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SENATE BILL 35

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2011

INTRODUCED BY

Stephen H. Fischmann

AN ACT

RELATING TO LICENSING; ENACTING THE GUEST WORKER DRIVING
PRIVILEGE ACT; CREATING A GUEST WORKER PROGRAM FOR CERTAIN NEW
MEXICO RESIDENT FOREIGN NATIONALS; DIRECTING THE WORKFORCE
SOLUTIONS DEPARTMENT TO WORK WITH THE UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT OF THE UNITED STATES DEPARTMENT OF
HOMELAND SECURITY REGARDING IMMIGRATION REFORM; PROVIDING FOR
DRIVING PRIVILEGE CARDS FOR CERTAIN NEW MEXICO RESIDENT FOREIGN
NATIONALS; CREATING PENALTIES; CREATING A FUND; IMPOSING FEES;
MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 22 of this act may be cited as the "Guest Worker
Driving Privilege Act".

SECTION 2. [NEW MATERIAL] PURPOSE OF ACT.--The purpose of
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1 the Guest Worker Driving Privilege Act is to stop the
2 inappropriate use of New Mexico driver's licenses as federal
3 identification, to improve road safety, to improve security
4 through better documentation and tracking of foreign nationals,
5 to protect jobs and wages for United States and New Mexico
6 citizens, to enable employers to hire necessary workers without
7 breaking the law, to enable necessary foreign national workers
8 to obtain jobs without living in fear of deportation and to
9 ensure that all foreign national workers contribute their fair
10 share to funding public services. The intent of the Guest
11 Worker Driving Privilege Act is to have the state government
12 work with the federal government to achieve effective
13 immigration reform that improves New Mexico's security and
14 prosperity and fosters a consistent, reliable and
15 understandable immigration policy for all New Mexicans.

16 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
17 Guest Worker Driving Privilege Act:

18 A. "department" means the workforce solutions
19 department;

20 B. "employee" means an individual employed by an
21 employer under a contract for hire;

22 C. "employer" means a person who has one or more
23 employees employed in the same business, or in or about the
24 same establishment, under any contract of hire, express or
25 implied, oral or written;

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1 D. "e-verify program" means the electronic
2 verification of the work authorization program of the Illegal
3 Immigration Reform and Immigrant Responsibility Act of 1996, 8
4 U.S.C. Sec. 1324a;

5 E. "federal SAVE program" means the systematic
6 alien verification for entitlements program operated by the
7 United States department of homeland security or an equivalent
8 program designated by the department of homeland security;

9 F. "guest worker" means an undocumented individual
10 who holds a guest worker permit;

11 G. "guest worker permit" means a permit issued in
12 accordance with the provisions of Section 11 of the Guest
13 Worker Driving Privilege Act to an undocumented individual who
14 meets the eligibility criteria provided in Section 12 of that
15 act;

16 H. "immediate family" means:

- 17 (1) an undocumented individual's spouse;
18 (2) a dependent parent of an undocumented
19 individual; or
20 (3) a child of an undocumented individual if
21 the child is:
22 (a) under twenty-one years of age; and
23 (b) unmarried;

24 I. "immediate family permit" means a permit issued
25 in accordance with the provisions of Section 11 of the Guest

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1 Worker Driving Privilege Act to an undocumented individual who
2 meets the eligibility criteria provided in Section 13 of that
3 act;

4 J. "nm-verify program" means the verification
5 procedure developed by the department in accordance with
6 Section 16 of the Guest Worker Driving Privilege Act;

7 K. "permit holder" means an undocumented individual
8 who holds a guest worker permit or an immediate family permit;

9 L. "program start date" means the day on which the
10 department is required to implement the guest worker program
11 pursuant to Section 7 of the Guest Worker Driving Privilege
12 Act;

13 M. "relevant contact information" means:

14 (1) an undocumented individual's name,
15 residential address, residential telephone number and personal
16 email address;

17 (2) the name of the undocumented individual's
18 employer, if the individual is employed, and the name, address
19 and telephone number of a contact person for that employer;

20 (3) the names of an undocumented individual's
21 immediate family members and the names of the family members
22 who reside with the undocumented individual; and

23 (4) any other information required by the
24 department by rule;

25 N. "status verification system" means an electronic

1 system operated by the federal government, through which an
2 authorized official of a state agency or a political
3 subdivision of a state may inquire, by exercise of authority
4 delegated pursuant to 8 U.S.C. Sec. 1373, to verify the
5 citizenship or immigration status of an individual within the
6 jurisdiction of the state agency or political subdivision for a
7 purpose authorized under this section. "Status verification
8 system" includes:

9 (1) the e-verify program;

10 (2) a federal program designated by the United
11 States department of homeland security or other federal agency
12 authorized to verify the work eligibility status of a newly
13 hired employee pursuant to the federal Immigration Reform and
14 Control Act of 1986; or

15 (3) the social security number verification
16 service or similar online verification service implemented by
17 the United States social security administration;

18 O. "unauthorized alien" means "unauthorized alien"
19 as defined in 8 U.S.C. Sec. 1324a(h)(3); and

20 P. "undocumented individual" means an individual
21 who:

22 (1) lives or works in the state; and

23 (2) is not in compliance with the federal
24 Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq.
25 with regard to presence in the United States.

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1 SECTION 4. [NEW MATERIAL] DETERMINING IMMIGRATION
2 STATUS--TRANSFER OR MAINTENANCE OF INFORMATION.--Except as
3 limited by federal law and the Guest Worker Driving Privilege
4 Act, the state and local governments are not restricted or
5 prohibited in any way from sending, receiving or maintaining
6 information related to the lawful or unlawful immigration
7 status of an individual by communicating with any federal,
8 state or local governmental entity for any lawful purpose,
9 including:

10 A. determining an individual's eligibility for any
11 public benefit, service or license provided by a federal
12 agency, the state or a political subdivision of the state;

13 B. confirming an individual's claim of residence or
14 domicile if determination is required by state law or a
15 judicial order issued pursuant to a civil or criminal
16 proceeding in this state;

17 C. if the individual is a foreign national,
18 determining if the individual is in compliance with the federal
19 registration laws under 8 U.S.C. Sec. 1301 through 1306; or

20 D. requesting verification of the citizenship or
21 immigration status of any person pursuant to 8 U.S.C. Sec.
22 1373.

