

EMPLOYMENT SELECTION PROCEDURES

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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.

58 (6) "Initial selection process" means the receipt of information in a record from an

59 applicant that the employer uses to determine whether the applicant will be considered for a
 60 second review for the position for which the applicant is applying.

61 (7) "Record" means information that is:

62 (a) inscribed on a tangible medium; or

63 (b) (i) received or stored in an electronic or other medium; and

64 (ii) retrievable in perceivable form.

65 Section 3. Section **34-45-201** is enacted to read:

66 **Part 2. Requirements Related to Questions**

67 **34-45-201. Information collected.**

68 (1) An employer may not request the information listed in Subsection (2) before:

69 (a) an applicant is offered a job; or

70 (b) (i) if applicable to any applicant applying for the position for which the applicant is
 71 applying, the time in the employer's employment selection process when the employer obtains
 72 a:

73 (A) criminal background check; ~~H→~~ [or] ~~←H~~

74 (B) credit history of an applicant for employment, subject to the requirements of the
 75 Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq.; ~~H→~~ or

75a (C) a driving record of a driver from the Driver License Division in accordance with
 75b Section 53-3-104 or Section 53-3-420; ~~←H~~ and

76 (ii) the applicant consents to the employer taking the action described in Subsection
 77 (1)(b)(i).

78 (2) The information subject to the restriction of Subsection (1) is an applicant's:

79 (a) Social Security number;

80 (b) date of birth; and

81 (c) driver license number.

82 Section 4. Section **34-45-202** is enacted to read:

83 **34-45-202. Use of information collected in initial selection process.**

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

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

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

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

91 (i) marketing;

92 (ii) profiling;

93 (iii) reselling of the information; or

94 (iv) a similar use.

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

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

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

99 (c) if the applicant becomes an employee and the information is used for one or more

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

101 (i) a performance review; or

102 (ii) a promotion application.

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

104 **34-45-203. Retention of information collected during an initial selection process.**

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

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

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

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

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

117 **Part 3. Enforcement**

118 **34-45-301. Investigations -- Complaints -- Sanctions -- Rulemaking.**

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

120 (2) (a) An individual claiming to be aggrieved by an action of an employer in violation

121 of this chapter may file with the division a request for agency action.

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

123 (i) shall conduct an adjudicative proceeding pursuant to Title 63G, Chapter 4,

124 Administrative Procedures Act; and

125 (ii) may attempt to reach a settlement between the parties through a settlement
126 conference.

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

129 (i) cease and desist the action;

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

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

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

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

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

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

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

140 **34-45-302. Inspection of records by division.**

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

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

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

147 **34A-1-202. Divisions and office -- Creation -- Duties -- Labor Relations Board,**
148 **Appeals Board, councils, and panels.**

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

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

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

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

156 (d) the Division of Antidiscrimination and Labor that shall administer the regulatory
157 requirements of:

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

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

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

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

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

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

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

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

168 (b) the Appeals Board created in Section 34A-1-205;

169 (c) the following program advisory councils:

170 (i) the workers' compensation advisory council created in Section 34A-2-107;

171 (ii) the antidiscrimination and labor advisory council created in Section 34A-5-105;

172 (iii) the occupational safety and health advisory council created in Section 34A-6-106;

173 (iv) the Mine Safety Technical Advisory Council created in Section 40-2-203; and

174 (v) the Coal Miner Certification Panel created in Section 40-2-204.

175 (3) In addition to the responsibilities described in this section, the commissioner may
176 assign to a division a responsibility granted to the commission by law.

Legislative Review Note
as of 2-4-09 7:44 AM

Office of Legislative Research and General Counsel

H.B. 206 - Employment Selection Procedures

Fiscal Note

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.
