

Steve Sisolak
Governor



Nevada Department of
Public Safety
DEDICATION PRIDE SERVICE

George Togliatti
Director

Sheri Brueggemann
Deputy Director

Mindy McKay
Division Administrator

**Records, Communications and
Compliance Division**

333 West Nye Lane, Suite 100
Carson City, Nevada 89706
Telephone (775) 684-6262 – Fax (775) 687-3289

November 19, 2019

Nevada Department of Health and Human Services
Attn: Leticia Metherell Manager III
727 Fairview Drive Suite E
Carson City, NV 89701

Dear Ms. Metherell,

This letter is to inform your agency of the Federal Bureau of Investigations (FBI) decision in regards to their review of Senate Bill (SB) 69 which amends Nevada Revised Statutes (NRS), Chapter 622, to determine if it would meet the requirements of Public Law (Pub. L.) 92-544 for access to FBI criminal history record information (CHRI).

The Criminal Justice Information Law Unit (CJILU) reviewed the draft SB 69, which would authorize the Governor, by executive order, to direct regulatory bodies to adopt regulations to facilitate the issuing of licenses by endorsement. Section 3 states that a Nevada regulatory body shall adopt regulations, providing for the issuance of a license by endorsement to engage in an occupation or profession in the state of Nevada and may adopt regulations to require an applicant for the issuance of a license by endorsement to submit to a fingerprint-based state and national criminal history record check. The CJILU determined that the language would not qualify for access to FBI CHRI under the criteria set forth under Pub. L. 92-544.

Specifically, for a state to conduct FBI fingerprint-based background checks under Pub. L. 92-544, the statute must outline the specific categories to be background. The category contained in draft SB 69, "licensure by endorsement," is overly broad and does not specify what individual licenses will be required to have FBI background checks. Also, a statute must designate a governmental agency responsible for the FBI background checks. The generic term of "regulatory body" is not specific enough to meet the requirements of Pub. L. 92-544. Lastly, for FBI fingerprint-based background checks to be authorized under Pub. L. 92-544, all of the criteria must be set out in statute. Executive orders, rules and regulations adopted by a regulatory body within the state of Nevada would not meet this requirement unless the rules or regulations are voted on by the full legislature.

Steve Sisolak
Governor



**Nevada Department of
Public Safety**
DEDICATION PRIDE SERVICE

George Togliatti
Director

Sheri Brueggemann
Deputy Director

Mindy McKay
Division Administrator

**Records, Communications and
Compliance Division**

333 West Nye Lane, Suite 100
Carson City, Nevada 89706

Telephone (775) 684-6262 – Fax (775) 687-3289

As a matter of information, the FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544. The criteria are as follows:

- a. The statute must exist as a result of a 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.

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.

Please note, that the CJILU is also available to review draft versions prior to adoption to verify compliance under PL. 92-544.

If you have any questions or concerns, please contact your agency’s Civil Applicant auditor, Georgina Velazquez at (775) 684-6245 or gvelazquez@dps.state.nv.us.

Sincerely,

A handwritten signature in blue ink that reads "Mindy McKay".

Mindy McKay,
Division Administrator and CSO
Nevada Department of Public Safety
Records, Communications and Compliance Division

CC: file
CC: Brenda Erdoes