23 SECTION 5. [NEW MATERIAL] DEPARTMENT TO CREATE GUEST
24 WORKER PROGRAM.--

25 A. The department shall create and administer the
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1 "guest worker program" under which the department shall:
2 (1) issue a guest worker permit or immediate
3 family permit;
4 (2) establish fees for filings or services
5 required by the Guest Worker Driving Privilege Act;
6 (3) establish penalties required by the Guest
7 Worker Driving Privilege Act; and
8 (4) report annually to the governor and the
9 legislature.

10 B. The department may make rules to the extent
11 expressly provided for in the Guest Worker Driving Privilege
12 Act.

13 C. In implementing the Guest Worker Driving
14 Privilege Act, the department shall cooperate with other state
15 agencies to minimize any duplication in databases or services.

16 SECTION 6. [NEW MATERIAL] IMPLEMENTATION TO BE CONSISTENT
17 WITH FEDERAL LAW AND CIVIL RIGHTS.--The department shall
18 implement the Guest Worker Driving Privilege Act in a manner
19 that:

20 A. is consistent with federal laws that regulate
21 immigration;

22 B. protects the civil rights of all persons; and

23 C. respects the privileges and immunities of United
24 States citizens.

25 SECTION 7. [NEW MATERIAL] FEDERAL WAIVERS, EXEMPTIONS OR

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1 AUTHORIZATIONS--IMPLEMENTATION WITHOUT WAIVER, EXEMPTION OR
2 AUTHORIZATION.--

3 A. The department shall seek one or more federal
4 waivers, exemptions or authorizations to implement the guest
5 worker program.

6 B. The governor shall participate actively in
7 efforts to obtain one or more federal waivers, exemptions or
8 authorizations under this section.

9 C. The department shall implement the guest worker
10 program the sooner of:

11 (1) one hundred twenty days after the day on
12 which the governor finds that the state has one or more federal
13 waivers, exemptions or authorizations that are needed to
14 implement the program; or

15 (2) July 1, 2013.

16 SECTION 8. [NEW MATERIAL] COORDINATION WITH OTHER FEDERAL
17 OR STATE LAWS OR PROGRAMS.--To the extent feasible, the
18 department shall coordinate the implementation of the guest
19 worker program with other existing state and federal laws that
20 relate to immigration and labor, including laws pertaining to
21 obtaining the privilege to drive and to report citizenship
22 status.

23 SECTION 9. [NEW MATERIAL] GUEST WORKER FUND--CREATED--
24 PURPOSE.--The "guest worker fund" is created in the state
25 treasury. The fund consists of fees paid pursuant to the Guest
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1 Worker Driving Privilege Act, appropriations, gifts, grants and
2 donations. Money in the fund at the end of a fiscal year shall
3 revert to the general fund. The department shall administer
4 the fund, and money in the fund is appropriated to the
5 department to administer the Guest Worker Driving Privilege
6 Act. Disbursements from the fund shall be made by warrant of
7 the secretary of finance and administration pursuant to
8 vouchers signed by the secretary of workforce solutions or the
9 secretary's representative.

10 SECTION 10. [NEW MATERIAL] STATE INCOME TAXES--GUEST
11 WORKER PERMIT FEES--WITHHOLDING OF FEES AND TAXES.--

12 A. A guest worker permit holder is subject to the
13 provisions of the Income Tax Act and the Withholding Tax Act.
14 An employer who hires a guest worker permit holder is subject
15 to the provisions of the Withholding Tax Act.

16 B. A "guest worker permit fee" is imposed on a
17 guest worker permit holder. The guest worker permit fee shall
18 be in an amount equal to the combined rates of the federal old
19 age survivors and disability insurance, also known as social
20 security, and the federal medicare program that would be
21 imposed on the guest worker permit holder by federal law if the
22 guest worker permit holder were hired as an employee with a
23 social security number.

24 C. A "guest worker employer fee" is imposed on an
25 employer that hires a guest worker permit holder as an

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1 employee. The guest worker employer fee shall be in an amount
2 equal to the combined rates of the federal old age survivors
3 and disability insurance, also known as social security, and
4 the federal medicare program that would be imposed on the
5 employer by federal law if the guest worker permit holder were
6 hired as an employee with a social security number.

7 D. The taxation and revenue department shall
8 collect the guest worker permit fee and guest worker employer
9 fee in the same manner that it collects state income taxes
10 withheld in accordance with the Withholding Tax Act. The
11 taxation and revenue department shall credit the guest worker
12 permit fee and the guest worker employer fee to the guest
13 worker fund to carry out the purposes of the Guest Worker
14 Driving Privilege Act.

15 SECTION 11. [NEW MATERIAL] OBTAINING A PERMIT--USES OF
16 PERMIT.--

17 A. An undocumented individual shall obtain a guest
18 worker permit:

19 (1) before providing services to an employer
20 in this state under a contract for hire; or

21 (2) in accordance with Subsection B of this
22 section no later than thirty days from the day on which the
23 undocumented individual enters into a contract for hire.

24 B. By rule, the department shall provide a
25 procedure under which an employer may hire an undocumented

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1 individual who does not hold a guest worker permit, pending the
2 undocumented individual obtaining a permit within thirty days
3 of the day on which the undocumented individual is hired to
4 provide services.

5 C. An undocumented individual shall not provide
6 services under a contract for hire to a person for more than
7 thirty days during a one-year calendar period without obtaining
8 a guest worker permit as provided in this section.

9 D. A guest worker permit or immediate family permit
10 is considered an identification document and may be used as
11 identification or proof of the permit holder's age for any
12 state-or local government-required purpose.

13 E. An undocumented individual shall not use a guest
14 worker permit or immediate family permit:

15 (1) to establish entitlement to a federal,
16 state or local benefit as provided in Section 22 of the Guest
17 Worker Driving Privilege Act; or

18 (2) to obtain work or provide services in a
19 state other than New Mexico.

