

1 **EMPLOYMENT SELECTION PROCEDURES**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 Senate Sponsor: Karen Mayne

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Employment Selection Procedures Act to address procedures used
10 by employers to select employees.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ imposes restrictions on the collection of information or testing;
- 15 ▶ addresses use of information collected;
- 16 ▶ imposes requirements related to the retention, disposition, access, and
17 confidentiality of information; and
- 18 ▶ provides for enforcement, including:
 - 19 • providing for a complaint process; and
 - 20 • authorizing rulemaking; and
- 21 ▶ makes technical and conforming amendments.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **34A-1-202**, as last amended by Laws of Utah 2008, Chapter 113

29 ENACTS:

- 30 **34-45-101**, Utah Code Annotated 1953
- 31 **34-45-102**, Utah Code Annotated 1953
- 32 **34-45-201**, Utah Code Annotated 1953
- 33 **34-45-202**, Utah Code Annotated 1953
- 34 **34-45-203**, Utah Code Annotated 1953
- 35 **34-45-301**, Utah Code Annotated 1953
- 36 **34-45-302**, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **34-45-101** is enacted to read:

40 **CHAPTER 45. EMPLOYMENT SELECTION PROCEDURES ACT**

41 **Part 1. General Provisions**

42 **34-45-101. Title.**

43 This chapter is known as the "Employment Selection Procedures Act."

44 Section 2. Section **34-45-102** is enacted to read:

45 **34-45-102. Definitions.**

46 As used in this chapter:

47 (1) "Applicant" means an individual that provides information to an employer for the
48 purpose of obtaining employment.

49 (2) "Division" means the Labor Commission's Division of Antidiscrimination and
50 Labor.

51 (3) "Employer" means a person employing 15 or more employees within the state for
52 each working day in each of 20 calendar weeks or more in the current or preceding calendar
53 year.

54 (4) "Employment selection process" means the process by which an employer selects
55 an individual to be an employee for the employer.

56 (5) "Employment test" means a structured, systematic instrument used to assess an
57 applicant's personality or behavior in a specific circumstance, such as a personality test.

86 (1) (a) An employer may not:
87 (i) use information about an applicant obtained through an initial selection process for
88 a purpose other than to determine whether or not the employer will hire the applicant as an
89 employee; or

90 (ii) except as provided in Subsection (2), provide information about an applicant
91 obtained through an initial selection process to a person other than the employer.

92 (b) A use prohibited under this Subsection (1) includes:

93 (i) marketing;

94 (ii) profiling;

95 (iii) reselling of the information; or

96 (iv) a similar use.

97 (2) Notwithstanding the other provisions of this section:

98 (a) an employer may provide information to a government official at the request of the
99 government official;

100 (b) if the applicant applies for another position with the employer; or

101 (c) if the applicant becomes an employee and the information is used for one or more
102 of the following, that is also applied to other employees in a similar position:

103 (i) a performance review; or

104 (ii) a promotion application.

105 Section 5. Section **34-45-203** is enacted to read:

106 **34-45-203. Retention of information collected during an initial selection process.**

107 (1) Subject to Subsection (2), with regard to information collected about an applicant
108 obtained through an initial selection process, an employer shall:

109 (a) maintain a specific policy regarding the retention, disposition, access, and
110 confidentiality of the information; and

111 (b) if an applicant requests to see the policy described in Subsection (1)(a), provide an
112 opportunity for the applicant to review the policy before being required to provide information
113 as part of the initial selection process.

114 (2) Except to the extent required by law, an employer may not retain the information
115 described in Subsection (1) more than two years after the day on which the applicant provides
116 the information to the employer, if the employer does not hire the applicant within that
117 two-year period.

118 Section 6. Section **34-45-301** is enacted to read:

119 **Part 3. Enforcement**

120 **34-45-301. Investigations -- Complaints -- Sanctions -- Rulemaking.**

121 (1) The division may investigate an alleged violation of this chapter.

122 (2) (a) An individual claiming to be aggrieved by an action of an employer in violation
123 of this chapter may file with the division a request for agency action.

124 (b) On receipt of a request for agency action under Subsection (2)(a), the division:

125 (i) shall conduct an adjudicative proceeding pursuant to Title 63G, Chapter 4,
126 Administrative Procedures Act; and

127 (ii) may attempt to reach a settlement between the parties through a settlement
128 conference.

129 (3) (a) If the division determines that a violation has occurred, the division may order
130 that the employer:

131 (i) cease and desist the action;

132 (ii) pay a fine to the division of up to \$500 for a violation, regardless of the number of
133 applicant's affected by the violation; or

134 (iii) comply with a combination of Subsections (3)(a)(i) and (ii).

135 (b) Monies received under this section shall be deposited as a dedicated credit to the
136 division to pay for the costs of administering this chapter.

137 (4) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
138 Administrative Rulemaking Act, regarding:

139 (a) the process to file a written complaint with the division; and

140 (b) the terms defined in Section 34-45-102.

141 Section 7. Section **34-45-302** is enacted to read:

142 **34-45-302. Inspection of records by division.**

143 (1) A representative of the division may enter a place of employment during business
144 hours to inspect a record as part of an investigation described in Section 34-45-301.

145 (2) An effort of an employer to obstruct the division in the performance of its duties
146 under this section is a violation of this chapter and subject to sanctions under Section
147 34-45-301.

148 Section 8. Section **34A-1-202** is amended to read:

149 **34A-1-202. Divisions and office -- Creation -- Duties -- Labor Relations Board,**
150 **Appeals Board, councils, and panels.**

151 (1) There is created within the commission the following divisions and office:

152 (a) the Division of Industrial Accidents that shall administer the regulatory
153 requirements of this title concerning industrial accidents and occupational disease;

154 (b) the Division of Occupational Safety and Health that shall administer the regulatory
155 requirements of Chapter 6, Utah Occupational Safety and Health Act;

156 (c) the Division of Boiler and Elevator Safety that shall administer the regulatory
157 requirements of Chapter 7, Safety;

158 (d) the Division of Antidiscrimination and Labor that shall administer the regulatory
159 requirements of:

160 (i) Title 34, Labor in General, when specified by statute;

161 [~~(i)~~] (ii) Chapter 5, Utah Antidiscrimination Act;

162 [~~(ii)~~] (iii) this title, when specified by statute; and

163 [~~(iii)~~] (iv) Title 57, Chapter 21, Utah Fair Housing Act;

164 (e) the Division of Adjudication that shall adjudicate claims or actions brought under
165 this title; and

166 (f) the Utah Office of Coal Mine Safety created in Section 40-2-201.

167 (2) In addition to the divisions created under this section, within the commission are
168 the following:

169 (a) the Labor Relations Board created in Section 34-20-3;

- 170 (b) the Appeals Board created in Section 34A-1-205;
- 171 (c) the following program advisory councils:
- 172 (i) the workers' compensation advisory council created in Section 34A-2-107;
- 173 (ii) the antidiscrimination and labor advisory council created in Section 34A-5-105;
- 174 (iii) the occupational safety and health advisory council created in Section 34A-6-106;
- 175 (iv) the Mine Safety Technical Advisory Council created in Section 40-2-203; and
- 176 (v) the Coal Miner Certification Panel created in Section 40-2-204.
- 177 (3) In addition to the responsibilities described in this section, the commissioner may
- 178 assign to a division a responsibility granted to the commission by law.