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SENATE BILL 14

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Stephen H. Fischmann

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE GUEST WORKER 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 23 of this act may be cited as the "Guest Worker Act".

SECTION 2. [NEW MATERIAL] PURPOSE OF ACT.--The purpose of
the Guest Worker Act is to enable employers to hire necessary

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1 workers without breaking the law, to protect jobs and wages for
2 New Mexico residents, to enable necessary foreign national
3 workers to obtain jobs without living in fear of deportation or
4 potential employer abuse, to ensure that all foreign national
5 workers contribute their fair share to funding public services,
6 to improve security through better documentation and tracking
7 of foreign nationals and to end the inappropriate use of New
8 Mexico driver's licenses as federal identification. The intent
9 of the Guest Worker Act is to have the state of New Mexico work
10 in partnership with the federal government to achieve effective
11 immigration reform that improves New Mexico's security and
12 prosperity and fosters a consistent, reliable and
13 understandable immigration policy for all New Mexicans.

14 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
15 Guest Worker Act:

16 A. "department" means the workforce solutions
17 department;

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

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

24 D. "e-verify program" means the electronic
25 verification of the work authorization program of the federal

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1 Illegal Immigration Reform and Immigrant Responsibility Act of
2 1996, 8 U.S.C. Sec. 1324a;

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

7 F. "guest worker" means an undocumented individual
8 who holds a guest worker permit;

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

14 H. "immediate family" means:
15 (1) an undocumented individual's spouse;
16 (2) a dependent parent of an undocumented
17 individual; or
18 (3) a child of an undocumented individual if
19 the child is:
20 (a) under twenty-one years of age; and
21 (b) unmarried;

22 I. "immediate family permit" means a permit issued
23 in accordance with the provisions of Section 12 of the Guest
24 Worker Act to an undocumented individual who meets the
25 eligibility criteria provided in Section 14 of Guest Worker

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1 Act;

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

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

7 L. "program start date" means the day on which the
8 department is required to implement the guest worker program
9 pursuant to Section 8 of the Guest Worker Act;

10 M. "relevant contact information" means:

11 (1) an undocumented individual's name,
12 residential address, residential telephone number and personal
13 email address;

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

17 (3) the names of an undocumented individual's
18 immediate family members and the names of the family members
19 who reside with the undocumented individual; and

20 (4) any other information required by the
21 department by rule;

22 N. "status verification system" means an electronic
23 system operated by the federal government, through which an
24 authorized official of a state agency or a political
25 subdivision of a state may inquire, by exercise of authority

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1 delegated pursuant to 8 U.S.C. Sec. 1373, to verify the
2 citizenship or immigration status of an individual within the
3 jurisdiction of the state agency or political subdivision for a
4 purpose authorized under this section. "Status verification
5 system" includes:

6 (1) the e-verify program;

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

12 (3) the social security number verification
13 service or similar online verification service implemented by
14 the United States social security administration;

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

17 P. "undocumented individual" means an individual
18 who:

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

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

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

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

9 B. confirming an individual's claim of residence or
10 domicile if determination is required by state law or a
11 judicial order issued pursuant to a civil or criminal
12 proceeding in this state;

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

16 D. requesting verification of the citizenship or
17 immigration status of any person pursuant to 8 U.S.C. Sec.
18 1373.

19 SECTION 5. [NEW MATERIAL] DEPARTMENT TO CREATE GUEST
20 WORKER PROGRAM.--

21 A. The department shall create and administer the
22 "guest worker program" under which the department shall:

23 (1) issue a guest worker permit or immediate
24 family permit;

25 (2) establish fees for filings or services

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1 required by the Guest Worker Act;

2 (3) establish penalties required by the Guest
3 Worker Act;

4 (4) track and maintain information regarding
5 the number of guest worker permits, types of employment in
6 which guest worker permit holders are employed and employer
7 violations of the Guest Worker Act; and

8 (5) 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 Act.

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

15 SECTION 6. [NEW MATERIAL] GUEST WORKER PROGRAM TASK FORCE
16 CREATED--MEMBERSHIP--DUTIES.--

17 A. The "guest worker program task force" is
18 created. The task force shall function from the effective date
19 of the Guest Worker Act.

20 B. The task force is composed of the following
21 members:

22 (1) one majority party member and one minority
23 party member of the house of representatives, appointed by the
24 New Mexico legislative council;

25 (2) one majority party member and one minority

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1 party member of the senate, appointed by the New Mexico
2 legislative council;

3 (3) the secretary of economic development;
4 (4) the secretary of workforce solutions; and
5 (5) the director of the New Mexico department
6 of agriculture.