20 SECTION 12. [NEW MATERIAL] ELIGIBILITY CRITERIA TO OBTAIN
21 OR RENEW A GUEST WORKER PERMIT.--

22 A. To be eligible to obtain or renew a guest worker
23 permit, an undocumented individual shall:

24 (1) be eighteen years of age or older or, if
25 younger than eighteen years of age, have the permission of a

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1 parent or guardian;

2 (2) live in New Mexico;

3 (3) have worked or lived in New Mexico before
4 January 1, 2012;

5 (4) provide and regularly update relevant
6 contact information to the department;

7 (5) provide documentation of a contract for
8 hire under which the undocumented individual begins or
9 continues to provide services within at least thirty days of
10 the day on which the undocumented individual obtains the
11 permit;

12 (6) agree to a criminal background check;

13 (7) not have been convicted of, pled guilty
14 to, pled no contest to, pled guilty in a similar manner to or
15 resolved by diversion or its equivalent to a felony; and

16 (8) provide evidence satisfactory to the
17 department that the undocumented individual would not be
18 inadmissible on public health grounds pursuant to 8 U.S.C. Sec.
19 1182.

20 B. The department may by rule provide for the
21 documentation required to establish eligibility pursuant to
22 Subsection A of this section.

23 C. The department shall require an undocumented
24 individual applying for a guest worker permit or renewing a
25 guest worker permit to submit to a criminal background check as

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1 a condition of receiving or renewing the guest worker permit.

2 D. An undocumented individual applying for a guest
3 worker permit and required to submit to a criminal background
4 check shall:

5 (1) submit a fingerprint card in a form
6 acceptable to the department; and

7 (2) consent to a fingerprint background check
8 by:

9 (a) the department of public safety; and

10 (b) the federal bureau of investigation.

11 E. For an undocumented individual applying for a
12 guest worker permit who submits a fingerprint card and consents
13 to a fingerprint background check, the department may request:

14 (1) criminal background information maintained
15 by the department of public safety; and

16 (2) complete federal bureau of investigation
17 criminal background checks through the national criminal
18 information center and secure communities program.

19 F. Information obtained by the department from the
20 review of criminal history records received under this section
21 shall be used by the department to determine eligibility to
22 obtain a guest worker permit.

23 G. The department shall:

24 (1) pay to the federal bureau of investigation
25 the costs incurred by the federal bureau of investigation in

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1 providing the department criminal background information
2 pursuant to this section; and

3 (2) charge the undocumented individual
4 applying for the guest worker permit a fee equal to the costs
5 incurred by the department regarding the undocumented
6 individual pursuant to this section.

7 SECTION 13. [NEW MATERIAL] ELIGIBILITY TO OBTAIN OR RENEW
8 AN IMMEDIATE FAMILY PERMIT.--

9 A. To be eligible to obtain or maintain an
10 immediate family permit, an undocumented individual shall:

- 11 (1) live in New Mexico;
12 (2) be a member of a guest worker's immediate
13 family;
14 (3) provide and regularly update relevant
15 contact information;
16 (4) agree to a criminal background check;
17 (5) not have been convicted of, pled guilty
18 to, pled no contest to, pled guilty in a similar manner to or
19 resolved by diversion or its equivalent to a felony; and
20 (6) provide evidence satisfactory to the
21 department that the undocumented individual would not be
22 inadmissible on public health grounds pursuant to 8 U.S.C. Sec.
23 1182.

24 B. The department may by rule provide for the
25 documentation required to establish eligibility pursuant to
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1 Subsection A of this section.

2 C. The department shall require an undocumented
3 individual applying for an immediate family permit or renewing
4 an immediate family permit to submit to a criminal background
5 check as a condition of receiving or renewing the immediate
6 family permit.

7 D. An undocumented individual applying for an
8 immediate family permit and required to submit to a criminal
9 background check shall:

10 (1) submit a fingerprint card in a form
11 acceptable to the department; and

12 (2) consent to a fingerprint background check
13 by:

14 (a) the department of public safety; and

15 (b) the federal bureau of investigation.

16 E. For an undocumented individual applying for an
17 immediate family permit who submits a fingerprint card and
18 consents to a fingerprint background check, the department may
19 request:

20 (1) criminal background information maintained
21 by the department of public safety; and

22 (2) complete federal bureau of investigation
23 criminal background checks through the national criminal
24 information center and secure communities program.

25 F. Information obtained by the department from the

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1 review of criminal history records received under this section
2 shall be used by the department to determine eligibility to
3 obtain an immediate family permit.

4 G. The department shall:

5 (1) pay to the federal bureau of investigation
6 the costs incurred by the federal bureau of investigation in
7 providing the department criminal background information
8 pursuant to this section; and

9 (2) charge the undocumented individual
10 applying for the immediate family permit a fee equal to the
11 costs incurred by the department regarding the undocumented
12 individual pursuant to this section.

13 SECTION 14. [NEW MATERIAL] APPLICATION AND RENEWAL
14 PROCESS.--

15 A. The department shall:

16 (1) create a guest worker permit and an
17 immediate family permit that:

18 (a) are made of impervious material that
19 is resistant to wear or damage; and

20 (b) minimize the risk that the permit
21 may be forged, falsified or counterfeited; and

22 (2) ensure that the guest worker permit and
23 immediate family permit:

24 (a) include a photograph of the
25 undocumented individual to whom the permit is issued;

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1 (b) prominently state the day on which
2 the permit expires; and

3 (c) prominently state whether the permit
4 is a guest worker permit or an immediate family member permit.

5 B. A guest worker permit and an immediate family
6 permit shall expire two years from the day on which the
7 department issues the permit.

8 C. To apply for a permit under the Guest Worker
9 Driving Privilege Act, an undocumented individual shall submit
10 to the department, in a form acceptable to the department:

11 (1) an application;

12 (2) documentation that the individual meets
13 the criteria provided in Section 12 or 13 of the Guest Worker
14 Driving Privilege Act;

15 (3) a birth certificate, either an original or
16 a certified copy, including a foreign birth certificate with a
17 notarized English translation, if necessary;

18 (4) a signed statement verifying that the
19 information in the application and the documentation is
20 correct; and

21 (5) a fee established by the department.

22 D. Subject to the provisions of Subsection E of
23 this section, if an undocumented individual submits a complete
24 application pursuant to Subsection C of this section, and the
25 department determines that the undocumented individual meets

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1 the criteria provided in Section 12 of the Guest Worker Driving
2 Privilege Act, the department shall issue or renew a guest
3 worker permit until the number of permits is at least equal to
4 three percent of the total labor force in the state.

