

Representative Mark A. Wheatley proposes the following substitute bill:

EMPLOYMENT SELECTION PROCEDURES ACT

AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark A. Wheatley

Senate Sponsor: _____

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;
- ▶ 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.



26 **Money Appropriated in this Bill:**

27 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 fixed or ascertained on a time, task, piece, commission basis or
45 other method of calculating the amount.

46 [~~(2)~~] (3) "Division" means the Labor Commission's Division of Antidiscrimination and
47 Labor.

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

51 [~~(4)~~] (5) "Employment selection process" means the process by which an employer
52 selects an individual to be an employee for the employer.

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

56 [~~(6)~~] (7) "Record" means information that is:

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

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

61 **34-46-301. Investigations -- Complaints -- Sanctions -- Rulemaking.**

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

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

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

66 (i) shall conduct an adjudicative proceeding pursuant to Title 63G, Chapter 4,
 67 Administrative Procedures Act; and

68 (ii) may attempt to reach a settlement between the parties through a settlement
 69 conference.

70 (3) (a) If the division determines that a violation has occurred~~[-]~~:

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

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

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

76 ~~[(iii)]~~ (C) comply with a combination of Subsections (3)(a)(i)(A) and ~~[(ii)-]~~ (B); or

77 (ii) in violation of Part 4, Prohibition on Inquiry into Compensation History, the

78 division shall ~~order that the employer pay a penalty of~~ ~~←~~ ~~H~~ :

79 (A) for the first offense ~~←~~ ~~H~~ ~~→~~ ~~[-, \$1,000; and]~~ , issue a warning; ~~←~~ ~~H~~

80 (B) for the second ~~←~~ ~~H~~ ~~→~~ ~~[or subsequent]~~ ~~←~~ ~~H~~ offense, ~~←~~ ~~H~~ ~~→~~ ~~[\$5,000.]~~ order that the
 80a employer pay a penalty of \$500; and

80b (C) for the third or subsequent offense, order that the employer pay a penalty of

80c \$1,500. ~~←~~ ~~H~~

81 (b) The division shall:

82 (i) retain ~~←~~ ~~H~~ ~~→~~ ~~[40%]~~ 50% ~~←~~ ~~H~~ of a penalty payment described in Subsection (3)(a)(ii); and

83 (ii) pay ~~←~~ ~~H~~ ~~→~~ ~~[60%]~~ 50% ~~←~~ ~~H~~ of a penalty payment described in Subsection (3)(a)(ii) to the

83a aggrieved

84 individual.

85 ~~[(b)]~~ (c) Money ~~[received]~~ the division retains under this section shall be deposited as a
 86 dedicated credit to the division to pay for the costs of administering this chapter.

87 (4) The commission may make rules in accordance with Title 63G, Chapter 3, Utah

88 Administrative Rulemaking Act, regarding:

89 (a) ~~[the process to file a written complaint with the division; and]~~ procedures under this
90 chapter;

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

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

93 (5) Either party may file with the Division of Adjudication created in Section
94 34A-1-202 a written request for review of an order issued under Subsection (3), in accordance
95 with:

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

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

98 (6) (a) The commission may employ counsel, appoint a representative, or request the
99 attorney general, or the county attorney for the county in which the final order is filed and
100 docketed, to represent the commission on any appeal or to enforce any judgment related to an
101 order under this section.

102 (b) If employed by or representing the commission outside the administrative process,
103 the counsel the commission employs, the attorney general, or the county representing the
104 commission, shall be awarded:

105 (i) reasonable attorney fees; and

106 (ii) costs for:

107 (A) appeals when the commission prevails; and

108 (B) judgment enforcement proceedings.

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

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

111 **34-46-401. Prohibited inquiry.**

112 (1) An employer may not seek information regarding an applicant's compensation
113 history from the applicant ~~or anyone connected with~~, ~~the applicant's current or former~~
113a employer, or an employee of the applicant's current or former employer.

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

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