

Part 2 Requirements Related to Information

34-46-201 Information collected.

- (1) Except as provided in Subsection (2), an employer may not request the following information before an applicant is offered a job:
 - (a) Social Security number;
 - (b) date of birth; or
 - (c) driver license number.
- (2) An employer may request the information listed in Subsection (1) before an applicant is offered a job only if:
 - (a) the request for information is applicable to any applicant applying for the position for which the applicant is applying;
 - (b) the information is requested during the time in the employer's employment selection process when the employer:
 - (i) obtains a criminal background check;
 - (ii) obtains a credit history of an applicant for employment, subject to the requirements of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq.;
 - (iii) obtains a driving record of a driver from the Driver License Division in accordance with Section 53-3-104 or 53-3-420;
 - (iv) subject to Subsection (3), conducts a review of the internal records of the employer to determine whether:
 - (A) the applicant was previously employed by the employer; or
 - (B) the applicant previously applied for employment with the employer; or
 - (v) collects the information to provide it to a government entity for the purpose of:
 - (A) determining eligibility for a government service, benefit, or program that requires that the information is collected on or before the day on which an offer of employment is made; or
 - (B) participating in a government service, benefit, or program that requires that the information is collected on or before the day on which an offer of employment is made;and
 - (c) the applicant consents to the employer taking the action described in Subsection (2)(b).
- (3) If the information listed in Subsection (1) is requested under Subsection (2)(b)(iv), the employer may only request that information listed in Subsection (1) that is necessary to conduct the review of the employer's internal records.
- (4) An employer violates this section if pursuant to Subsection (2) the employer requests the information listed in Subsection (1), but fails to take the action described in Subsection (2)(b) for which the information is requested.

Amended by Chapter 2, 2009 Special Session 1

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

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

- (ii) except as provided in Subsection (2), provide information about an applicant obtained through an initial selection process to a person other than the employer.
- (b) A use prohibited under this Subsection (1) includes:
 - (i) marketing;
 - (ii) profiling;
 - (iii) reselling of the information; or
 - (iv) a similar use.
- (2) Notwithstanding the other provisions of this section, an employer may provide information:
 - (a) as required by law;
 - (b) to a government entity for the purpose of:
 - (i) determining eligibility for a government service, benefit, or program; or
 - (ii) participating in a government service, benefit, or program;
 - (c) if the applicant applies for another position with the employer; or
 - (d) if the applicant becomes an employee and the information is used for one or more of the following, that is also applied to other employees in a similar position:
 - (i) a performance review; or
 - (ii) a promotion application.

Amended by Chapter 2, 2009 Special Session 1

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34-46-203 Retention of information collected during an initial selection process.

- (1) Subject to Subsection (2), with regard to information collected about an applicant obtained through an initial selection process, an employer shall:
 - (a) maintain a specific policy regarding the retention, disposition, access, and confidentiality of the information; and
 - (b) if an applicant requests to see the policy described in Subsection (1)(a), provide an opportunity for the applicant to review the policy before being required to provide information as part of the initial selection process.
- (2) Except to the extent required by law, an employer may not retain the information described in Subsection (1) more than two years after the day on which the applicant provides the information to the employer, if the employer does not hire the applicant within that two-year period.

Enacted by Chapter 174, 2009 General Session