5 E. The number of active guest worker permits shall
6 not exceed six percent of the total labor force in the state.
7 The percentage downward adjustment of active guest worker
8 permits shall not exceed one percent in any given calendar
9 year.

10 F. If an undocumented individual submits a complete
11 application pursuant to Subsection C of this section, and the
12 department determines that the undocumented individual meets
13 the criteria provided in Section 13 of the Guest Worker Driving
14 Privilege Act, the department shall issue or renew an immediate
15 family permit.

16 G. An undocumented individual may appeal a denial
17 of a guest worker permit or an immediate family permit under
18 this section to the secretary of workforce solutions.

19 SECTION 15. [NEW MATERIAL] CONDITIONS DURING PERMIT
20 TERM.--

21 A. A guest worker permit holder or an immediate
22 family permit holder shall continue to meet the eligibility
23 criteria for the type of permit held by the permit holder.

24 B. A guest worker permit or immediate family permit
25 is automatically revoked if, after issuance of the permit:

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1 (1) the permit holder to whom it is issued is
2 convicted of, pleads guilty to, pleads no contest to, pleads
3 guilty in a similar manner to or has resolved by diversion or
4 its equivalent a felony;

5 (2) for a guest worker permit, the permit
6 holder to whom it is issued does not provide services under a
7 contract for hire for more than one year; or

8 (3) for an immediate family permit, the guest
9 worker permit under which the immediate family member's permit
10 is issued is revoked or expired under this section.

11 SECTION 16. [NEW MATERIAL] VERIFICATION OF VALID
12 PERMIT--PROTECTED STATUS OF INFORMATION.--

13 A. The department shall develop a verification
14 procedure, by rule, for an employer who hires a guest worker
15 permit holder to verify with the department that the holder's
16 permit is valid as required by Section 18 of the Guest Worker
17 Driving Privilege Act.

18 B. The verification procedure adopted pursuant to
19 this section shall be substantially similar to the employer
20 requirements to verify federal employment status under the
21 e-verify program and may be cited as the "nm-verify program".

22 SECTION 17. [NEW MATERIAL] PROHIBITED CONDUCT--
23 ADMINISTRATIVE PENALTIES--CRIMINAL PENALTIES.--

24 A. A guest worker permit holder or an immediate
25 family permit holder shall not file for or receive unemployment

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1 benefits.

2 B. No person shall:

3 (1) furnish false or forged information or
4 documentation in support of an application for a guest worker
5 permit or an immediate family permit;

6 (2) alter the information on a guest worker
7 permit or immediate family permit;

8 (3) allow an individual to use a guest worker
9 permit or an immediate family permit if the individual is not
10 entitled to use the permit;

11 (4) represent that a guest worker permit or an
12 immediate family permit is issued to an individual if the
13 permit is not issued to that individual;

14 (5) use, or attempt to use, an invalid guest
15 worker permit or an immediate family permit as a valid permit;
16 or

17 (6) knowingly or with reckless disregard
18 acquire, use, display or transfer an item that purports to be a
19 valid guest worker permit or an immediate family permit but
20 that is not a valid permit.

21 SECTION 18. [NEW MATERIAL] EMPLOYING AN UNAUTHORIZED
22 ALIEN--VERIFICATION OF EMPLOYMENT ELIGIBILITY.--

23 A. On and after the guest worker program start
24 date, an employer shall not knowingly employ an unauthorized
25 alien who does not hold a guest worker permit.

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1 B. On and after the program start date, an employer
2 employing one or more employees within the state shall, after
3 hiring an employee, verify the employment eligibility of the
4 new employee or employees:

5 (1) through the e-verify program, if the
6 individual does not hold a guest worker permit; and

7 (2) through the nm-verify program, if the
8 individual holds a guest worker permit.

9 C. An employer shall keep a record of the
10 verification required by Subsection B of this section for the
11 longer of:

12 (1) the duration of the employee's employment;
13 or

14 (2) three years from the date of verification.

15 D. On and after the guest worker program start
16 date, an employer shall terminate the employment of an
17 undocumented individual if the employer determines that the
18 undocumented individual does not hold a valid guest worker
19 permit.

20 **SECTION 19. [NEW MATERIAL] LIABILITY PROTECTIONS.--**

21 A. On or after the guest worker program start date,
22 an employer shall not be held civilly liable under state law in
23 a cause of action for the employer's unlawful hiring of an
24 unauthorized alien if:

25 (1) the employer complies with the provisions

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1 of Section 18 of the Guest Worker Driving Privilege Act; and

2 (2) the information obtained after
3 verification pursuant to Section 18 of the Guest Worker Driving
4 Privilege Act indicates that:

5 (a) the employee's federal legal status
6 allowed the employer to hire the employee; or

7 (b) on and after the guest worker
8 program start date, the employee held a valid guest worker
9 permit.

10 B. On or after the guest worker program start date,
11 an employer shall not be held civilly liable under state law in
12 a cause of action for the employer's refusal to hire an
13 individual if:

14 (1) the employer complies with the provisions
15 of Section 18 of the Guest Worker Driving Privilege Act; and

16 (2) the information obtained after
17 verification pursuant to Section 18 of the Guest Worker Driving
18 Privilege Act indicates that the employee:

19 (a) was an unauthorized alien; or

20 (b) on and after the guest worker
21 program start date, does not hold a valid guest worker permit.

22 C. The Guest Worker Driving Privilege Act does not
23 create a cause of action, on the basis of discrimination or
24 otherwise, for not hiring an individual who holds a guest
25 worker permit.

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1 SECTION 20. [NEW MATERIAL] ADMINISTRATIVE ACTIONS--

2 DEFENSES.--

3 A. On and after the guest worker program start
4 date, the department may bring agency action against an
5 employer who violates the provisions of Section 18 of the Guest
6 Worker Driving Privilege Act.

7 B. To determine whether an employee is an
8 unauthorized alien for purposes of Subsection A of this
9 section, the department shall consider only the federal
10 government's determination pursuant to 8 U.S.C. Sec. 1373c.

11 C. The federal government's determination of
12 unauthorized alien status creates a rebuttable presumption of
13 the employee's lawful status. The department may request the
14 federal government to provide automated or testimonial
15 verification pursuant to 8 U.S.C. Sec. 1373c.