7 C. Vacancies on the task force shall be filled by
8 appointment by the original appointing authority.

9 D. Members of the task force are entitled to per
10 diem and mileage as provided in the Per Diem and Mileage Act
11 and shall receive no other compensation, perquisite or
12 allowance.

13 E. The task force shall:

14 (1) examine the number of guest worker
15 permits, types of employment in which guest worker permit
16 holders are employed and employer violations of the Guest
17 Worker Act; and

18 (2) make recommendations to the governor
19 annually on December 15 regarding any upward or downward
20 adjustment in the number of guest worker permits to issue to
21 achieve the ideal percentage of the state labor force made up
22 by guest worker permit holders.

23 SECTION 7. [NEW MATERIAL] IMPLEMENTATION TO BE CONSISTENT
24 WITH FEDERAL LAW AND CIVIL RIGHTS.--The department shall
25 implement the Guest Worker Act in a manner that:

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1 A. is consistent with federal laws that regulate
2 immigration;

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

4 C. respects the privileges and immunities of United
5 States citizens.

6 SECTION 8. [NEW MATERIAL] FEDERAL WAIVERS, EXEMPTIONS OR
7 AUTHORIZATIONS--NO IMPLEMENTATION WITHOUT WAIVER, EXEMPTION OR
8 AUTHORIZATION.--

9 A. The department shall seek one or more federal
10 waivers, exemptions or authorizations to implement the guest
11 worker program. The federal waivers, exemptions or
12 authorizations shall state that the federal government will not
13 remove a permit holder from the United States and will provide
14 at least one year of notice to all permit holders before making
15 any change to that policy.

16 B. The governor shall participate actively in
17 efforts to obtain one or more federal waivers, exemptions or
18 authorizations under this section.

19 C. The department shall implement the guest worker
20 program on the effective date of the Guest Worker Act; provided
21 that federal waivers, exemption or authorizations are in
22 effect.

23 SECTION 9. [NEW MATERIAL] COORDINATION WITH OTHER FEDERAL
24 OR STATE LAWS OR PROGRAMS.--To the extent feasible, the
25 department shall coordinate the implementation of the guest

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1 worker program with other existing state and federal laws that
2 relate to immigration and labor, including laws pertaining to
3 obtaining the privilege to drive and to report citizenship
4 status.

5 SECTION 10. [NEW MATERIAL] GUEST WORKER FUND--CREATED--
6 PURPOSE.--The "guest worker fund" is created in the state
7 treasury. The fund consists of fees paid pursuant to the Guest
8 Worker Act, appropriations, gifts, grants and donations. Money
9 in the fund at the end of a fiscal year shall revert to the
10 general fund. The department shall administer the fund, and
11 money in the fund is appropriated to the department to
12 administer the Guest Worker Act. Disbursements from the fund
13 shall be made by warrant of the secretary of finance and
14 administration pursuant to vouchers signed by the secretary of
15 workforce solutions or the secretary of workforce solutions'
16 representative.

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

19 A. A guest worker permit holder is subject to the
20 provisions of the Income Tax Act and the Withholding Tax Act.
21 An employer who hires a guest worker permit holder is subject
22 to the provisions of the Withholding Tax Act.

23 B. A "guest worker permit fee" is imposed on a
24 guest worker permit holder. The guest worker permit fee shall
25 be in an amount equal to the combined rates of the federal old

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1 age survivors and disability insurance, also known as social
2 security, and the federal medicare program that would be
3 imposed on the guest worker permit holder by federal law if the
4 guest worker permit holder were hired as an employee with a
5 social security number.

6 C. A "guest worker employer fee" is imposed on an
7 employer that hires a guest worker permit holder as an
8 employee. The guest worker employer fee shall be in an amount
9 equal to the combined rates of the federal old age survivors
10 and disability insurance, also known as social security, and
11 the federal medicare program that would be imposed on the
12 employer by federal law if the guest worker permit holder were
13 hired as an employee with a social security number.

14 D. The taxation and revenue department shall
15 collect the guest worker permit fee and guest worker employer
16 fee in the same manner that it collects state income taxes
17 withheld in accordance with the Withholding Tax Act. The
18 taxation and revenue department shall credit the guest worker
19 permit fee and the guest worker employer fee to the guest
20 worker fund to carry out the purposes of the Guest Worker Act.

