

Background Check Laws: New Hampshire

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A Q&A guide to background check and employment reference law for private employers in New Hampshire. This Q&A addresses employers' obligations when conducting criminal and non-criminal background checks and penalties for violating these laws. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Background Check Laws: State Q&A Tool).

Overview of State Background Check Law

1. Please list each state statute or regulation governing background checks (for example, state equivalents of the federal Fair Credit Reporting Act and state law governing criminal background checks or driving records). Include law governing both criminal background checks and non-criminal background checks. For each, please:

- Provide a brief description of the statute or regulation.
- Identify which employers are covered.
- Identify which employees are covered (for example, all employees or only those in specific job functions, such as commercial driving).
- Describe whether it provides for a private right of action.
- Identify the state agency or entity that administers the statute.

New Hampshire Fair Credit Reporting Act: N.H. RSA §§ 359-B:1 to 359-B:29

Description

Businesses and individuals:

- Can request a consumer report for employment purposes only after informing the applicant or employee of a possible credit report request.
- Must inform applicants and employees of adverse employment actions based on information in a consumer report and provide the name and address of the consumer reporting agency making the report.

(N.H. RSA §§ 359-B:3(II), 359-B:6, and 359-B:15(I).)

Covered Employers

This law covers all New Hampshire employers.

Covered Employees

This law covers all New Hampshire employees and job applicants.

Private Right of Action

Applicants and employees may file a civil action against an employer that violates the employee's or applicant's rights under this law (N.H. RSA §§ 359-B:16, 359-B:17, and 359-B:23).

A consumer reporting agency or user of information failing to comply with the law is liable to the consumer, in any successful action to enforce liability, for:

- The costs of the action.
- Reasonable attorneys' fees.

(N.H. RSA §§ 359-B:16 and 359-B:17.)

Obtaining information on a consumer from a consumer reporting agency under false pretenses may result in



criminal penalties (N.H. RSA § 359-B:19). An unauthorized disclosure by an officer or employee of a consumer reporting agency may result in either or both of the following:

- A fine of up to \$5,000.
- Imprisonment of up to one year.

(N.H. RSA § 359-B:20.)

State Agency

The law does not specify an administering agency. Credit checks are obtained from individual consumer reporting agencies.

The [New Hampshire Office of the Attorney General](#) (NHOAG) enforces compliance with the requirements imposed under this law (N.H. RSA § 359-B:21).

Residential Care and Health Facility Licensing: N.H. RSA §§ 151:2 to 151:2-d

Description

Applicants for a license or certification to operate certain residential care and health facilities must submit the results of a criminal records check from the [New Hampshire Department of Safety](#) (NHDOS) (N.H. RSA § 151:2-d(I)).

Additionally, individuals selected for employment or to a volunteer position with a covered employer must submit a public criminal history record information authorization form to the director of state police after an applicant accepts a conditional offer of employment if the scope of their employment involves direct contact with:

- Clients.
- Client records.
- Client tissue, bodily fluids, or other biological material.

N.H. RSA § 151:2-d(II).

Covered employers must thereafter review the results of the criminal conviction record check before making a final offer of employment (N.H. RSA § 151:2-d(III)). An employee cannot begin work until a final offer of employment has been made.

Covered Employers

The law covers any employer required to be licensed or certified under N.H. RSA § 151:2, including but not limited to the following New Hampshire employers:

- Hospitals, infirmaries, or health services maintained by an educational institution.
- Home health care providers.
- Laboratory-owned collection stations or laboratories that test or analyze human samples, or laboratories that test therapeutic cannabis.
- Facilities providing:
 - outpatient rehabilitation services;
 - ambulatory surgical care;
 - hospice care;
 - emergency medical care;
 - birthing centers; or
 - other services providing health care for illness, injury, deformity, infirmity, or other physical disability.
- Residential care facilities offering services beyond room and board to at least two people, including those offering residents:
 - both home-like living arrangements and social or health services; or
 - social, health, or medical services.
- Adult day care services offering medical care or help with daily living activities, to at least three individuals.

(N.H. RSA § 151:2(I).)

Covered Employees

The law covers all employees and volunteers whose scope of employment with a covered employer involves direct contact with any of the following:

- A client.
- Client records.
- Client tissue, body fluids, or other biological material.

(N.H. RSA § 151:2-d(II).)

Private Right of Action

The statute does not provide for a private right of action.

State Agency

The NHDOS administers this law and the [New Hampshire Division of State Police](#) (NHDSP) provides the criminal history check report (N.H. RSA § 151:2-d).

Child Day Care, Residential Care, and Child-Placing Agencies: N.H. RSA §§ 170-E:1 to 170-E:29-a

Description

Applicants for employment, owners, household members, program directors, and other individuals associated with child day care agencies or providers required to be licensed or registered under New Hampshire law must undergo a criminal history record check through the [New Hampshire Department of Health and Human Services](#) (NHDHHS), including a search on:

- The New Hampshire sex offender and abuse and neglect registries.
- The sex offender registries of each state where the individual resided in the past five years.
- The National Sex Offender Registry.

(N.H. RSA § 170-E:7(II).)

The NHDHHS determines the individual's eligibility for employment within 45 days after the employer submits all required information (N.H. RSA § 170-E:7(III); see Question 8: Health and Safety-Related Occupations and Education and Youth-Serving Organizations).