16 D. For the purposes of this section, proof of
17 verifying the employment authorization in accordance with the
18 provisions of Section 18 of the Guest Worker Driving Privilege
19 Act creates a rebuttable presumption that an employer did not
20 knowingly employ an unauthorized alien who does not hold a
21 valid guest worker permit.

22 E. An employer is considered to have complied with
23 the requirements of 8 U.S.C. Sec. 1324a(b), notwithstanding an
24 isolated, sporadic or accidental technical or procedural
25 failure to meet the requirements, if there is a good-faith

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1 attempt to comply with those requirements.

2 SECTION 21. [NEW MATERIAL] PENALTIES.--

3 A. As used in this section:

4 (1) "first violation" means the first time
5 that the department imposes a penalty pursuant to this section,
6 regardless of the number of individuals that the employer hires
7 in violation of the provisions of Section 18 of the Guest
8 Worker Driving Privilege Act;

9 (2) "second violation" means the second time
10 that the department imposes a penalty pursuant to this section,
11 regardless of the number of individuals that the employer hires
12 in violation of the provisions of Section 18 of the Guest
13 Worker Driving Privilege Act; and

14 (3) "third or subsequent violation" means the
15 third or subsequent time that the department imposes a penalty
16 pursuant to this section, regardless of the number of
17 individuals that the employer hires in violation of the
18 provisions of Section 18 of the Guest Worker Driving Privilege
19 Act.

20 B. For a first violation of the provisions of
21 Section 18 of the Guest Worker Driving Privilege Act, the
22 department shall impose a civil penalty on an employer not to
23 exceed five hundred dollars (\$500) for each individual who is
24 employed by the employer during the time period specified in
25 the notice of agency action and who is an unauthorized alien

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1 who does not hold a valid guest worker permit.

2 C. For a second violation of the provisions of
3 Section 18 of the Guest Worker Driving Privilege Act, the
4 department shall impose a civil penalty on an employer not to
5 exceed one thousand dollars (\$1,000) for each individual who is
6 employed by the employer during the time period specified in
7 the notice of agency action and who is an unauthorized alien
8 who does not hold a valid guest worker permit.

9 D. For a third or subsequent violation of the
10 provisions of Section 18 of the Guest Worker Driving Privilege
11 Act, the department shall:

12 (1) notify the issuing agency of the
13 applicable licenses of the third or subsequent violation of the
14 Guest Worker Driving Privilege Act and recommend revocation of
15 the applicable licenses for a period not to exceed one year; or

16 (2) impose a civil penalty on an employer not
17 to exceed the greater of ten thousand dollars (\$10,000) or one
18 thousand five hundred dollars (\$1,500) for each individual who
19 is employed by the employer during the time period specified in
20 the agency action and who is an unauthorized alien who does not
21 hold a valid guest worker permit.

22 E. The department shall base its determination of
23 the length of revocation pursuant to Subsection D of this
24 section on evidence or information submitted to the department
25 during the action under which a third or subsequent violation

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1 is found and shall consider the following factors, if relevant:

2 (1) the number of unauthorized aliens who do
3 not hold a guest worker permit who are employed by the
4 employer;

5 (2) prior misconduct by the employer;

6 (3) the degree of harm resulting from the
7 violation;

8 (4) whether the employer made good-faith
9 efforts to comply with any applicable requirements;

10 (5) the duration of the violation;

11 (6) the role of the individuals described in
12 Paragraph (1) of Subsection D of this section in the violation;
13 and

14 (7) any other factor that the department
15 considers appropriate.

16 F. For a violation described in Subsections A and B
17 of Section 17 of the Guest Worker Driving Privilege Act, the
18 department may suspend, limit, or revoke and repossess a permit
19 or impose a civil penalty not to exceed seven hundred fifty
20 dollars (\$750) for each violation, or both, and may notify the
21 United States immigration and customs enforcement of the
22 violation.

23 G. A person is guilty of a misdemeanor, and shall
24 be sentenced in accordance with the provisions of Section
25 31-19-1 NMSA 1978, if the person:

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1 (1) furnishes false or forged information or
2 documentation in support of an application for a guest worker
3 permit or an immediate family permit; or

4 (2) alters the information on a guest worker
5 permit or an immediate family permit.

6 SECTION 22. [NEW MATERIAL] RECEIPT OF STATE, LOCAL OR
7 FEDERAL PUBLIC BENEFITS--VERIFICATION--EXCEPTIONS--FRAUDULENTLY
8 OBTAINING BENEFITS--ANNUAL REPORT.--

9 A. Except as provided in Subsection C of this
10 section, or when exempted by federal law, a state agency or
11 political subdivision of the state shall verify the lawful
12 presence in the United States of an individual who is at least
13 eighteen years of age and who applies for:

14 (1) a state or local public benefit as defined
15 in 8 U.S.C. Sec. 1621; or

16 (2) a federal public benefit as defined in 8
17 U.S.C. Sec. 1611 that is administered by an agency or political
18 subdivision of this state.

19 B. This section shall be enforced without regard to
20 race, religion, gender, ethnicity, sexual orientation or
21 national origin.

22 C. Verification of lawful presence in the United
23 States under this section is not required for:

24 (1) any purpose for which lawful presence in
25 the United States is not restricted by law, ordinance or

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1 regulation;

2 (2) health care items and services that are:

3 (a) necessary for the treatment of an
4 emergency medical condition, as defined in 42 U.S.C. Sec.
5 1396b(v)(3), of the individual involved; and

6 (b) not related to an organ transplant
7 procedure;

8 (3) short-term, noncash, in-kind emergency
9 disaster relief;

10 (4) public health assistance for immunizations
11 with respect to immunizable diseases and for testing and
12 treatment of symptoms of communicable diseases, whether or not
13 the symptoms are caused by the communicable disease;

14 (5) programs, services or assistance such as
15 soup kitchens, crisis counseling and intervention and
16 short-term shelter, specified by the United States attorney
17 general, in the sole and unreviewable discretion of the United
18 States attorney general, after consultation with appropriate
19 federal agencies and departments, that:

20 (a) deliver in-kind services at the
21 community level, including through public or private nonprofit
22 agencies;

23 (b) do not condition the provision of
24 assistance, the amount of assistance provided or the cost of
25 assistance provided on the income or resources of the

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1 individual recipient; and

2 (c) are necessary for the protection of
3 life or safety;

4 (6) a home loan that will be insured,
5 guaranteed or purchased by:

6 (a) the federal housing administration
7 of the United States Department of housing and urban
8 development, the United States department of veterans affairs
9 or any other federal agency; or

10 (b) an enterprise, as defined in 12
11 U.S.C. Sec. 4502; or

12 (7) a subordinate loan or a grant that will be
13 made to an applicant in connection with a home loan that does
14 not require verification under Paragraph (6) of this
15 subsection.