21 SECTION 12. [NEW MATERIAL] OBTAINING A PERMIT--USES OF
22 PERMIT.--

23 A. An undocumented individual shall obtain a guest
24 worker permit:

25 (1) before providing services to an employer

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1 in this state under a contract for hire; or

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

5 B. By rule, the department shall provide a
6 procedure under which an employer may hire an undocumented
7 individual who does not hold a guest worker permit, pending the
8 undocumented individual obtaining a permit within thirty days
9 of the day on which the undocumented individual is hired to
10 provide services.

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

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

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

21 (1) to establish entitlement to a federal,
22 state or local benefit as provided in Section 23 of the Guest
23 Worker Act; or

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

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1 SECTION 13. ~~[NEW MATERIAL]~~ ELIGIBILITY CRITERIA TO OBTAIN
2 OR RENEW A GUEST WORKER PERMIT.--

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

- 5 (1) comply with the Child Labor Act;
- 6 (2) live in New Mexico;
- 7 (3) have worked or lived in New Mexico before
8 January 1, 2012;
- 9 (4) provide and regularly update relevant
10 contact information to the department;
- 11 (5) provide documentation of a contract for
12 hire under which the undocumented individual begins or
13 continues to provide services within at least thirty days of
14 the day on which the undocumented individual obtains the
15 permit;
- 16 (6) agree to a criminal background check;
- 17 (7) 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 (8) 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 a guest worker permit or renewing a
4 guest worker permit to submit to a criminal background check as
5 a condition of receiving or renewing the guest worker permit.

6 D. An undocumented individual applying for a guest
7 worker permit and required to submit to a criminal background
8 check shall:

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

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

13 (a) the department of public safety; and

14 (b) the federal bureau of investigation.

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

18 (1) criminal background information maintained
19 by the department of public safety; and

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

23 F. Information obtained by the department from the
24 review of criminal history records received under this section
25 shall be used by the department to determine eligibility to

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1 obtain a guest worker permit.

2 G. The department shall:

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

7 (2) charge the undocumented individual
8 applying for the guest worker permit a fee equal to the costs
9 incurred by the department regarding the undocumented
10 individual pursuant to this section.

11 SECTION 14. [NEW MATERIAL] ELIGIBILITY TO OBTAIN OR RENEW
12 AN IMMEDIATE FAMILY PERMIT.--

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

15 (1) live in New Mexico;

16 (2) be a member of a guest worker's immediate
17 family;

18 (3) provide and regularly update relevant
19 contact information;

20 (4) agree to a criminal background check;

21 (5) not have been convicted of, pled guilty
22 to, pled no contest to, pled guilty in a similar manner to or
23 resolved by diversion or its equivalent to a felony; and

24 (6) provide evidence satisfactory to the
25 department that the undocumented individual would not be

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1 inadmissible on public health grounds pursuant to 8 U.S.C. Sec.
2 1182.

3 B. The department may, by rule, provide for the
4 documentation required to establish eligibility pursuant to
5 Subsection A of this section.

6 C. The department shall require an undocumented
7 individual applying for an immediate family permit or renewing
8 an immediate family permit to submit to a criminal background
9 check as a condition of receiving or renewing the immediate
10 family permit.

11 D. An undocumented individual applying for an
12 immediate family permit and required to submit to a criminal
13 background check shall:

- 14 (1) submit a fingerprint card in a form
 - 15 acceptable to the department; and
 - 16 (2) consent to a fingerprint background check
- 17 by:
- 18 (a) the department of public safety; and
 - 19 (b) the federal bureau of investigation.

20 E. For an undocumented individual applying for an
21 immediate family permit who submits a fingerprint card and
22 consents to a fingerprint background check, the department may
23 request:

- 24 (1) criminal background information maintained
- 25 by the department of public safety; and

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

4 F. Information obtained by the department from the
5 review of criminal history records received under this section
6 shall be used by the department to determine eligibility to
7 obtain an immediate family permit.

8 G. The department shall:

9 (1) pay to the federal bureau of investigation
10 the costs incurred by the federal bureau of investigation in
11 providing the department criminal background information
12 pursuant to this section; and

13 (2) charge the undocumented individual
14 applying for the immediate family permit a fee equal to the
15 costs incurred by the department regarding the undocumented
16 individual pursuant to this section.

