

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

4 2009 FIRST SPECIAL SESSION

5 STATE OF UTAH

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

7 Senate Sponsor: Karen Mayne

8
9 **LONG TITLE**

10 **General Description:**

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

14 **Highlighted Provisions:**

15 This bill:

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

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

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) An employer may not request the information listed in Subsection (2) [~~before~~]:

37 (a) before an applicant is offered a job; or

38 (b) (i) if applicable to any applicant applying for the position for which the applicant is
39 applying, before the time in the employer's employment selection process when the employer
40 [~~obtains a~~]:

41 (A) obtains a criminal background check;

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

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

46 (D) subject to Subsection (2)(b), conducts a review of the internal records of the
47 employer to determine:

48 (I) if the applicant was previously employed by the employer, whether the employer
49 terminated that employment for cause; or

50 (II) if the applicant previously applied for employment with the employer, whether the
51 applicant failed a drug or alcohol test taken as part of the previous application for employment;

52 or

53 (E) collects the information to provide it to a government entity for the purpose of:

54 (I) determining eligibility for a government service, benefit, or program that requires
55 that the information is collected on or before the day on which an offer of employment is made;

56 or

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

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

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

62 [~~(a)~~] (i) Social Security number;

63 [~~(b)~~] (ii) date of birth; and

64 [~~(c)~~] (iii) driver license number.

65 (b) If the information described in Subsection (2)(a) is requested under Subsection
66 (1)(b)(i)(D), the employer may only request that information described in Subsection (2)(a) that
67 is necessary to conduct the review of the employer's internal records.

68 (3) An employer violates this section if pursuant to Subsection (1)(b) the employer
69 requests the information described in Subsection (2), but fails to take the action described in
70 Subsection (1)(b)(i) for which the information is requested.

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

72 **34-46-202. Use of information collected in initial selection process.**

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

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

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

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

80 (i) marketing;

81 (ii) profiling;

82 (iii) reselling of the information; or

83 (iv) a similar use.

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

86 (a) as required by law;

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

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

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

90 [~~(b)~~] (c) if the applicant applies for another position with the employer; or
91 [~~(c)~~] (d) if the applicant becomes an employee and the information is used for one or
92 more of the following, that is also applied to other employees in a similar position:

- 93 (i) a performance review; or
- 94 (ii) a promotion application.

95 Section 3. **Effective date.**

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

100 Section 4. **Retrospective operation.**

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

Legislative Review Note
as of **5-15-09 10:45 AM**

Office of Legislative Research and General Counsel

Fiscal Note

**H.B. 1002 - 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.