A covered employee is exempt from a criminal history check if both:

- The individual completed a check of criminal records under this law within the previous five years, and the NHDHHS determined that the individual was eligible for employment.
- The individual:
 - is currently employed by a New Hampshire childcare provider; or
 - has been separated from employment with a New Hampshire childcare provider for no more than 180 days.

(N.H. RSA § 170-E:7(II-a).)

Within 30 days of hire, licensed childcare institutions and child-placing agencies must identify to NHDHHS new employees responsible for the care of or in regular contact with children for a records check against the New Hampshire registry of founded abuse and neglect reports (N.H. RSA § 170-E:29(II)).

Applicants for employment and other individuals associated with childcare institutions and childcare

agencies, other than foster family homes, required to be licensed under New Hampshire law must undergo a criminal history record check through the NHDHHS, including a search on:

- The New Hampshire sex offender and abuse and neglect registries.
- The sex offender registries of each state where the individual resided in the past five years.
- The National Sex Offender Registry.

(N.H. RSA § 170-E:29-a(II).)

The NHDHHS determines the individual's eligibility for employment within 45 days after the employer submits all required information (N.H. RSA § 170-E:29-a(V)).

A covered employee is exempt from a criminal history check if the individual both:

- Is or has been employed or volunteered at a childcare institution or childcare agency.
- Completed a criminal records check under this law within the previous five years and the NHDHHS determined that the individual was eligible for employment.

(N.H. RSA § 170-E:29-a(IV-a).)

Those providers exempt from licensing under N.H. RSA § 170-E:3 must submit information for any individual residing in the child day care provider's household who may be responsible for the care of, or is in regular contact with children, to the NHDHHS for a criminal background check and registration check.

Covered Employers

Employers covered under this law include:

- Licensed or registered child day care agencies.
- Child day care providers exempt from licensing under Section 17-E:3 of the New Hampshire Revised Statutes receiving state funds or subsidies.
- Licensed childcare institutions and childcare agencies other than foster family homes.
- Child-placing agencies.

(N.H. RSA §§ 170-E:2(IV), 170-E:3-a, 170-E:7, 170-E:25(II) through (IV), 170-E:29, and 170-E:29-a; see Question 6: Child Day Care, Residential Care, and Child-Placing Agencies.)

Covered Employees

Covered employees are both:

- Employed by:
 - licensed or registered child day care agencies;
 - child day care providers exempt from licensing under Section 17-E:3 of the New Hampshire Revised Statutes receiving state funds or subsidies;
 - licensed childcare institutions or childcare agencies other than foster family homes; or
 - child-placing agencies.

(N.H. RSA §§ 170-E:2, 170-E:3-a, 170-E:7, 170-E:25, 170-E:29, and 170-E:29-a; see Question 6: Child Day Care, Residential Care, and Child-Placing Agencies.)

- Responsible for the care of or have regular contact with children (N.H. RSA §§ 170-E:7(I), 170-E:29(II), and 170-E:29-a(I)).

Private Right of Action

Any individual may file a claim for injunctive relief in state court for violation of this law (N.H. RSA §§ 170-E:22 and 170-E:46).

State Agency

The NHDHHS administers and enforces this law.

Licensing of Sales Finance Companies and Retail Sellers of Motor Vehicles: N.H. RSA § 361-A:2

Description

When applying for a license with the [New Hampshire Banking Department](#) (NHBD), sales finance companies and retail sellers of motor vehicles must submit, among other information, the following information on any principal engaging in sales finance or retail sale of motor vehicles:

- Name.
- Home address.
- Social Security number.
- Authorization for the NHBD to conduct a background check.
- Criminal history records release form, as provided by the NHDSP.
- Complete set of fingerprints.

- Disclosure of any:
 - injunction or administrative order issued against the listed individual; and
 - convictions for felonies or certain misdemeanors.

(N.H. RSA § 361-A:2(II)(a).)

Covered Employers

The law covers all New Hampshire sales finance companies and retail sellers of motor vehicles.

Covered Employees

Covered employees include those who are considered “principals”. Principals include, for example:

- Owners with at least a 10% ownership interest.
- Corporate officers.
- Directors.
- Members.
- General or limited liability partners.
- Limited partners with at least a 10% ownership interest.
- Trustees.
- Beneficiaries of 10% or more of the trust that owns the applicant or licensee.
- Indirect owners.
- Senior managers.
- New Hampshire branch managers.
- Individuals occupying similar status or performing similar functions.

(N.H. RSA § 361-A:1(VIII-a).)

Private Right of Action

The law does not provide for a private right of action.

State Agency

The NHBD enforces this law and the NHDSP administers criminal background checks.

Background Checks for School Boards, Superintendents, Teachers, and Truant Officers: N.H. RSA § 189:13-a

Description

All applicants for employment or designated volunteers for work at a public school including the school administrative

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unit, school district, chartered public school, or a public academy, must undergo a criminal history records check before a final offer of employment or acceptance of volunteer services. Nonpublic schools are not required to complete background checks on applicants and volunteers but must follow this law if they choose to do so. (N.H. RSA § 189:13-a(l).)

The superintendent or chief executive officer of the school may extend a conditional offer of employment to a selected applicant, but every final offer of employment requires the successful completion of a criminal history records check (N.H. RSA § 189:13-a(l)(a)).

Covered Employers

The law covers all New Hampshire:

- School administrative units.
- School districts.
- Chartered public schools.
- Public academies approved by the [New Hampshire State Board of Education](#).