17 SECTION 15. [NEW MATERIAL] APPLICATION AND RENEWAL
18 PROCESS.--

19 A. The department shall:

20 (1) create a guest worker permit and an
21 immediate family permit that:

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

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

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

3 (a) include a photograph of the
4 undocumented individual to whom the permit is issued;

5 (b) prominently state the date on which
6 the permit expires; and

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

9 B. A guest worker permit and an immediate family
10 permit shall expire two years from the day on which the
11 department issues the permit.

12 C. To apply for a permit under the Guest Worker
13 Act, an undocumented individual shall submit to the department,
14 in a form acceptable to the department:

15 (1) an application;

16 (2) documentation that the individual meets
17 the criteria provided in Section 13 or 14 of the Guest Worker
18 Act;

19 (3) a valid passport issued by a country of
20 citizenship, a matricula consular card issued by the Mexican
21 consulate in Albuquerque or El Paso, or a birth certificate,
22 either an original or a certified copy, including a foreign
23 birth certificate with a notarized English translation, if
24 necessary;

25 (4) a signed statement verifying that the

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1 information in the application and the documentation is
2 correct; and

3 (5) a fee established by the department, not
4 to exceed two hundred dollars (\$200) per permit.

5 D. Subject to the provisions of Subsection E of
6 this section, if an undocumented individual submits a complete
7 application pursuant to Subsection C of this section, and the
8 department determines that the undocumented individual meets
9 the criteria provided in Section 13 of the Guest Worker Act,
10 the department shall issue or renew a guest worker permit until
11 the number of permits is at least equal to three percent of the
12 total labor force in the state.

13 E. The number of active guest worker permits shall
14 not exceed six percent of the total labor force in the state.
15 The percentage downward adjustment of active guest worker
16 permits shall not exceed one percent in any given calendar
17 year.

18 F. If an undocumented individual submits a complete
19 application pursuant to Subsection C of this section, and the
20 department determines that the undocumented individual meets
21 the criteria provided in Section 14 of the Guest Worker Act,
22 the department shall issue or renew an immediate family permit.

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

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1 SECTION 16. ~~[NEW MATERIAL]~~ CONDITIONS DURING PERMIT
2 TERM.--

3 A. A guest worker permit holder or an immediate
4 family permit holder shall continue to meet the eligibility
5 criteria for the type of permit held by the permit holder.

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

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

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

15 (3) for an immediate family permit, the guest
16 worker permit under which the immediate family member's permit
17 is issued is revoked or expired.

18 SECTION 17. ~~[NEW MATERIAL]~~ VERIFICATION OF VALID
19 PERMIT--PROTECTED STATUS OF INFORMATION.--

20 A. The department shall develop a verification
21 procedure, by rule, for an employer who hires a guest worker
22 permit holder to verify with the department that the holder's
23 permit is valid as required by Section 19 of the Guest Worker
24 Act.

25 B. The verification procedure adopted pursuant to

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1 this section shall be substantially similar to the employer
2 requirements to verify federal employment status under the
3 e-verify program and may be cited as the "nm-verify program".

4 SECTION 18. [NEW MATERIAL] PROHIBITED CONDUCT--
5 ADMINISTRATIVE PENALTIES--CRIMINAL PENALTIES.--

6 A. A guest worker permit holder or an immediate
7 family permit holder shall not file for or receive unemployment
8 benefits.

9 B. No person shall:

10 (1) furnish false or forged information or
11 documentation in support of an application for a guest worker
12 permit or an immediate family permit;

13 (2) alter the information on a guest worker
14 permit or immediate family permit;

15 (3) allow an individual to use a guest worker
16 permit or an immediate family permit if the individual is not
17 entitled to use the permit;

18 (4) represent that a guest worker permit or an
19 immediate family permit is issued to an individual if the
20 permit is not issued to that individual;

21 (5) use, or attempt to use, an invalid guest
22 worker permit or an immediate family permit as a valid permit;
23 or

24 (6) knowingly or with reckless disregard
25 acquire, use, display or transfer an item that purports to be a

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1 valid guest worker permit or an immediate family permit but
2 that is not a valid permit.

3 SECTION 19. [NEW MATERIAL] EMPLOYING AN UNAUTHORIZED
4 ALIEN--VERIFICATION OF EMPLOYMENT ELIGIBILITY.--

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

8 B. On and after the program start date, an employer
9 employing one or more employees within the state shall, after
10 hiring an employee, verify the employment eligibility of the
11 new employee or employees:

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

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

16 C. An employer shall keep a record of the
17 verification required by Subsection B of this section for the
18 longer of:

19 (1) the duration of the employee's employment;
20 or

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

22 D. On and after the guest worker program start
23 date, an employer shall terminate the employment of an
24 undocumented individual if the employer determines that the
25 undocumented individual does not hold a valid guest worker

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1 permit.