16 D. A state agency or political subdivision of the
17 state that is required to verify the lawful presence in the
18 United States of an applicant under this section shall require
19 the applicant to certify under penalty of perjury that:

20 (1) the applicant is a United States citizen;
21 or

22 (2) the applicant is:

23 (a) a qualified alien, as defined in 8
24 U.S.C. Sec. 1641; and

25 (b) lawfully present in the United

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1 States.

2 E. The certificate required under Subsection D of
3 this section shall include a statement advising the signer that
4 providing false information subjects the signer to penalties
5 for perjury.

6 F. A state agency or political subdivision of the
7 state shall verify a certification required under Subsection E
8 of this section through the federal SAVE program.

9 G. If the certification constitutes a false claim
10 of United States citizenship under 18 U.S.C. Sec. 911, a state
11 agency or political subdivision of the state shall file a
12 complaint with the United States attorney general for the
13 applicable district based upon the venue in which the
14 application was made.

15 H. If a state agency or political subdivision of
16 the state receives verification that a person making an
17 application for a benefit, service or license is not a
18 qualified alien, the agency or political subdivision shall
19 provide the information to the office of the attorney general
20 of New Mexico unless prohibited by federal mandate.

21 I. A state agency or political subdivision of the
22 state may adopt variations to the requirements of this section
23 that:

- 24 (1) clearly improve the efficiency of or
25 reduce delay in the verification process; or

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1 (2) provide for adjudication of unique
2 individual circumstances where the verification procedures in
3 this section would impose an unusual hardship on a legal
4 resident of New Mexico.

5 J. It is unlawful for a state agency or a political
6 subdivision of the state to provide a state, local or federal
7 benefit, as defined in 8 U.S.C. Sec. 1611 and 1621, in
8 violation of this section.

9 K. A state agency or department that administers a
10 program of state or local public benefits shall:

11 (1) provide an annual report to the governor
12 and the legislature regarding its compliance with this section;

13 (2) monitor the federal SAVE program for
14 application verification errors and significant delays;

15 (3) provide an annual report on the errors and
16 delays to ensure that the application of the federal SAVE
17 program is not erroneously denying a state or local benefit to
18 a legal resident of the state; and

19 (4) report delays and errors in the federal
20 SAVE program to the United States department of homeland
21 security.

22 SECTION 23. A new section of the Tax Administration Act
23 is enacted to read:

24 "[NEW MATERIAL] DISTRIBUTION--GUEST WORKER FUND.--A
25 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be

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1 made to the guest worker fund in an amount equal to the net
2 receipts attributable to the guest worker permit fee and guest
3 worker employer fee imposed pursuant to the Guest Worker
4 Driving Privilege Act."

5 SECTION 24. Section 66-1-4.10 NMSA 1978 (being Laws 1990,
6 Chapter 120, Section 11) is amended to read:

7 "66-1-4.10. DEFINITIONS.--As used in the Motor Vehicle
8 Code:

9 A. "laned roadway" means a roadway that is divided
10 into two or more clearly marked lanes for vehicular traffic;

11 B. "law enforcement agency designated by the
12 division" means the law enforcement agency indicated on the
13 dismantler's notification form as the appropriate agency for
14 the receipt of the appropriate copy of that form;

15 C. "license", without modification, means any
16 license, temporary instruction permit [~~or~~], temporary license
17 or driving privilege card issued or recognized under the laws
18 of New Mexico pertaining to the licensing of persons to operate
19 motor vehicles;

20 D. "lien" or "encumbrance" means every chattel
21 mortgage, conditional sales contract, lease, purchase lease,
22 sales lease, contract, security interest under the Uniform
23 Commercial Code or other instrument in writing having the
24 effect of a mortgage or lien or encumbrance upon, or intended
25 to hold, the title to any vehicle in the former owner,

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1 possessor or grantor; and

2 E. "local authorities" means every county,
3 municipality and any local board or body having authority to
4 enact laws relating to traffic under the constitution and laws
5 of this state."

6 SECTION 25. Section 66-5-9 NMSA 1978 (being Laws 1978,
7 Chapter 35, Section 231, as amended) is amended to read:

8 "66-5-9. APPLICATION FOR LICENSE, TEMPORARY LICENSE,
9 PROVISIONAL LICENSE, DRIVING PRIVILEGE CARD OR INSTRUCTION
10 PERMIT.--

11 A. An application for an instruction permit,
12 driving privilege card, provisional license or driver's license
13 shall be made upon a form furnished by the department. An
14 application shall be accompanied by the proper fee. For
15 permits, driving privilege cards, provisional licenses or
16 driver's licenses other than those issued pursuant to the New
17 Mexico Commercial Driver's License Act, submission of a
18 complete application with payment of the fee entitles the
19 applicant to not more than three attempts to pass the
20 examination within a period of six months from the date of
21 application.

22 B. An application shall contain the full legal
23 name, social security number, [~~or individual tax identification~~
24 ~~number~~] except for applicants who are ineligible for a social
25 security number, date of birth, sex and New Mexico residence

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1 address of the applicant and briefly describe the applicant and
2 indicate whether the applicant has previously been licensed as
3 a driver and, if so, when and by what state or country and
4 whether any such license has ever been suspended or revoked or
5 whether an application has ever been refused and, if so, the
6 date of and reason for the suspension, revocation or refusal.
7 ~~[For foreign nationals applying for driver's licenses, the~~
8 ~~secretary shall accept the individual taxpayer identification~~
9 ~~number as a substitute for a social security number regardless~~
10 ~~of immigration status.]~~ The secretary is authorized to
11 establish by regulation other documents that may be accepted as
12 ~~[a substitute for a social security number or an individual tax~~
13 ~~identification number]~~ documentary evidence of the identity and
14 residence of the applicant.

