

**EMPLOYMENT SELECTION PROCEDURES ACT**

**AMENDMENTS**

2019 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;
- ▶ gives the Labor Commission's Division of Antidiscrimination and Labor enforcement power;
- ▶ permits an aggrieved individual to file a request for agency action;
- ▶ 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

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **34-46-102**, as last amended by Laws of Utah 2010, Chapter 218

31 **34-46-301**, as enacted by Laws of Utah 2009, Chapter 174

32 ENACTS:

33 **34-46-401**, Utah Code Annotated 1953



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

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

37 **34-46-102. Definitions.**

38 As used in this chapter:

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

41 (2) "Compensation" means the amounts or benefits due an employee for labor or  
42 services, whether the amount is fixed or ascertained on a time, task, piece, commission basis or  
43 other method of calculating the amount.

44 [~~2~~] (3) "Division" means the Labor Commission's Division of Antidiscrimination and  
45 Labor.

46 [~~3~~] (4) "Employer" means a person employing 15 or more employees within the state  
47 for each working day in each of 20 calendar weeks or more in the current or preceding calendar  
48 year.

49 [~~4~~] (5) "Employment selection process" means the process by which an employer  
50 selects an individual to be an employee for the employer.

51 [~~5~~] (6) "Initial selection process" means the receipt of information in a record from an  
52 applicant that the employer uses to determine whether the applicant will be considered for a  
53 second review for the position for which the applicant is applying.

54 [~~6~~] (7) "Record" means information that is:

- 55 (a) inscribed on a tangible medium; or
- 56 (b) (i) received or stored in an electronic or other medium; and
- 57 (ii) retrievable in perceivable form.

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

59 **34-46-301. Investigations -- Complaints -- Sanctions -- Rulemaking.**

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

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

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

64 (i) shall conduct an adjudicative proceeding pursuant to Title 63G, Chapter 4,  
65 Administrative Procedures Act; and66 (ii) may attempt to reach a settlement between the parties through a settlement  
67 conference.68 (3) (a) If the division determines that a violation has occurred~~[-]~~:69 (i) in violation of Part 2, Requirements Related to Information, the division may order  
70 that the employer:71 ~~[(i)]~~ (A) cease and desist the action;72 ~~[(ii)]~~ (B) pay a fine to the division of up to \$500 for a violation, regardless of the  
73 number of applicants affected by the violation; or74 ~~[(iii)]~~ (C) comply with a combination of Subsections (3)(a)(i)(A) and ~~[(ii)]~~ (B); or75 (ii) in violation of Part 4, Prohibition on Inquiry into Compensation History, the  
76 division shall order that the employer pay a penalty of:77 (A) for the first offense, at least \$1,000 but not to exceed \$5,000; and78 (B) for the second or subsequent offense, at least \$5,000 but not to exceed \$10,000.79 (b) The division shall:80 (i) retain 40% of a penalty payment described in Subsection (3)(a)(ii); and81 (ii) pay 60% of a penalty payment described in Subsection (3)(a)(ii) to the aggrieved  
82 individual.83 ~~[(b)]~~ (c) Money ~~received~~ the division retains under this section shall be deposited as a  
84 dedicated credit to the division to pay for the costs of administering this chapter.85 (4) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
86 Administrative Rulemaking Act, regarding:87 (a) the process to file a written complaint with the division; ~~[and]~~88 (b) the terms defined in Section 34-46-102~~[-]~~; and89 (c) the amount of a penalty imposed under Subsection (3)(a)(ii).

90           (5) (a) The commission may employ counsel, appoint a representative, or request the  
91 attorney general, or the county attorney for the county in which the final order is filed and  
92 docketed, to represent the commission on any appeal or to enforce any judgment related to an  
93 order under this section.

94           (b) The counsel the commission employs, the attorney general, or the county  
95 representing the commission, shall be awarded:

96           (i) reasonable attorney fees, as specified by the commission; and

97           (ii) costs for:

98           (A) appeals when the plaintiff prevails; and

99           (B) judgment enforcement proceedings.

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

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

102                           **34-46-401. Prohibited inquiry.**

103           (1) An employer may not seek information regarding an applicant's compensation  
104 history from the applicant or anyone connected with the applicant's current or former employer.

105           (2) This section does not apply to any compensation history available to the public  
106 under federal or state law.

107           (3) Nothing in this section prohibits an applicant from voluntarily disclosing the  
108 applicant's compensation history to a prospective employer.