2 SECTION 20. [NEW MATERIAL] LIABILITY PROTECTIONS.--

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

7 (1) the employer complies with the provisions
8 of Section 19 of the Guest Worker Act; and

9 (2) the information obtained after
10 verification pursuant to Section 19 of the Guest Worker Act
11 indicates that:

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

14 (b) on and after the guest worker
15 program start date, the employee held a valid guest worker
16 permit.

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

21 (1) the employer complies with the provisions
22 of Section 19 of the Guest Worker Act; and

23 (2) the information obtained after
24 verification pursuant to Section 19 of the Guest Worker Act
25 indicates that the employee:

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1 (a) was an unauthorized alien; or

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

4 C. The Guest Worker Act does not create a cause of
5 action, on the basis of discrimination or otherwise, for not
6 hiring an individual who holds a guest worker permit.

7 SECTION 21. [NEW MATERIAL] ADMINISTRATIVE ACTIONS--
8 DEFENSES.--

9 A. On and after the guest worker program start
10 date, the department may bring agency action against an
11 employer who violates the provisions of Section 19 of the Guest
12 Worker Act.

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

17 C. The federal government's determination of
18 unauthorized alien status creates a rebuttable presumption of
19 the employee's lawful status. The department may request the
20 federal government to provide automated or testimonial
21 verification pursuant to 8 U.S.C. Sec. 1373c.

22 D. For the purposes of this section, proof of
23 verifying the authorization for employment in accordance with
24 the provisions of Section 19 of the Guest Worker Act creates a
25 rebuttable presumption that an employer did not knowingly

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1 employ an unauthorized alien who did not hold a valid guest
2 worker permit.

3 E. An employer is considered to have complied with
4 the requirements of 8 U.S.C. Sec. 1324a(b), notwithstanding an
5 isolated, sporadic or accidental technical or procedural
6 failure to meet the requirements, if there is a good-faith
7 attempt to comply with those requirements.

8 SECTION 22. [NEW MATERIAL] PENALTIES.--

9 A. As used in this section:

10 (1) "first violation" means the first time
11 that the department imposes a penalty pursuant to this section,
12 regardless of the number of individuals that the employer hires
13 in violation of the provisions of Section 19 of the Guest
14 Worker Act;

15 (2) "second violation" means the second time
16 that the department imposes a penalty pursuant to this section,
17 regardless of the number of individuals that the employer hires
18 in violation of the provisions of Section 19 of the Guest
19 Worker Act; and

20 (3) "third or subsequent violation" means the
21 third or subsequent time that the department imposes a penalty
22 pursuant to this section, regardless of the number of
23 individuals that the employer hires in violation of the
24 provisions of Section 19 of the Guest Worker Act.

25 B. For a first violation of the provisions of

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1 Section 19 of the Guest Worker Act, the department shall impose
2 a civil penalty on an employer not to exceed five hundred
3 dollars (\$500) for each individual who is employed by the
4 employer during the time period specified in the notice of
5 agency action and who is an unauthorized alien who does not
6 hold a valid guest worker permit.

7 C. For a second violation of the provisions of
8 Section 19 of the Guest Worker Act, the department shall impose
9 a civil penalty on an employer not to exceed one thousand
10 dollars (\$1,000) for each individual who is employed by the
11 employer during the time period specified in the notice of
12 agency action and who is an unauthorized alien who does not
13 hold a valid guest worker permit.

14 D. For a third or subsequent violation of the
15 provisions of Section 19 of the Guest Worker Act, the
16 department shall:

17 (1) notify the issuing agency of the
18 applicable licenses of the third or subsequent violation of the
19 Guest Worker Act and recommend revocation of the applicable
20 licenses for a period not to exceed one year; or

21 (2) impose a civil penalty on an employer not
22 to exceed the greater of ten thousand dollars (\$10,000) or one
23 thousand five hundred dollars (\$1,500) for each individual who
24 is employed by the employer during the time period specified in
25 the agency action and who is an unauthorized alien who does not

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1 hold a valid guest worker permit.

