the process of withholding, their refusal is misconstrued as a false statement to federal law enforcement or obstructing a federal investigation. This is particularly the case in instances where the employee's expression to withhold information is considered a misrepresentation of whether the record exists.

### *Responsibility for Fines*

Another concern is the lack of clarity around the penalty provision. It is unclear who is subject to the \$1000 fine; specifically, whether it is the individual who is thought to have erroneously produced the data or the employer. To illustrate that concern, several interpretations are listed below:

- employee shall pay one fine for one violation
- employer shall pay one fine on behalf of the employee for one violation
- they both shall pay two separate fines for the same violation
- the employer shall pay two fines for one violation on behalf of the employee and employer

Any number of those scenarios is complicated by the potential that one conversation could lead to a denial or disclosure of multiple pieces of information. In those instances, it is unclear whether the federal- or state-level violation would constitute one or more penalties based on the number of records or pieces of information unlawfully shared or denied.

### *Conclusion*

The question of how best to ensure that privacy is maintained for all employees and detainees of a local government is an important one to address. Due to the current and shifting guidance around immigration enforcement laws and regulations, SB 977 – without clarification – has the potential to further complicate an already difficult situation and fall short of its overall goal.

Local governments will continue to ensure standards remain high and appropriate compliance is managed. Counties look forward to continuing this important conversation, not just around SB 977, but as this issue evolves more broadly.