(N.H. RSA § 189:13-a(l)(a).)

The law covers nonpublic schools only if they choose to require criminal background checks (N.H. RSA § 189:13-a(l)(b)).

Covered Employees

The law covers all employees, applicants selected for employment, designated volunteers, and volunteer organizations that contract with a covered employer, including but not limited to:

- Substitute teachers.
- Cafeteria workers.
- School bus drivers.
- Custodial personnel.
- Workers in other services where the contractor or employees of the contractor provide services directly to students of the covered employer.
- Designated volunteers.

(N.H. RSA § 189:13-a(VI), (VII), and (IX).)

Private Right of Action

This statute does not provide for a private right of action.

State Agency

The [New Hampshire Department of Education](#) and the NHDSP administer and enforce this law (N.H. RSA § 189:13-a(X)).

Background Checks for Licensees for the Sale of Alcohol: N.H. RSA § 179:23(IV)

The New Hampshire alcoholic beverages licensing laws require each licensee to designate one or more persons to be in charge of the premises. Each designated person in charge must file an affidavit with the State Liquor Commission attesting to the fact such person is 18 years of age or older and has not been convicted of a felony. Any corporate officer or member of a limited partnership shall be deemed a person in charge of the premises.

Background Checks for Certain Vendors: N.H. RSA § 31:102-b

Description

Although beyond the scope of this Q&A, this statute allows municipalities to require hawkers, peddlers, and vendors to submit to a criminal history records check (N.H. RSA § 31:102-b(l)).

Covered Employers

The law covers New Hampshire municipalities.

Covered Employees

This law covers all individuals who sell goods or services door-to-door or place-to-place, including:

- Hawkers.
- Peddlers.
- Vendors.

(N.H. RSA § 31:102-b(l).)

Private Right of Action

The statute does not provide for a private right of action.

State Agency

New Hampshire municipalities administer and enforce this law.

Background Checks for Certain Town Employees: N.H. RSA § 41:9-b

Description

Although beyond the scope of this Q&A, this law allows towns to require a background investigation and a criminal history check on a volunteer or an applicant with a conditional offer for employment in positions with the town that require the individual to either:

- Work with or around children or elderly persons.
- Enter people's homes.
- Collect or manage money.

(N.H. RSA § 41:9-b.)

Covered Employers

The law covers all New Hampshire municipalities.

Covered Employees

The law covers applicants and volunteers for positions in a New Hampshire town if the position requires:

- Work with or around children or elderly persons.
- Entering people's homes.
- Collecting or managing money.

(N.H. RSA § 41:9-b(I), (V).)

Private Right of Action

The law does not provide for a private right of action.

State Agency

New Hampshire municipalities administer and enforce this law.

Money Transmitters: N.H. RSA § 399-G:4

Description

New Hampshire money transmitters must obtain a license from the NHBD, which requires a background investigation and a criminal history records check for each principal of the applicant (N.H. RSA § 399-G:4(III)).

Covered Employers

The law covers employers engaged in money transmission either:

- While physically located in New Hampshire.
- With, to, or from persons located in New Hampshire.

(N.H. RSA §§ 399-G:1(XVI) and 399-G:2(I).)

The Money Transmitters statute excludes certain businesses, including:

- Retailers issuing store value credits or gift cards.
- Banks and/or other financial institutions chartered by the state or federal government.
- Various governmental agencies.

(N.H. RSA §§ 399-G:3.)

Covered Employees

The law covers those who are defined as "principals" of covered employers, including:

- Owners with at least a 10% ownership interest.
- Corporate officers.
- Directors.
- Members.
- General and limited liability partners.
- Limited partners with at least a 10% ownership interest.
- Trustees.
- Beneficiaries of at least 10% of the trust that owns the applicant or licensee.
- Indirect owners.
- Senior managers.
- Any person occupying similar status or performing similar duties.

(N.H. RSA § 399-G:1(XXI).)

Private Right of Action

The statute does not provide for a private right of action.

State Agency

The NHBD administers and enforces this law.

Nondepository Mortgage Bankers, Brokers, and Servicers: N.H. RSA § 397-A:5

Description

To be considered for licensure, a mortgage banker, mortgage broker, or mortgage servicing company applying for a license in New Hampshire must have its principals undergo a background investigation (including a credit report) and a criminal history records check (N.H. RSA § 397-A:5(I), (II), and (IV-b); see Covered Employees).

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Covered Employers

The law covers New Hampshire employers engaged in the business of:

- A mortgage banker.
- A mortgage broker.
- A mortgage servicer.
- A mortgage originator.

Covered employers are not:

- Individuals who offer or negotiate terms of a residential mortgage loan:
 - with or on behalf of an immediate family member; or
 - secured by the individual's residence.
- Licensed attorneys performing activities within the definition of a loan originator, if those activities are:
 - considered by the New Hampshire Supreme Court to be part of the authorized practice of law;
 - carried out within an attorney-client relationship; and
 - accomplished in compliance with applicable laws, rules, ethics, and standards.
- Individuals acting as a mortgage banker, mortgage broker, mortgage servicer, or mortgage originator if the individual is not habitually and repeatedly engaged in these activities in a commercial context.

(N.H. RSA § 397-A:2(I).)

