

CHAPTER 31
HB 253 - FINAL VERSION

14Feb2019... 0246h
01/30/2020 0323s

2020 SESSION

19-0332
04/08

HOUSE BILL **253**

AN ACT relative to criminal records checks in the employee application process.

SPONSORS: Rep. Cahill, Rock. 17; Rep. D. Ley, Ches. 9

COMMITTEE: Labor, Industrial and Rehabilitative Services

AMENDED ANALYSIS

This bill prohibits a public employer from inquiring about or conducting a criminal background check on a prospective employee prior to an interview, unless required by state or federal law.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT relative to criminal records checks in the employee application process.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 31:1 New Chapter; Use of Criminal Records in Employment Decisions. Amend RSA by inserting
2 after chapter 275-G the following new chapter:

CHAPTER 275-H

USE OF CRIMINAL RECORDS IN EMPLOYMENT DECISIONS

5 275-H:1 Definitions. In this chapter:

6 I. "Commissioner" means the commissioner of the department of labor.

7 II. "Applicant" means a person who applies for employment for a wage, salary, fee, or
8 payment to perform work for an employer, but excludes any person applying for employment in the
9 domestic service of any family or person at the person's home.

10 III. "Employer" means any department, agency, bureau, or administrative unit of the state
11 of New Hampshire. "Employer" shall not include:

12 (a) Any bank holding company, financial holding company, bank, savings bank, savings
13 and loan association, credit union, or trust company, or any subsidiary or affiliate thereof, that is
14 chartered by any state or the United States.

15 (b) Any state or local government agency which requires use of the employee's or
16 applicant's criminal history or criminal background.

17 275-H:2 Prohibition on Questions Relating to Criminal Records.

18 I. Except as provided in paragraph II, no employer shall include a question on any
19 application for employment, as to whether the applicant has ever been arrested, charged with, or
20 convicted of any crime or violation, or adjudicated as a juvenile delinquent, except when the
21 applicant is applying for:

22 (a) A position with, or related to, a law enforcement agency.

23 (b) A position that requires a standard fidelity bond or equivalent bond, where the
24 applicant's conviction of a crime would disqualify the applicant from obtaining such a bond.

25 (c) Any other position that requires automatic disqualification of an applicant with a
26 criminal history pursuant to federal or state law.

27 (d) A position with an employer who is contractually prohibited from employing any
28 person with a criminal record.

CHAPTER 31
HB 253 - FINAL VERSION
- Page 2 -

1 II. An employer may inquire about an applicant's criminal history during an employment
2 interview.

3 275-H:3 Penalty. Any employer who violates RSA 275-H:2 may be subject to a civil penalty not
4 to exceed \$2,500, to be imposed by the commissioner in accordance with the procedures established
5 in RSA 273:11-a. Any person aggrieved by the commissioner's assessment of such penalty may
6 appeal in accordance with RSA 273:11-c.

7 31:2 New Section; Protective Legislation; Use of Criminal Records in Employment Decisions.
8 Amend RSA 275 by inserting after section 37-b the following new section:

9 275:37-c Use of Criminal Records in Employment Decisions.

10 I. In this section:

11 (a) "Applicant for employment" means any person a public employer or a public
12 employer's agent considers when identifying potential employees, through any means including, but
13 not limited to, recruitment, solicitation, or seeking personal information, or any person who requests
14 consideration for employment by a public employer, or who requests information from a public
15 employer related to seeking employment, and includes any person who is currently an employee of
16 the public employer.

17 (b) "Criminal record" means information collected by a criminal justice agency on
18 individuals consisting of identifiable descriptions and notations of encounters, arrests, detentions,
19 indictments, or other formal criminal charges, and any disposition arising therefrom, including
20 dismissal, acquittal, sentencing, correctional supervision, release, or conviction including, but not
21 limited to, any sentence arising from a verdict or plea of guilty or nolo contendere, including a
22 sentence of incarceration, a suspended sentence, a sentence of probation, a sentence of conditional
23 discharge or a filing with or without a finding.

24 (c) "Employee" means a person who is hired for a wage, salary, fee, or payment to
25 perform work for a public employer. The term includes interns and apprentices.

26 (d) "Public employer" means any department, agency, bureau, or administrative unit of
27 the state of New Hampshire.

28 (e) "Employment" means any occupation, vocation, job, or work with pay, including
29 temporary or seasonal work, contingent work, and work through the services of a temporary or other
30 employment agency; any form of vocational apprenticeship; or any internship.

31 (f) "Employment application" means a form, questionnaire, or similar document or
32 collection of documents that an applicant for public employment is required by a public employer to
33 complete whether the application exists in a hard copy, electronic, or Internet medium.
34 "Employment application" shall not include a criminal background check necessary to authorize
35 access to a federally-regulated facility pursuant to federal law or regulation.

36 II. No public employer or public employer's agent shall inquire about a prospective
37 employee's prior arrests, criminal charges, or convictions on an employment application, unless the

CHAPTER 31
HB 253 - FINAL VERSION
- Page 3 -

1 public employer is required to screen applications for specific criminal convictions because it is
2 prohibited from hiring those with such convictions under state or federal law. For a position that is
3 exclusive to a contract or subcontract that is subject to state or federal law prohibiting the hiring of
4 an individual with a criminal record, the employer may inquire only about those prior arrests,
5 criminal charges, or convictions directly implicated by applicable state or federal law.

6 III. As part of an employment application process, no public employer or public employer's
7 agent shall conduct a criminal record check of an applicant prior to the initial interview. An
8 employer shall not make any such inquiry covered by this paragraph and paragraph II except in
9 person or by telephone, if it is standard practice for that public employer to conduct telephone
10 interviews.

11 IV. No public employer or public employer's agent shall discriminate against an employment
12 applicant based on the racial or ethnic origin of the applicant, including as determined by the
13 applicant's first or last name consistent with state and federal law prohibiting discrimination.

14 31:3 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 24, 2020
Effective Date: September 22, 2020

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