15 C. In addition to the requirements of Subsection B
16 of this section, an application by a foreign national for a
17 driver's license that is acceptable by federal agencies for
18 official federal purposes shall contain the unique identifying
19 number of the foreign national's valid passport, valid visa or
20 other arrival-departure record or document issued by the
21 federal department of homeland security and the expiration date
22 of the foreign national's authorized period of admission or
23 extension of stay as demonstrated on the foreign national's
24 valid passport, valid visa or other arrival-departure record or
25 document issued by the federal department of homeland security.

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1 The department may issue to an eligible foreign national
2 applicant a driver's license valid only for the duration of the
3 foreign national's authorized period of admission or extension
4 of stay.

5 D. The department shall issue a driving privilege
6 card that is not acceptable by federal agencies for official
7 federal purposes to an otherwise eligible applicant regardless
8 of immigration status; provided that the applicant holds a
9 valid guest worker permit or an immediate family permit
10 pursuant to the Guest Worker Driving Privilege Act. For an
11 application for a driving privilege card that is not acceptable
12 by federal agencies for official federal purposes, the
13 secretary shall accept as substitutes for otherwise required
14 documents evidence that the department deems sufficient as
15 documentary evidence of the identity and residency of the
16 applicant. The department may issue to an eligible applicant a
17 driving privilege card valid only for the duration of the
18 applicant's guest worker permit or immediate family permit.

19 ~~[G-]~~ E. An applicant shall indicate whether the
20 applicant has been convicted of driving while under the
21 influence of intoxicating liquor or drugs in this state or in
22 any other jurisdiction. Failure to disclose any such
23 conviction prevents the issuance of a driver's license,
24 provisional license, temporary license, driving privilege card
25 or instruction permit for a period of one year if the failure

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1 to disclose is discovered by the department prior to issuance.
2 If the nondisclosure is discovered by the department subsequent
3 to issuance, the department shall revoke the driver's license,
4 provisional license, temporary license, driving privilege card
5 or instruction permit for a period of one year. Intentional
6 and willful failure to disclose, as required in this
7 subsection, is a misdemeanor.

8 ~~[D-]~~ F. An applicant under eighteen years of age
9 who is making an application for a first New Mexico driver's
10 license shall submit evidence that the applicant has:

11 (1) successfully completed a driver education
12 course approved by the bureau that included a DWI prevention
13 and education component. The bureau may accept verification of
14 driver education course completion from another state if the
15 driver education course substantially meets the requirements of
16 the bureau for a course offered in New Mexico;

17 (2) had a provisional license for at least the
18 twelve-month period immediately preceding the date of the
19 application for the driver's license; provided that thirty days
20 shall be added to the twelve-month period for each adjudication
21 or conviction of a traffic violation committed during the time
22 the person was driving with a provisional license;

23 (3) complied with restrictions on that
24 license;

25 (4) not been cited for a traffic violation

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1 that is pending at the time of application; and

2 (5) not been adjudicated for an offense
3 involving the use of alcohol or drugs during the twelve-month
4 period immediately preceding the date of the application for
5 the driver's license and that there are no pending
6 adjudications alleging an offense involving the use of alcohol
7 or drugs at the time of application.

8 [~~E-~~] G. An applicant eighteen years of age or over,
9 but under twenty-five years of age, who is making an
10 application to be granted a first New Mexico driver's license
11 or driving privilege card shall submit evidence with the
12 application that the applicant has successfully completed a
13 bureau-approved DWI prevention and education program.

14 [~~F-~~] H. An applicant twenty-five years of age or
15 over who has been convicted of driving under the influence of
16 intoxicating liquor or drugs and who is making an application
17 to be granted a first New Mexico driver's license or driving
18 privilege card shall submit evidence with the application that
19 the applicant has successfully completed a bureau-approved DWI
20 prevention and education program.

21 [~~G-~~] I. Whenever an application is received from a
22 person previously licensed in another jurisdiction, the
23 department may request a copy of the driver's record from the
24 other jurisdiction. When received, the driver's record may
25 become a part of the driver's record in this state with the

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1 same effect as though entered on the driver's record in this
2 state in the original instance.

3 [~~H.~~] J. Whenever the department receives a request
4 for a driver's record from another licensing jurisdiction, the
5 record shall be forwarded without charge.

6 [~~F.~~] K. This section does not apply to driver's
7 licenses issued pursuant to the New Mexico Commercial Driver's
8 License Act."

9 SECTION 26. Section 66-5-15 NMSA 1978 (being Laws 1978,
10 Chapter 35, Section 237, as amended) is amended to read:

11 "66-5-15. LICENSES ISSUED TO APPLICANTS.--

12 A. The department shall, upon payment of the
13 required fee, issue to every qualified applicant a driver's
14 license or driving privilege card as applied for. [~~The~~
15 ~~license~~] All licenses and driving privilege cards shall bear
16 the full legal name, date of birth, sex, current New Mexico
17 physical or mailing address, a full face or front-view
18 photograph of the license holder and a brief description of the
19 licensee and the signature of the licensee. A license or
20 driving privilege card shall not be valid unless it bears the
21 signature of the licensee.

22 B. On or after July 1, 2012, a driver's license
23 issued to a licensee that meets federal requirements to be
24 acceptable by federal agencies for official federal purposes
25 shall contain a unique design that distinguishes the driver's

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1 license as being acceptable by federal agencies for official
2 federal purposes from a driving privilege card that is not
3 acceptable by federal agencies for official federal purposes.

4 C. On or after January 1, 2013, a driving privilege
5 card that fails to meet federal requirements to be acceptable
6 by federal agencies for official federal purposes shall state
7 that the driving privilege card is not acceptable by federal
8 agencies for official federal purposes. The information shall
9 be stated in the same manner as restrictions are set forth upon
10 the usual driving privilege card form and in the machine
11 readable zone. The department shall establish by rule the
12 restriction code of "J" to designate the restriction "driving
13 privilege cards are not acceptable by federal agencies for
14 official federal purposes" in order to implement the provisions
15 of this subsection."