Covered Employees

The law covers all those defined as "principals" of a covered employer, including:

- Owners with at least a 10% ownership interest.
- Corporate officers.
- Directors.
- Members.
- General or limited liability partners.
- Limited partners with at least a 10% ownership interest.
- Trustees.
- Beneficiaries of at least 10% of the trust that owns the applicant or licensee.
- Indirect owners.
- Senior managers.

- Branch managers of a location required to be licensed under N.H. RSA §§ 397-A:1 to 397-A:23.

- Individuals occupying similar status or performing similar functions.

(N.H. RSA § 397-A:1(XIX).)

Private Right of Action

The statute does not provide for a private right of action.

State Agency

The NHBD administers and enforces this law (N.H. RSA § 397-A:17).

Games of Chance: N.H. RSA §§ 287-D:1 to 287-D:25

Description

Applicants for a gaming license in New Hampshire must undergo a criminal records check by the [New Hampshire Lottery Commission, Racing and Charitable Gaming Division](#) (NHLC). Applicants also must certify under oath to the NHLC that they have not:

- Been convicted in any jurisdiction of a felony within the previous ten years, or a misdemeanor involving falsehood or dishonesty within the previous five years, which has not been annulled by a court.
- Violated the statutes or rules governing charitable gambling.

(N.H. RSA §§ 287-D:5(VI) and 287-D:12.)

The law provides for additional background investigations applicable to applicants for:

- A facilities license.
- A game operator employer license.

(N.H. RSA § 287-D:7.)

Covered Employers

The law covers applicants for a gaming license under Chapter 287-D of the New Hampshire Revised Statutes (N.H. RSA §§ 287-D:1(I) and 287-D:5).

Covered Employees

The law covers applicants for a New Hampshire gaming license, and:

- For a licensed corporation, each:

- officer;
- director; or
- shareholder.
- For a licensed limited liability company, each:
 - manager; or
 - member.
- Each owner, partner, or trustee of the underlying property.

(N.H. RSA § 287-D:12(I) and (VI).)

Private Right of Action

The statute does not provide for a private right of action.

State Agency

The NHLC administers and enforces this law, along with the NHOAG and the chief of police in the municipality where games of chance are held (N.H. RSA § 287-D:2).

Non-Criminal Background Check Law

2. For any law identified in Question 1 addressing non-criminal background checks, list the key terms of art used and the definition of each.

New Hampshire Fair Credit Reporting Act: N.H. RSA §§ 359-B:1 to 359-B:29

Terms of Art

Key terms of art include:

- **Employment purposes.** Use of a consumer report to evaluate an individual for:
 - employment;
 - promotion;
 - reassignment; or
 - retention.
- **Consumer.** A consumer is an individual.
- **Consumer report.** Any written, oral, or other communication of any information by a consumer reporting agency on an individual's:

- credit worthiness;
- credit standing;
- credit capacity;
- character;
- general reputation;
- personal characteristics; or
- mode of living.

- **Investigative consumer report.** A consumer report or portions of it where information is obtained through personal interviews with persons with whom the individual associates or who may have knowledge of the individual's credit, reputation, and other characteristics. However, this does not include specific factual information on an individual's credit record obtained either:

- directly from a creditor; or
- from a consumer reporting agency when the information was obtained directly from a creditor or from the individual.

- **Person.** A person means any:

- individual;
- partnership;
- corporation;
- trust or estate;
- cooperative;
- association;
- government or governmental subdivision or agency; or
- other entity.

(N.H. RSA § 359-B:3.)

Background Checks for Certain Town Employees: N.H. RSA § 41:9-b

- **Candidate for employment.** The term also includes candidates for volunteer positions.

3. For any law identified in Question 1 addressing non-criminal background checks, please describe potential penalties for violations of the law.

New Hampshire Fair Credit Reporting Act: N.H. RSA §§ 359-B:1 to 359-B:29

New Hampshire employers negligently violating this law may be liable to the applicant or employee for:

- The greater of either:
 - actual damages; or
 - \$1,000.
- Attorneys' fees and costs.

(N.H. RSA § 359-B:17.)

Employers willfully violating this law may be liable to the applicant or employee for:

- The greater of either:
 - actual damages; or
 - \$1,000.
- Punitive damages.
- Attorneys' fees and costs.

(N.H. RSA § 359-B:16.)

Employers that willfully and knowingly obtain information on an applicant or employee from a consumer reporting agency under false pretenses face criminal:

- Misdemeanor charges, if by obtained a person.
- Felony charges, if obtained by an entity.

(N.H. RSA § 359-B:19.)

Employers that willfully and knowingly make an unauthorized disclosure of an applicant's or employee's information may face either or both of the following:

- A fine up to \$5,000.
- Imprisonment for up to one year.

(N.H. RSA § 359-B:20.)

4. For any law identified in Question 1 addressing non-criminal background checks, please describe the employers' legal obligations, including obligations to provide notice to applicants or employees.

New Hampshire Fair Credit Reporting Act: N.H. RSA §§ 359-B:1 to 359-B:29

Before obtaining an investigative consumer report, an employer must disclose to the consumer (which

could include any individual such as an employee or applicant) that:

- The employer may obtain an investigative consumer report about the consumer.
- The report may contain information about the consumer's character, general reputation, personal characteristics, and mode of living.

(N.H. RSA § 359-B:6(I)(a)(1), (2).)

Alternatively, a person may procure an investigative consumer report without the above disclosures if such report is to be used for employment purposes for which the consumer has not specifically applied.

(N.H. RSA § 359-B:6(I)(b).)

