

HB 59-FN - AS INTRODUCED

2023 SESSION

23-0013

04/05

HOUSE BILL **59-FN**

AN ACT requiring a background check prior to any commercial firearm sale.

SPONSORS: Rep. M. Smith, Straf. 10; Rep. M. Paige, Rock. 11; Rep. Kenney, Straf. 10; Rep. Leishman, Hills. 33; Rep. Wolf, Merr. 7; Rep. Schuett, Merr. 12; Rep. Vail, Hills. 6; Rep. Shurtleff, Merr. 15; Rep. Grote, Rock. 24; Sen. Altschiller, Dist 24

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill requires commercial firearms sales or transfers in this state to be subject to a criminal background check and provides a criminal penalty for a violation. The bill excludes private, noncommercial sales or transfers between individuals, provided neither individual is prohibited from owning or possessing a firearm under 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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-0013

04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT requiring a background check prior to any commercial firearm sale.

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

1 Purpose. It is the purpose and intent of the general court in enacting RSA 159-F to require commercial firearm sales in New Hampshire to be processed through a licensed firearms dealer, who will conduct a background check and create a record of each sale. The general court believes this law will protect public safety by helping to keep firearms out of the hands of felons, domestic abusers, and those adjudicated to be mentally ill.

2 New Chapter; Background Checks for Commercial Firearms Sales. Amend RSA by inserting after chapter 159-E the following new chapter:

CHAPTER 159-F

BACKGROUND CHECKS FOR COMMERCIAL FIREARMS SALES

159-F:1 Definitions. In this chapter:

I. “Commercial sale” means a transfer of ownership of a firearm, including but not limited to, a sale, exchange, or gift.

II. “Firearm” means any weapon or device designed to be used as a weapon, which will, is designed to, or may be readily converted to, expel a projectile by the action of an explosive, explosion, or other means of combustion, or the frame or receiver of such a device, provided the term “firearm” shall not include the term “antique firearm” as defined in 18 U.S.C. Section 921(a)(16), or a weapon that has been rendered permanently inoperable and is incapable of being readily restored to a firing condition.

III. “Individual” means a natural person.

IV. “Law enforcement” means any person employed by the United States, or a state, county, city, or town, or other political subdivision as a police officer, peace officer, or another position involving the enforcement of the law and protection of the public interest.

V. “Licensed firearms dealer,” “licensed dealer,” or “dealer” means a person who has a valid federal firearms dealer license under 18 U.S.C. Section 923(a), and all additional licenses required by state or local law to engage in the business of selling or transferring firearms.

VI. “Person” means any corporation, company, association, firm, partnership, club, organization, society, joint stock company or other entity, and shall include any entity that engages in business in this state, in whole or part, through Internet or mail order sales.

VII. “Prohibited person” means any individual or person who is prohibited from owning or possessing a firearm pursuant to 18 U.S.C. Section 922(d) or pursuant to state law.

159-F:2 Firearms Sales to be Conducted Through a Licensed Dealer.

I. No individual or person shall engage in the commercial sale of a firearm unless the requirements of paragraph II are met.

II. If neither party to a prospective firearms transaction is a licensed firearms dealer, the parties to the transaction shall complete the commercial sale through a licensed firearms dealer as follows:

(a) The seller shall deliver the firearm to the dealer, who shall process the sale as if he or she were the seller, except that the seller may remove the firearm from the business premises of the licensed dealer while the background check is being conducted. If the seller removes the firearm from the business premises of the licensed dealer while the background check is being conducted, the purchaser and the seller shall return to the business premises of the licensed dealer, and the seller shall again deliver the firearm to the licensed dealer prior to completing the sale.

(b) Except as provided in subparagraph (a), the dealer shall comply with all requirements of federal, state, and local law that would apply if the licensed dealer were selling the firearm from his or her inventory to the purchaser, including but not limited to, conducting a background check on the prospective purchaser, which shall include a check of the National Instant Criminal Background Check System (NICS), and compliance with all federal, state, and local record keeping requirements.

(c) If the transaction is not prohibited, the dealer shall deliver the firearm to the buyer after all legal requirements are met.

(d) If the dealer cannot legally deliver the firearm to the buyer, the dealer shall return the firearm to the seller after ensuring compliance with all state and federal laws applicable to the transfer, and the transfer to the buyer shall not take place.

(e) The dealer may impose on the purchaser a reasonable fee to cover administrative costs incurred by the dealer for facilitating the transfer of the firearm, plus any applicable fees permitted under state or federal law.

159-F:3 Successful Completion of Background Check. No firearm shall be delivered to an individual pursuant to a commercial sale until NICS has issued a “proceed” response.

159-F:4 Penalties.

I. Any individual or person who violates any provision of this chapter shall be guilty of a class B misdemeanor for a first offense, and a class A misdemeanor for a second or subsequent offense.

II. The local law enforcement agency shall report all violations of this chapter by a licensed firearms dealer to the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives.

159-F:5 Other Laws.

I. Nothing in this chapter shall be construed to modify or change the duties of the department of safety pursuant to RSA 159-D.

II. Nothing in this chapter shall be construed to require or authorize any state, county, or local law enforcement agency to establish or maintain a registry of firearms sold or transferred in accordance with this chapter.

3 Applicability. The provisions of section 2 of this act shall apply to the sale of a firearm on or after the effective date of this act and shall not apply to sales completed prior to the effective date of this act

.4 Effective Date. This act shall take effect January 1, 2024.

LBA

23-0013

11/16/22

**HB 59-FN- FISCAL NOTE
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FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges, if any, would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	\$119	\$122	\$122
Routine Criminal Case	\$644	\$657	\$779
Appeals	Varies	Varies	Varies

Judicial Council	FY 2023	FY 2024
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Misdemeanor	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)

Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	\$90/Hour up to \$2,000	\$90/Hour up to \$2,000
Assigned Counsel - Supreme Court Appeal	\$125/Hour up to \$10,000	\$125/Hour up to \$10,000
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake of new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
NH Association of Counties	FY 2023	FY 2024
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

The Department of Safety states this bill will have no impact on its budget.

AGENCIES CONTACTED:

Judicial Branch, Departments of Safety and Justice, Judicial Council, and New Hampshire Association of Counties