2 E. The department shall base its determination of
3 the length of revocation pursuant to Subsection D of this
4 section on evidence or information submitted to the department
5 during the action under which a third or subsequent violation
6 is found and shall consider the following factors, if relevant:

7 (1) the number of unauthorized aliens who do
8 not hold a guest worker permit who are employed by the
9 employer;

10 (2) prior misconduct by the employer;

11 (3) the degree of harm resulting from the
12 violation;

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

15 (5) the duration of the violation; and

16 (6) any other factor that the department
17 considers appropriate.

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

24 G. A person is guilty of a misdemeanor, and shall
25 be sentenced in accordance with the provisions of Section

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1 31-19-1 NMSA 1978, if the person:

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

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

7 SECTION 23. [NEW MATERIAL] RECEIPT OF STATE, LOCAL OR
8 FEDERAL PUBLIC BENEFITS--VERIFICATION--EXCEPTIONS--FRAUDULENTLY
9 OBTAINING BENEFITS--ANNUAL REPORT.--

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

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

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

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

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

25 (1) any purpose for which lawful presence in

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1 the United States is not restricted by law, ordinance or
2 regulation;

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

4 (a) necessary for the treatment of an
5 emergency medical condition, as defined in 42 U.S.C. Sec.

6 1396b(v)(3), of the individual involved; and

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

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

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

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

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

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

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1 assistance provided on the income or resources of the
2 individual recipient; and

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

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

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

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

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

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

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

23 (2) the applicant is:

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

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1 (b) lawfully present in the United
2 States.

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

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

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

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

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

25 (1) clearly improve the efficiency of or

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1 reduce delay in the verification process; or

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

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

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

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

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

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

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

23 SECTION 24. A new section of the Tax Administration Act
24 is enacted to read:

25 "[NEW MATERIAL] DISTRIBUTION--GUEST WORKER FUND.--A

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1 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
2 made to the guest worker fund in an amount equal to the net
3 receipts attributable to the guest worker permit fee and guest
4 worker employer fee imposed pursuant to the Guest Worker Act."

5 SECTION 25. 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 26. 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
12 as ~~[a substitute for a social security number or an individual~~
13 ~~tax identification number]~~ documentary evidence of the identity
14 and 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 Act. For an application for a
11 driving privilege card that is not acceptable by federal
12 agencies for official federal purposes, the secretary shall
13 accept as substitutes for otherwise required documents evidence
14 that the department deems sufficient as documentary evidence of
15 the identity and residency of the applicant. The department
16 may issue to an eligible applicant a driving privilege card
17 valid only for the duration of the applicant's guest worker
18 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 [I.] 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 27. 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 six months after the effective date
23 of this 2012 act, a driver's license issued to a licensee that
24 meets federal requirements to be acceptable by federal agencies
25 for official federal purposes shall contain a unique design

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1 that distinguishes the driver's license as being acceptable by
2 federal agencies for official federal purposes from a driving
3 privilege card that is not acceptable by federal agencies for
4 official federal purposes.

5 C. On or after twelve months after the effective
6 date of this 2012 act, a driving privilege card that fails to
7 meet federal requirements to be acceptable by federal agencies
8 for official federal purposes shall state that the driving
9 privilege card is not acceptable by federal agencies for
10 official federal purposes. The information shall be stated in
11 the same manner as restrictions are set forth upon the usual
12 driving privilege card form and in the machine readable zone.
13 The department shall establish by rule the restriction code of
14 "J" to designate the restriction "driving privilege cards are
15 not acceptable by federal agencies for official federal
16 purposes" in order to implement the provisions of this
17 subsection."

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

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

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

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1 an eight-year period, a fee of twenty dollars (\$20.00) shall be
2 paid to the department. Each license shall be for a term
3 provided for in Section 66-5-21 NMSA 1978.

4 B. For each permit and instruction permit, there
5 shall be paid to the department a fee of two dollars (\$2.00).
6 The term for each permit shall be as provided in Sections
7 66-5-8 and 66-5-9 NMSA 1978.

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

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

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

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

19 **SECTION 29. CONTINGENT EFFECTIVE DATE.**--The effective
20 date of the provisions of this act shall be the date that the
21 governor certifies to the taxation and revenue department and
22 the workforce solutions department that the governor has
23 received in writing one or more federal waivers, exemptions or
24 authorizations to implement a guest worker program for foreign
25 nationals who do not provide a social security number or proof

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1 of authorized presence in the United States. Upon that date,
2 the taxation and revenue department and the workforce solutions
3 department shall implement the provisions of this act and
4 notify the New Mexico compilation commission.

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