The disclosure required under § 359-B:6(I)(a)(1) to (2) above must:

- Be in writing.
- Be delivered to the individual within three days after the employer first requests a copy of the report.
- Inform the applicant or employee of the right to request additional disclosures of the nature and scope of the investigation requested.

(N.H. RSA § 359-B:6(I)(a).)

If the consumer (which can include individuals such as an applicant or employee) makes a written request within a reasonable time after receiving the disclosure, the employer must inform the applicant or employee of the nature and scope of the investigative report. The employer must send the disclosure within five days after either the employer:

- Received the employee's or applicant's written request.
- First requested the investigative consumer report.

(N.H. RSA § 359-B:6(II).)

Background Checks for School Boards, Superintendents, Teachers, and Truant Officers: N.H. RSA § 189:13-a

A covered employer must provide every school employee, including coaches and those listed in RSA 189:13-a(I)(a), (VI), and (IX)(a) in a position requiring a criminal background check with informational materials, training, or other education, concerning:

- Child sexual abuse prevention.
- Sexual assault and harassment policy training.

- Warning signs of child abuse.
- Reporting mandates.

(N.H. RSA § 189:13-a.)

The required training:

- May be offered either in person or online.
- Must be completed:
 - within 30 days of employment; and
 - renewed every 2 years.

(N.H. RSA § 189:13-a.)

5. For any law identified in Question 1 that functions as the state equivalent of the federal Fair Credit Reporting Act, please describe any significant differences between the state and federal law.

The New Hampshire Fair Credit Reporting Act (NHFCRA) (N.H. RSA §§ 359-B:1 to 359-B:29) differs from the federal Fair Credit Reporting Act (FCRA) in that under the NHFCRA, employers may obtain information on “obsolete information,” that is information older than 7 years prior to the date of the report if the employee is expected to earn at least \$20,000 per year (N.H. RSA § 359-B:5). Obsolete information may also be sought for a consumer when a credit transaction that involves more than \$50,000 is involved or when the consumer has applied for a life insurance policy for more than \$50,000 (N.H. RSA § 359-B:5).

For more information about the federal FCRA, see [Practice Note, Background Checks and References](#).

Criminal Background Check Law

6. For any law identified in Question 1 addressing criminal background checks, please identify the law and describe:

- The key terms of art.
- The potential penalties for violations.

Residential Care and Health Facility Licensing: N.H. RSA §§ 151:2 to 151:2-d

Terms of Art

Key terms of art include:

- **Home health care provider.** Any organization or business entity engaged in arranging or providing:

- nursing services;
- home health aide services; or
- other therapeutic and related services, for example, physical and occupational therapy, speech pathology, nutritional services, medical social services, personal care services, and homemaker services.

(N.H. RSA § 151:2-b(I).)

- **Health care facility.** Hospitals, ambulatory surgical facilities, specialty hospitals, and licensed nursing homes (N.H. RSA § 151:2).

Penalties

Employers violating this law may face:

- Denial, suspension, or revocation of licensure.
- Criminal misdemeanor or felony charges.
- Administrative fines up to \$2,000 for each offense.

(N.H. RSA §§ 151:7(II), 151:16, and 151:16-a.)

Child Day Care, Residential Care, and Child-Placing Agencies: N.H. RSA §§ 170-E:7 to 170-E:29

Terms of Art

Key terms of art include:

- **Applicant.** A person, institution, or agency who intends to receive for child day care one or more children unrelated to the operator (N.H. RSA § 170-E:2(I)).
- **Child.** Any person under:
 - 18 years old, for employers and employees of child day care agencies (N.H. RSA § 170-E:2(II)).
 - 21 years old, for employers and employees of childcare institutions and child-placing agencies (N.H. RSA § 170-E:25(I)).
- **Child day care.** The care and supervision of a child:
 - away from the child’s home; and
 - apart from the child’s parents.(N.H. RSA § 170-E:2(III).)
- **Child day care agency.** A person, corporation, partnership, voluntary association, or other organization that regularly receives for child day care one or more children unrelated to the operator or staff of the agency. Child day care agencies include:
 - family day care homes;
 - family group day care homes;

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- group child day care centers;
- day care nurseries;
- night care agencies;
- preschool programs; and
- school-age programs.

(N.H. RSA § 170-E:2(IV).)

- **Childcare institution.** Residential childcare agency where more than 12 children are received and maintained for 24-hour care for the purpose of providing care, training, or both. Childcare institutions do not include:

- state-operated childcare or juvenile detention institutions;
- institutions, homes, places, or facilities operating under a residential care and health facility license pursuant to Section 151:2 of the New Hampshire Revised Statutes;
- state-approved, bona fide boarding schools; and
- bona fide summer camps.

(N.H. RSA § 170-E:25(III).)

- **Child-placing agency.** A firm, corporation, or association that receives any child for the purpose of providing services related to arranging for the placement of children in:

- a foster family home, group home, or childcare institution; or
- adoption.

(N.H. RSA § 170-E:25(IV).)

Penalties

Employers violating this law may face:

- Criminal misdemeanor charges (N.H. RSA §§ 170-E:21(II)(d) and 170-E:45(I)(e)).
- Administrative fines up to \$2,000 for each violation of child day care licensing requirements (N.H. RSA § 170-E:21-a).

Each day a violation continues constitutes a separate offense (N.H. RSA §§ 170-E:21(III) and 170-E:45(III)).