16 SECTION 27. Section 66-5-21 NMSA 1978 (being Laws 1978,
17 Chapter 35, Section 243, as amended by Laws 2010, Chapter 42,
18 Section 2 and by Laws 2010, Chapter 70, Section 2) is amended
19 to read:

20 "66-5-21. EXPIRATION OF LICENSE--FOUR-YEAR ISSUANCE
21 PERIOD--EIGHT-YEAR ISSUANCE PERIOD--LIMITED ISSUANCE
22 PERIOD--RENEWAL.--

23 A. Except as provided in Subsection B [~~or~~], D or E
24 of this section, Section 66-5-19 NMSA 1978 and Section 66-5-67
25 NMSA 1978, all driver's licenses shall be issued for a period

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1 of four years, and each driver's license shall expire thirty
2 days after the applicant's birthday in the fourth year after
3 the effective date of the driver's license or shall expire
4 thirty days after the applicant's seventy-fifth birthday. A
5 driver's license issued pursuant to Section 66-5-19 NMSA 1978
6 shall expire thirty days after the applicant's birthday in the
7 year in which the license expires. Each driver's license is
8 renewable within ninety days prior to its expiration or at an
9 earlier date approved by the department. The fee for the
10 driver's license shall be as provided in Section 66-5-44 NMSA
11 1978. The department may provide for renewal by mail or
12 telephonic or electronic means of a driver's license issued
13 pursuant to the provisions of this subsection, pursuant to
14 regulations adopted by the department that ensure adequate
15 security measures to safeguard personal information that is
16 obtained in the issuance of a driver's license. The department
17 may require an examination upon renewal of the driver's
18 license.

19 B. At the option of an applicant, a driver's
20 license may be issued for a period of eight years; provided
21 that the applicant:

22 (1) pays the amount required for a driver's
23 license issued for a term of eight years;

24 (2) otherwise qualifies for a four-year
25 driver's license; and

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1 (3) will not reach the age of seventy-five
2 during the last four years of the eight-year driver's license
3 period or reach the age of twenty-one during any year within
4 the term of the driver's license.

5 C. A driver's license issued pursuant to the
6 provisions of Subsection B of this section shall expire thirty
7 days after the applicant's birthday in the eighth year after
8 the effective date of the driver's license.

9 D. A driver's license issued prior to an
10 applicant's twenty-first birthday shall expire thirty days
11 after the applicant's twenty-first birthday. A driver's
12 license issued prior to an applicant's twenty-first birthday
13 may be issued for a period of up to five years.

14 E. A driver's license that is issued to a foreign
15 national and that is acceptable by federal agencies for
16 official federal purposes shall expire on the earlier of:

17 (1) if issued prior to the applicant's twenty-
18 first birthday, thirty days after the applicant's twenty-first
19 birthday;

20 (2) thirty days after the applicant's seventy-
21 fifth birthday;

22 (3) thirty days after the applicant's birthday
23 on the fourth year after the effective date of the driver's
24 license or on the eighth year after the effective date of the
25 driver's license if the applicant opted for a period of eight

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1 years pursuant to Subsection B of this section; or

2 (4) the date of the foreign national's
3 termination of authorized period of admission or extension of
4 stay as demonstrated on the foreign national's valid passport,
5 valid visa or other arrival-departure record or document issued
6 by the federal department of homeland security.

7 F. A driving privilege card that is issued to a
8 foreign national shall expire on the date that the card
9 holder's guest worker permit or immediate family permit
10 expires.

11 ~~[E-]~~ G. The director may adopt regulations
12 providing for the proration of driver's license fees, ~~[and]~~
13 commercial driver's license fees and driving privilege card
14 fees due to shortened licensure periods permitted pursuant to
15 Subsection A of Section 66-5-19 NMSA 1978 or for licensure
16 periods authorized pursuant to the provisions of this section."

17 **SECTION 28.** Section 66-5-44 NMSA 1978 (being Laws 1978,
18 Chapter 35, Section 266, as amended) is amended to read:

19 "66-5-44. LICENSES AND PERMITS--DURATION AND FEE--
20 APPROPRIATION.--

21 A. There shall be paid to the department a fee of
22 ten dollars (\$10.00) for each driver's license ~~[or]~~, duplicate
23 driver's license, driving privilege card or duplicate driving
24 privilege card, except that for a driver's license issued for
25 an eight-year period, a fee of twenty dollars (\$20.00) shall be

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1 paid to the department. Each license shall be for a term
2 provided for in Section 66-5-21 NMSA 1978.

3 B. For each permit and instruction permit, there
4 shall be paid to the department a fee of two dollars (\$2.00).
5 The term for each permit shall be as provided in Sections
6 66-5-8 and 66-5-9 NMSA 1978.

7 C. Except for fees charged pursuant to Subsection E
8 of this section, the director with the approval of the governor
9 may increase the amount of the fees provided for in this
10 section by an amount not to exceed three dollars (\$3.00) for
11 the purpose of implementing an enhanced driver's license
12 system; provided that for a driver's license issued for an
13 eight-year period, the amount of the fees shall be twice the
14 amount charged for other driver's licenses. The additional
15 amounts collected pursuant to this subsection are appropriated
16 to the department to defray the expense of the new system of
17 licensing and for use as set forth in Subsection F of Section
18 66-6-13 NMSA 1978. Unexpended or unencumbered balances
19 remaining from fees collected pursuant to the provisions of
20 this subsection at the end of any fiscal year shall not revert
21 to the general fund but shall be expended by the department in
22 fiscal year 2010 and subsequent fiscal years.

23 D. There shall be paid to the department a driver
24 safety fee of three dollars (\$3.00) for each driver's license
25 or duplicate driver's license, except that for a driver's

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1 license issued for an eight-year period, a fee of six dollars
2 (\$6.00) shall be paid to the department. The fee shall be
3 distributed to each school district for the purpose of
4 providing defensive driving instruction through the state
5 equalization guarantee distribution made annually pursuant to
6 the general appropriation act.

7 E. The department may charge a fee of no more than
8 fifteen dollars (\$15.00) to a person who holds a driver's
9 license from another state and is applying for a New Mexico
10 driver's license for the first time. The fee is appropriated
11 to the department to defray the expense of determining whether
12 the driver has been convicted of driving a motor vehicle while
13 under the influence of intoxicating liquor or drugs, or
14 equivalent crime, and determining if the person qualifies for a
15 driver's license in this state. The fee provided for in this
16 subsection is not subject to the increase provided for in
17 Subsection C of this section."

18 SECTION 29. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is January 1, 2012.

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