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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/31/12

**SPONSOR** D. Chavez **LAST UPDATED** \_\_\_\_\_ **HB** 244

**SHORT TITLE** Driver's Licenses & Guest Driver's Permits **SB** \_\_\_\_\_

**ANALYST** Boerner

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal				

(Parenthesis ( ) Indicate Expenditure Decreases)

**Relates to:**

**HB103** requires a SSN from eligible driver's license (DL) applicants or the unique identifying number of the foreign national's valid passport, valid visa or other arrival departure record.

**HB171** requires that driver's license issued that meets federal requirements for official purposes shall contain a unique design that distinguishes it from a driver's license that does not comply with federal requirements.

**SB14** creates a guest worker program for certain New Mexico resident foreign nationals.

**SB235** allows a foreign national applicant without a social security number (SSN) or proof of authorized presence in the United States to provide an individual tax ID number (ITIN) or other authorized document as an acceptable substitute.

**SOURCES OF INFORMATION**

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Homeland Security and Emergency Management Department (HSEMD)

**SUMMARY**

Synopsis of Bill

The bill amends Section 66-5-9 NMSA 1978 to provide that an individual applying for a New Mexico driver's license must be in the United States lawfully.

Further, the bill creates a new section of the Motor Vehicle Code which allows for the issuance of a guest driver's permit to an undocumented person who does not possess a SSN but who does possess an ITIN or other documentation allowed by the secretary as an acceptable substitute for an ITIN.

In addition to meeting all the requirements of the Motor Vehicle Code for a driver license, an applicant for a guest driver's permit is also required to undergo a background check, fingerprinting, and a test for illegal controlled substances. A guest driver permit application is denied for applicants convicted of a felony or if the applicant tests positive for an illegal controlled substance.

## **FISCAL IMPLICATIONS**

**None reported**

## **SIGNIFICANT ISSUES**

The HSEMD reports that:

The bill allows for the guest driver's permit to be issued to those who, among other conditions, pass a background check, but the bill does not address the fact that insufficient documents and legal status may produce inconclusive results to background checks. Additionally, the bill does not provide law enforcement the authority to act on failed background checks.

The bill allows those in the United States illegally to obtain driving privileges which may be a potential security risk.

Finally, the bill does not include provisions to bring New Mexico Drivers licenses into full compliance with the Federal REAL ID Act. The REAL ID Act requires that people born on or after December 1, 1964, will have to obtain a REAL ID by December 1, 2014. Those born before December 1, 1964, will have until December 1, 2017 to obtain their REAL ID. The Act also requires that before a card can be issued, the applicant must provide the following documentation:

- A photo ID, or a non-photo ID that includes full legal name and birthdate.
- Documentation of birth date.
- Documentation of legal status and Social Security number
- Documentation showing name and principal residence address.
- Digital images of each identity document will be stored in each state DMV database.

The AGO reports the following legal issues:

The bill requires applicants for a guest driver's permit to undergo a background check by having his or her fingerprints taken and submitted to the FBI. The applicant must also take a drug test. If an applicant fails the background check or drug test he or she will not be eligible for a permit. **These provisions may give rise to equal protection challenges in that these conditions are not required for drivers who possess a social security number.**

The bill requires that the guest permit will only be valid for driving privileges and identification in New Mexico and not as proof of lawful status. This provision appears to attempt to comply

with the federal REAL ID Act of 2005, 109 P.L. 13, in which licenses granted to undocumented persons are not valid for official federal purposes. Specifically, states are to require proof of lawful status if the country prior to issuance of a driver's license. See 49 USC § 30301(c)(2)(B).

The bill amends NMSA 1978, Section 66-5-9(B) to address certain legal deficiencies in the current license program. The amendments state that foreign nationals who are not citizens but are in the country lawfully may present an ITIN as a substitute for a social security number. It allows the secretary to promulgate regulations as to substitutes for a SSN. This would seem to be consistent with the Real ID Act. The Real ID Act allows legal immigrants who do not have a social security number to obtain a driver's license. Legal immigrants can present documentation showing non-work authorized status in order to obtain a license. See 6 CFR 37.11(c)(1). A legal immigrant must show either: (1) a valid, unexpired Permanent Resident Card (Form I-551) issued by DHS or INS; (2) an unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B; or (3) a unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States. Id.

Finally, Section 3 of the bill contains new material stating that licenses issued or renewed to foreign nationals who did not provide proper documentation will expire on December 31, 2012. Those drivers whose license to TRD will be issued a driving permit at no additional cost. In New Mexico, a license to operate a motor vehicle is a mere privilege, and not a property right, and is subject to reasonable regulation under the police power in the interest of public safety and welfare. *Johnson v. Sanchez*, 67 N.M. 41, 351 P.2d 449 (1960). **Nevertheless, the expiration of a license prior to its original expiration date may invite litigation.**

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