Licensing of Sales Finance Companies and Retail Sellers of Motor Vehicles: N.H. RSA § 361-A:2

Terms of Art

Key terms of art include:

- **Retail buyer.** A person who:
 - buys a motor vehicle from a retail seller; and
 - executes a retail installment contract either with the retail seller or any lender.
- **Retail installment contract.** An agreement under which the title to, property in, or a lien on a motor vehicle is retained or taken by a sales finance company as security for the retail buyer's obligation.
- **Retail seller.** A person who sells a motor vehicle in New Hampshire subject to a retail installment contract.
- **Sales finance company.** A person engaged in the business of either:
 - providing motor vehicle financing in New Hampshire to one or more retail buyers; or
 - purchasing retail installment contracts from one or more retail sellers.

(N.H. RSA § 361-A:1.)

Penalties

Employers violating this law may face:

- Criminal misdemeanor or felony charges.
- Administrative fines up to \$2,500 for each violation.
- Denial, suspension, or revocation of licensure.

(N.H. RSA § 361-A:11(I) and (VII).)

If the NHBD obtains an injunction against an employer for violating this law, the court may enforce the injunction with either or both of the following:

- A fine up to \$10,000.
- Imprisonment.

(N.H. RSA § 361-A:11(IX).)

Background Checks for School Board, Superintendents, Teachers, and Truant Officers: N.H. RSA § 189:13-a

Terms of Art

There are no key terms of art relating to criminal background checks.

Penalties

The law does not address penalties for violations.

Background Checks for Certain Vendors: N.H. RSA § 31:102-b

Terms of Art

There are no key terms of art relating to criminal background checks.

Penalties

The law does not address penalties for violations.

Background Checks for Certain Town Employees: N.H. RSA § 41:9-b

Terms of Art

There are no key terms of art relating to criminal background checks.

Penalties

The law does not address penalties for violations.

Money Transmitters: N.H. RSA § 399-G:4

Terms of Art

Key terms of art include:

- **Principal.** An individual who is either:
 - an owner with at least 10% ownership interest in the applicant or licensee;
 - a corporate officer;
 - a director;
 - a member;
 - a general and limited liability partner;
 - a limited partner with at least 10% ownership interest;
 - a trustee;
 - a beneficiary of at least 10% of the trust that owns the applicant or licensee;
 - an indirect owner;
 - a senior manager; or
 - any person occupying a similar status or performing similar functions.
- **Money transmission.** Either:
 - engaging in the business of selling or issuing payment instruments or stored value; or

- receiving money or monetary value for transmission to another location.

(N.H. RSA § 399-G:1.)

Penalties

Employers violating this law may face:

- Criminal charges.
- An administrative fine for each violation.
- Forfeiture of the application fee.
- Denial, suspension, or revocation of licensure.

(N.H. RSA §§ 399-G:20(III) and 399-G:23.)

If the NHBD obtains an injunction against an employer for violating this law, the court may enforce the injunction with either or both of the following:

- A fine up to \$10,000.
- Imprisonment.

(N.H. RSA § 399-G:23(V).)

Licensing of Sales Finance Companies and Retail Sellers of Motor Vehicles: N.H. RSA § 361-A:2

Terms of Art

Key terms of art include:

- Principal.
- Owners with at least a 10% ownership interest.
- Corporate officers.
- Directors.
- Members.
- General or limited liability partners.
- Limited partners with at least a 10% ownership interest.
- Trustees.
- Beneficiaries of 10% or more of the trust that owns the applicant or licensee.
- Indirect owners.
- Senior managers.
- New Hampshire branch managers.
- Individuals occupying similar status or performing similar functions.

(N.H. RSA § 361-A:1(VIII-a).)

Nondepository Mortgage Bankers, Brokers, and Servicers: N.H. RSA § 397-A:5

Terms of Art

Key terms of art include:

- **Mortgage banker.** A person who, for compensation or gain:
 - makes or originates a mortgage loan as payee on the note evidencing the loan;
 - advances, makes, or offers to advance or make a commitment to advance a banker's funds for a mortgage loan, or closes a mortgage loan in its own name or with the banker's funds; or
 - otherwise funds or offers to fund a mortgage loan.
- **Mortgage broker.** A person who, for compensation or gain:
 - acts or offers to act as an intermediary, finder, or agent of a lender or borrower for the purpose of negotiating, arranging, finding, or procuring mortgage loans or commitments for mortgage loans;
 - offers to serve as agent for any person in an attempt to obtain a mortgage loan; or
 - offers to serve as agent for any person who has money to lend for a mortgage loan.
- **Mortgage servicing company.** An individual, partnership, corporation, association, or other entity that holds the servicing rights or records payment on its books to carry out the mortgage holders' obligations under the mortgage agreement.
- **Principal.** An individual who is either:
 - an owner with at least 10% ownership interest;
 - a corporate officer;
 - a director;
 - a member;
 - a general or limited liability partner;
 - a limited partner with at least 10% ownership interest;
 - a trustee;
 - a beneficiary of at least 10% of the trust that owns the applicant or licensee;
 - an indirect owner;

- a senior manager;
- a New Hampshire branch manager; or
- any person occupying a similar status or performing similar functions.

(N.H. RSA § 397-A:1.)

