

Representative Wayne A. Harper proposes the following substitute bill:

**CONDITIONS FOR REQUESTING AND
DISCLOSING INFORMATION UNDER
EMPLOYMENT SELECTION PROCEDURES ACT**

2009 FIRST SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies the Employment Selection Procedures Act to modify conditions under which identifying information may be requested and when information may be disclosed.

Highlighted Provisions:

This bill:

- ▶ permits an employer, if certain conditions are met, to request information when the employer conducts an internal review for employment related actions;
- ▶ permits an employer, if certain conditions are met, to request information for purposes related to a government service, benefit, or program;
- ▶ clarifies when information may be disclosed by an employer as required by law or for purposes related to a government service, benefit, or program; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

1st Sub. H.B. 1002



26 This bill provides an immediate effective date.

27 This bill has retrospective operation to May 12, 2009.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **34-46-201**, as enacted by Laws of Utah 2009, Chapter 174

31 **34-46-202**, as enacted by Laws of Utah 2009, Chapter 174



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

34 Section 1. Section **34-46-201** is amended to read:

35 **34-46-201. Information collected.**

36 (1) ~~Except as provided in Subsection (2), an employer may not request the~~
37 ~~following information [listed in Subsection (2) before: (a)] before an applicant is offered a job[;~~
38 ~~or];~~

39 ~~(a) Social Security number;~~

40 ~~(b) date of birth; or~~

41 ~~(c) driver license number.~~

42 ~~(2) An employer may request the information listed in Subsection (1) before an~~
43 ~~applicant is offered a job only if:~~

44 ~~[(b)-(i) if] (a) the request for information is applicable to any applicant applying for the~~
45 ~~position for which the applicant is applying[;];~~

46 ~~(b) the information is requested during the time in the employer's employment~~
47 ~~selection process when the employer [obtains a]:~~

48 ~~[(A)] (i) obtains a criminal background check;~~

49 ~~[(B)] (ii) obtains a credit history of an applicant for employment, subject to the~~
50 ~~requirements of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq.; [or]~~

51 ~~[(C)] (iii) obtains a driving record of a driver from the Driver License Division in~~
52 ~~accordance with Section 53-3-104 or [Section] 53-3-420; [and]~~

53 ~~(iv) subject to Subsection (3), conducts a review of the internal records of the employer~~
54 ~~to determine whether:~~

55 ~~(A) the applicant was previously employed by the employer; or~~

56 ~~(B) the applicant previously applied for employment with the employer; or~~

57 (v) collects the information to provide it to a government entity for the purpose of:
58 (A) determining eligibility for a government service, benefit, or program that requires
59 that the information is collected on or before the day on which an offer of employment is made;
60 or

61 (B) participating in a government service, benefit, or program that requires that the
62 information is collected on or before the day on which an offer of employment is made; and

63 [(ii)] (c) the applicant consents to the employer taking the action described in
64 Subsection [(1)(b)(i)] (2)(b).

65 ~~[(2) The information subject to the restriction of Subsection (1) is an applicant's:]~~

66 ~~[(a) Social Security number;]~~

67 ~~[(b) date of birth; and]~~

68 ~~[(c) driver license number.]~~

69 (3) If the information listed in Subsection (1) is requested under Subsection (2)(b)(iv),
70 the employer may only request that information listed in Subsection (1) that is necessary to
71 conduct the review of the employer's internal records.

72 (4) An employer violates this section if pursuant to Subsection (2) the employer
73 requests the information listed in Subsection (1), but fails to take the action described in
74 Subsection (2)(b) for which the information is requested.

75 Section 2. Section **34-46-202** is amended to read:

76 **34-46-202. Use of information collected in initial selection process.**

77 (1) (a) An employer may not:

78 (i) use information about an applicant obtained through an initial selection process for
79 a purpose other than to determine whether or not the employer will hire the applicant as an
80 employee; or

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

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

84 (i) marketing;

85 (ii) profiling;

86 (iii) reselling of the information; or

87 (iv) a similar use.

88 (2) Notwithstanding the other provisions of this section[~~:(a)~~], an employer may
89 provide information [~~to a government official at the request of the government official;~~];

90 (a) as required by law;

91 (b) to a government entity for the purpose of:

92 (i) determining eligibility for a government service, benefit, or program; or

93 (ii) participating in a government service, benefit, or program;

94 [~~(b)~~] (c) if the applicant applies for another position with the employer; or

95 [~~(c)~~] (d) if the applicant becomes an employee and the information is used for one or

96 more of the following, that is also applied to other employees in a similar position:

97 (i) a performance review; or

98 (ii) a promotion application.

99 Section 3. **Effective date.**

100 If approved by two-thirds of all the members elected to each house, this bill takes effect
101 upon approval by the governor, or the day following the constitutional time limit of Utah
102 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
103 the date of veto override.

104 Section 4. **Retrospective operation.**

105 This bill has retrospective operation to May 12, 2009.

Fiscal Note

**H.B. 1002 1st Sub. (Buff) - Conditions for Requesting and Disclosing
Information Under Employment Selection Procedures Act**

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
