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DAVID PERLMAN
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COMMISSION ON POSTSECONDARY EDUCATION

Testimony in Support of AB505
April 9, 2003

AB505 corrects an issue raised by the Federal Bureau of Investigation concerning the confidentiality of background investigation information released to the Commission.

In a letter dated April 11, 2002 (attached), the Commission was notified that the FBI would no longer process background investigations absent a change to NRS 394.465, prohibiting release of background information to private entities. Currently, NRS 394.465 contains a statement directing the administrator to notify the applicant and the hiring institution of felony convictions.

AB505 removes the offending statement and ensures that the FBI will continue to process background investigations for the Commission.

I support AB505 and strongly recommend its passage.

A handwritten signature in black ink, appearing to read "David Perlman".

David Perlman, Administrator
Nevada Commission on Postsecondary Education

KEVIN C. GIBLIN



STATE OF NEVADA
Commission on Postsecondary Education

DAVID PERLMAN
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ASSEMBLY EDUCATION
DATE: 4/9/03 ROOM: 3143 EXHIBIT E
SUBMITTED BY: DAVID PERLMAN

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Kenny C. Guinn
Governor



Records and Identification Bureau
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Richard Kirkland
Director

Colonel David S. Hosmer
Chief
Nevada Highway Patrol

April 11, 2002

Bonnie Shanteler
Nevada Commission on Post-Secondary Education
1820 E. Sahara Ave., Suite 111
Las Vegas, NV 89104

Dear Ms. Shanteler:

The Federal Bureau of Investigation (FBI) performed a review of all of Nevada's state statutes to ensure that they meet with the requirements of Public Law (Pub. L.) 92-544. In the past, Nevada Revised Statute (NRS) 394.465 has been sufficient to allow the Criminal History Records Repository to forward a fingerprint card to the FBI and yet, the FBI has informed us that without modification of this statute, that will no longer be the case.

For your information, Pub. L. 92-544 authorizes the FBI to exchange criminal history records with officials of state and local governments for purposes of employment and licensing. This authorization is dependent upon enactment of a state statute approved by the Attorney General of the United States. In exercising this approval function, the FBI employs the following standards in order to determine whether or not a state statute is acceptable for purposes of Pub. L. 92.544.

- a. The statute must exist as the result of legislative enactment;
- b. It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
- c. It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
- d. It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth;
- e. It must not be against public policy; and
- f. It may not authorize receipt of the CHRI by a private entity.

April 12, 2002
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Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau (for a check of state records) and thereafter forwarded to the FBI for a "national criminal history check."

Based on these standards, the FBI has determined that NRS 394.465 fails to meet the sixth (f) listed criteria which prohibits the statute to authorize receipt of the CHRI by a private entity and therefore, will no longer accept this statute for the purposes of Pub. L. 92.544. However, because legislative action is necessary in order to change the statute, the FBI has advised that they will continue to accept those fingerprint cards historically submitted by the Repository under NRS 394.465 until June 10, 2003. If the statute has not been changed by that date, the FBI will no longer accept fingerprint cards submitted by the Repository and your agency will no longer be able to obtain national criminal history background checks.

I would like to take this opportunity to apologize for this late notice as our Bureau has gone through some management and supervisory changes. In receiving this information at this time, you should have enough time to prepare appropriate language to modify your statute so it can acted upon during the next legislative session, if you so desire. For your convenience, we have enclosed draft language already approved by the FBI for the purposes of Pub. L. 92-544. If you have any question, please do not hesitate to contact Suzie Carrillo of my staff at 775-687-1600, extension 226.

Sincerely,



Lt. Rick Keema, Manager

RK/shc
Enclosure

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