Penalties

Employers violating or materially aiding in violating this law may face:

- Criminal misdemeanor or felony charges.
- Suspension, revocation, or denial of licensure, including forfeiture of any application fee.
- An administrative fine up to \$2,500 for each violation.
- Both a fine and loss of the employer's license.

(N.H. RSA §§ 397-A:17 and 397-A:20.)

If the NHBD obtains an injunction against an employer for violating this law, the court may enforce the injunction with either or both of the following:

- A fine up to \$10,000.
- Imprisonment.

(N.H. RSA § 397-A:20(V).)

Games of Chance: N.H. RSA §§ 287-D:1 to 287-D:25

Terms of Art

Key terms of art include:

- **Charitable organization.** Any bona fide religious, charitable, civic, veterans', fraternal, or church organization, including police and firefighters' organizations, which have been registered with the [New Hampshire Secretary of State](#) for at least two years. Charitable organizations do not include auxiliary units, committees, or other entities organized for the primary purpose of conducting games of chance. (N.H. RSA § 287-D:1(IV).)
- **Game of chance.** Any game involving gambling or the lottery, not including slot machines. The definition also excludes some types of charitable raffles and contests. (N.H. RSA § 287-D:1(III).)
- **Game operator employer.** A primary game operator or a business entity who:
 - employs, supervises, and controls game operators; and

- is hired by a charitable organization to operate games of chance on its behalf.

(N.H. RSA § 287-D:1(VIII).)

- **Primary game operator.** Any person, other than a bona fide member of the charitable organization, involved in conducting, managing, supervising, directing, or running games of chance (N.H. RSA § 287-D:1(X)).

Penalties

Any person violating this law may face:

- Criminal charges.
- An administrative fine.
- Suspension or revocation of licensure.

(N.H. RSA § 287-D:23.)

7. For any law identified in Question 1 addressing criminal background checks, please describe:

- The kind of criminal background information into which an employer may inquire, including obligations to provide notice to applicants or employees.
- The kind of criminal background information into which an employer may not inquire (for example, expunged or juvenile records).
- Any other circumstances under which a criminal background inquiry may be limited (for example, where there is no business necessity).

Authorized Inquiry

New Hampshire law does not specify the kind of criminal background information into which an employer may inquire.

Unauthorized Inquiry

The New Hampshire Fair Credit Reporting Act provides that employers may obtain information on information older than seven years prior to the date of the report only if the employee is expected to earn at least \$20,000 per year (N.H. RSA § 359-B:5).

Other New Hampshire laws do not specify the kind of criminal background information into which an employer may not inquire. For information on state and local legislation limiting access to the criminal history information of job applicants, see [Ban-the-Box State and Local Laws Chart](#).

Other Limitations

New Hampshire law does not specify any other limitations.

Additional Requirements

There are no additional requirements for background checks for laws listed in Question 1.

Best practice dictates, however, that employers be mindful of their obligations to avoid discriminatory bias under the federal and state anti-discrimination laws. When employers require background checks, they should uniformly require such checks so as to avoid selective investigation that could allow bias against one protected class or another.

Similarly, information obtained from background checks should not be used to exclude or tend to exclude members of any protected class. Employers who use the results of background checks in a manner that tends to exclude members of any certain protected class more than others may be found liable for employment discrimination unless they can show a legitimate business necessity for such standards for exclusion.

For information on state and local legislation limiting access to the criminal history information of job applicants, see [State Q&A, Anti-Discrimination Laws: New Hampshire](#) and [Practice Note, Responding to Equal Employment Opportunity Commission Charges](#).

Education and Youth-Serving Organizations

After receiving an applicant's criminal history records check from the [New Hampshire Division of State Police](#) and reviewing the information, a school must destroy the records check:

- Immediately, if the records check indicates that the applicant has no criminal record.
- Within 60 days after receiving the records check, if the applicant has been:
 - convicted of any crime;
 - convicted of certain crimes (see Question 8: Health and Safety-Related Occupations and Education and Youth-Serving Organizations); or
 - charged with certain crimes (see Question 8: Health and Safety-Related Occupations and Education and Youth-Serving Organizations).

(N.H. RSA § 189:13-a(III).)

8. For any law identified in Question 1 addressing criminal background checks, please describe how an employer can collect criminal background information and what an employer can do with criminal background information, including:

- Whether and under what circumstances an application for employment in your state can include a question about convictions or arrests.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment generally.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment in specific jobs (such as childcare).

Questions in Application

There is no specific law either prohibiting or allowing inquiry into criminal convictions or arrests.

Bar to Employment

There is no general bar to employment for criminal convictions or arrests in New Hampshire.

Bar to Employment in Specific Jobs

Health and Safety-Related Occupations and Education and Youth-Serving Organizations

The law bars an individual from employment at child day care, residential care, and child placing agencies if the individual:

- Is registered or required to be registered on:
 - a state sex offender registry; or
 - the National Sex Offender Registry.
- Has been convicted of a felony consisting of:
 - murder;
 - child abuse or neglect;
 - an offense involving child sexual abuse images;
 - trafficking;
 - spousal abuse;
 - a crime involving rape or sexual assault;
 - kidnapping;
 - arson;

- physical assault or battery; or
- a drug-related offense committed during the previous five years.
- Has been convicted of a violent or sexually related misdemeanor against a child, including:
 - child abuse;
 - child endangerment; or
 - sexual assault.
- Has been convicted of a crime showing that the individual might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually related crime against an adult.

(N.H. RSA § 170-E:7(III).)

