

**Chapter 46**  
**Employment Selection Procedures Act**

**Part 1**  
**General Provisions**

**34-46-101 Title.**

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

Enacted by Chapter 174, 2009 General Session

**34-46-102 Definitions.**

As used in this chapter:

- (1) "Applicant" means an individual that provides information to an employer for the purpose of obtaining employment.
- (2) "Division" means the Labor Commission's Division of Antidiscrimination and Labor.
- (3) "Employer" means a person employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.
- (4) "Employment selection process" means the process by which an employer selects an individual to be an employee for the employer.
- (5) "Initial selection process" means the receipt of information in a record from an applicant that the employer uses to determine whether the applicant will be considered for a second review for the position for which the applicant is applying.
- (6) "Record" means information that is:
  - (a) inscribed on a tangible medium; or
  - (b)
    - (i) received or stored in an electronic or other medium; and
    - (ii) retrievable in perceivable form.

Amended by Chapter 218, 2010 General Session

**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

**Part 3  
Enforcement**

**34-46-301 Investigations -- Complaints -- Sanctions -- Rulemaking.**

- (1) The division may investigate an alleged violation of this chapter.
- (2)
  - (a) An individual claiming to be aggrieved by an action of an employer in violation of this chapter may file with the division a request for agency action.
  - (b) On receipt of a request for agency action under Subsection (2)(a), the division:
    - (i) shall conduct an adjudicative proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act; and
    - (ii) may attempt to reach a settlement between the parties through a settlement conference.
- (3)
  - (a) If the division determines that a violation has occurred, the division may order that the employer:
    - (i) cease and desist the action;
    - (ii) pay a fine to the division of up to \$500 for a violation, regardless of the number of applicants affected by the violation; or
    - (iii) comply with a combination of Subsections (3)(a)(i) and (ii).
  - (b) Money received under this section shall be deposited as a dedicated credit to the division to pay for the costs of administering this chapter.
- (4) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding:
  - (a) the process to file a written complaint with the division; and
  - (b) the terms defined in Section 34-46-102.

Enacted by Chapter 174, 2009 General Session

**34-46-302 Inspection of records by division.**

- (1) A representative of the division may enter a place of employment during business hours to inspect a record as part of an investigation described in Section 34-46-301.
- (2) An effort of an employer to obstruct the division in the performance of its duties under this section is a violation of this chapter and subject to sanctions under Section 34-46-301.

Enacted by Chapter 174, 2009 General Session