

**EMPLOYMENT SELECTION PROCEDURES ACT**

**AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mark A. Wheatley**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Employment Selection Procedures Act to prohibit an employer from inquiring into an applicant's compensation history.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ prohibits an employer from seeking information regarding an applicant's employment history from certain persons;
- ▶ gives the Labor Commission's Division of Antidiscrimination and Labor enforcement power;
- ▶ permits an aggrieved individual to file a request for agency action;
- ▶ permits either party to appeal an order made under the Employment Selection Procedures Act;
- ▶ provides for the Labor Commission to obtain representation on any appeal or to enforce any judgment of an order made under the Employment Selection Procedures Act; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **34-46-102**, as last amended by Laws of Utah 2010, Chapter 218

33 **34-46-301**, as enacted by Laws of Utah 2009, Chapter 174

34 ENACTS:

35 **34-46-401**, Utah Code Annotated 1953



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

38 Section 1. Section **34-46-102** is amended to read:

39 **34-46-102. Definitions.**

40 As used in this chapter:

41 (1) "Applicant" means an individual that provides information to an employer for the  
42 purpose of obtaining employment.

43 (2) "Compensation" means the amounts or benefits due an employee for labor or  
44 services, whether the amount is:

45 (a) fixed;

46 (b) ascertained on a time, task, piece, or commission basis; or

47 (c) based on some other method of calculating the amount.

48 [~~(2)~~] (3) "Division" means the Labor Commission's Division of Antidiscrimination and  
49 Labor.

50 [~~(3)~~] (4) "Employer" means a person employing 15 or more employees within the state  
51 for each working day in each of 20 calendar weeks or more in the current or preceding calendar  
52 year.

53 [~~(4)~~] (5) "Employment selection process" means the process by which an employer  
54 selects an individual to be an employee for the employer.

55 [~~(5)~~] (6) "Initial selection process" means the receipt of information in a record from an  
56 applicant that the employer uses to determine whether the applicant will be considered for a  
57 second review for the position for which the applicant is applying.

58 [~~(6)~~] (7) "Record" means information that is:

59 (a) inscribed on a tangible medium; or

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

61 (ii) retrievable in perceivable form.

62 Section 2. Section **34-46-301** is amended to read:

63 **34-46-301. Investigations -- Complaints -- Sanctions -- Rulemaking.**

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

65 (2) (a) An individual claiming to be aggrieved by an action of an employer in violation  
66 of this chapter may file with the division a request for agency action.

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

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

69 Administrative Procedures Act; and

70 (ii) may attempt to reach a settlement between the parties through a settlement

71 conference.

72 (3) (a) If the division determines that a violation has occurred:

73 (i) in violation of Part 2, Requirements Related to Information, the division may order  
74 that the employer:

75 ~~[(i)]~~ (A) cease and desist the action;

76 ~~[(ii)]~~ (B) pay a fine to the division of up to \$500 for a violation, regardless of the  
77 number of applicants affected by the violation; or

78 ~~[(iii)]~~ (C) comply with a combination of Subsections ~~[(3)(a)(i) and (ii)].~~ (3)(a)(i)(A)

79 and (B); or

80 (ii) in violation of Part 4, Prohibition on Inquiry into Compensation History, the  
81 division shall:

82 (A) for the first offense, issue a warning;

83 (B) for the second offense, order that the employer pay a penalty of \$500; and

84 (C) for the third or subsequent offense, order that the employer pay a penalty of \$1,500.

85 (b) The division shall:

86 (i) retain 50% of a penalty payment described in Subsection (3)(a)(ii); and

87 (ii) pay 50% of a penalty payment described in Subsection (3)(a)(ii) to the aggrieved  
88 individual.

89 ~~[(b)]~~ (c) Money [received] the division retains under this section shall be deposited as a

90 dedicated credit to the division to pay for the costs of administering this chapter.

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

93 [~~(a) the process to file a written complaint with the division; and~~]

94 (a) procedures under this chapter;

95 (b) the terms defined in Section 34-46-102[-]; and

96 (c) the amount of a penalty imposed under Subsection (3)(a)(ii).

97 (5) Either party may file with the Division of Adjudication created in Section

98 34A-1-202 a written request for review of an order issued under Subsection (3), in accordance  
99 with:

100 (a) Section 63G-4-301; and

101 (b) Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.

102 (6) (a) The commission may employ counsel, appoint a representative, or request the  
103 attorney general or the county attorney for the county in which the final order is filed and  
104 docketed to:

105 (i) represent the commission on any appeal; or

106 (ii) enforce any judgment related to an order under this section.

107 (b) If employed by or representing the commission outside the administrative process,  
108 the counsel the commission employs, the attorney general, or the county representing the  
109 commission, shall be awarded:

110 (i) reasonable attorney fees; and

111 (ii) costs for:

112 (A) appeals when the commission prevails; and

113 (B) judgment enforcement proceedings.

114 Section 3. Section 34-46-401 is enacted to read:

115 **Part 4. Prohibition on Inquiry into Compensation History**

116 **34-46-401. Prohibited inquiry.**

117 (1) An employer may not seek information regarding an applicant's compensation  
118 history from the applicant, the applicant's current or former employer, or an employee of the  
119 applicant's current or former employer.

120 (2) This section does not apply to any compensation history available to the public

121 under federal or state law.

122 (3) Nothing in this section prohibits an applicant from voluntarily disclosing the

123 applicant's compensation history to a prospective employer.