New Hampshire public schools must and private schools may bar an individual from employment if the individual is presently charged with or was convicted of:

- Murder.
- Manslaughter.
- Sexual assault.
- Kidnapping.
- Incest.
- Endangering a child's welfare.
- Indecent exposure.
- Prostitution.
- Child pornography.
- Online solicitation of sex acts or pornography with a minor.
- Possessing or being involved in the distribution of obscene material, if the material involves a child.
- Any equivalent crime under federal or another state's law.

(N.H. RSA § 189:13-a(V).)

Additional Requirements

There are no additional requirements.

9. If your state has a statute or regulation protecting the employment rights of persons with criminal records, please identify the statute or regulation and briefly describe the rights it confers.

There are no New Hampshire statutes or regulations protecting the employment rights of persons with criminal records.

Employer Liability

10. Have courts in your jurisdiction recognized privacy claims brought by applicants or employees as a result of an employer's conducting a background check? If so, please name any relevant cases and briefly describe their holdings.

New Hampshire courts have not recognized privacy claims brought by applicants or employees as a result of an employer's background check.

11. Have courts in your jurisdiction recognized negligent hiring, negligent supervising, or negligent retention claims brought by employees, customers, or others associated with the employer as a result of allegedly flawed background checks? If so, please name any relevant cases and briefly describe their holdings.

New Hampshire recognizes negligent hiring or retention claims when the employer hires a person that the employer knew or should have known was unfit for the job so as to create a danger of harm to third persons (*Marquay v. Eno*, 662 A.2d 272, 280-81 (N.H. 1995) (citing *Cutter v. Town of Farmington*, 498 A.2d 316, 320 (N.H. 1985); *LaBonte v. Nat'l Gypsum Co.*, 313 A.2d 403, 405 (N.H. 1973))).

Employers are liable for negligent hiring or retention when the employer should have reasonably foreseen that the employee would be a danger to third parties. A plaintiff must establish a causal relationship between:

- The plaintiff's injury.
- The employee's employment.

(*Marquay*, 662 A.2d at 280; *Holy Rosary*, 656 A.2d at 833.)

An employer is also liable if it brings into contact or association an individual whom the employer should

have known was likely to commit misconduct. Therefore, employers may be liable even when the employee commits the crime:

- After the employee's employment is terminated.
- During non-work hours.
- Outside the scope of employment duties.

(*Marquay*, 662 A.2d at 280.)

Employers are liable for negligent training or supervision if the employer knew or should have known the employee presented a risk. This is considered direct liability rather than vicarious liability under *respondeat superior*. (*Tessier v. Rockefeller*, 33 A.3d 1118, 1133 (N.H. 2011).)

Depending on the circumstances, the standard of care in a negligent hiring case could be imposed by a criminal statute relevant to the business of the employer or the service the employer offers, provided that the plaintiff in such a negligent hiring case is within the class of people sought to be protected by the statute. (*Marquay*, 662 A.2d at 278-79.)

State Law Regarding References

12. If your state has any law governing employment references, please identify that law and:

- Describe any requirements for obtaining references for employees or applicants.
- Describe any requirements for giving references for employees or former employees (including any provision insulating employers from or exposing employers to liability because of references given).

Obtaining References

There are no applicable laws governing obtaining employment references.

Giving References

There are no applicable laws governing giving employment references.

Social Networking for Background Checks

13. Are there statutes, regulations, cases, or any other guidance in your state on an employer's use of social networking or other online searches of applicants or employees for employment background check purposes? If so, please briefly characterize them.

Employers in New Hampshire cannot:

- Request or require an employee or applicant to disclose login information for accessing any personal account or service.
- Compel an employee or applicant to add anyone to a list of contacts associated with an electronic mail account or personal account.
- Require an employee or applicant to reduce the privacy settings associated with any electronic mail or personal account that would affect a third party's ability to view the account's contents.

(N.H. RSA § 275:74(I) to (III).)

Employers may:

- Adopt and enforce lawful workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use.
- Monitor usage of the employer's electronic equipment and electronic mail.
- Request or require an employee to disclose login information for access to:
 - an account or service provided by virtue of the employee's employment relationship with the employer; or
 - an electronic communications device or online account paid for or supplied by the employer.

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- Obtain information about an employee or applicant that is in the public domain.
- Investigate:
 - to ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct based on information about activity on an employee's personal account or service from an employee or other source; or
 - of an employee's actions based on the receipt of specific information about the unauthorized transfer of an employer's proprietary information, confidential information, or financial data to a personal online account or service by an employee or other source.

(N.H. RSA § 275:74(IV), (VI).)

Employers are not liable for inadvertently receiving an employee's password or other authentication information if the transmission occurred through the use of:

- An electronic device or program that monitors the employer's network.
- Employer-provided devices.

(N.H. RSA § 275:74(V).)

However, the employer cannot use this information to access an employee's personal accounts (N.H. RSA § 275:74(V)).

For more information on employer access to social media accounts, see [Practice Note, Employer Access to Social Media Accounts State Laws Chart: Overview](#).

Additional Resources

14. If the state agency charged with oversight of background check or references laws in your state has useful online guidance or forms, please provide the link for those resources and a brief description of them.

There are no additional resources relating to background check or references laws.

15. Please describe any other significant background check or references laws, cases, or requirements specific to your state not otherwise addressed in this survey.

There are no other significant background check or references laws, cases, or requirements.