

**Superseded 5/9/2017**

**72-10-502 Implied consent to chemical tests for alcohol or drugs -- Number of tests -- Refusal -- Person incapable of refusal -- Results of test available -- Who may give test -- Evidence -- Immunity from liability.**

- (1)
  - (a) A person operating an aircraft in this state consents to a chemical test or tests of the person's breath, blood, urine, or oral fluids:
    - (i) for the purpose of determining whether the person was operating or in actual physical control of an aircraft while having a blood or breath alcohol content statutorily prohibited under Section 72-10-501, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 72-10-501, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of an aircraft in violation of Section 72-10-501; or
    - (ii) if the person operating the aircraft is involved in an accident that results in death, serious injury, or substantial aircraft damage.
  - (b)
    - (i) The peace officer determines which of the tests are administered and how many of them are administered.
    - (ii) The peace officer may order any or all tests of the person's breath, blood, urine, or oral fluids.
    - (iii) If an officer requests more than one test, refusal by a person to take one or more requested tests, even though the person does submit to any other requested test or tests, is a refusal under this section.
  - (c)
    - (i) A person who has been requested under this section to submit to a chemical test or tests of the person's breath, blood, urine, or oral fluids may not select the test or tests to be administered.
    - (ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.
- (2)
  - (a) If the person has been placed under arrest and has then been requested by a peace officer to submit to any one or more of the chemical tests provided in Subsection (1) and refuses to submit to any chemical test, the person shall be warned by the peace officer requesting the test that a refusal to submit to the test is admissible in civil or criminal proceedings as provided under Subsection (8).
  - (b) Following this warning, unless the person immediately requests that the chemical test offered by a peace officer be administered, a test may not be given.
- (3) Any person who is dead, unconscious, or in any other condition rendering the person incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.
- (4) Upon the request of the person who was tested, the results of the test or tests shall be made available to that person.
- (5)
  - (a) Only the following, acting at the request of a peace officer, may draw blood to determine its alcohol or drug content:

- (i) a physician;
  - (ii) a registered nurse;
  - (iii) a licensed practical nurse;
  - (iv) a paramedic;
  - (v) as provided in Subsection (5)(b), emergency medical service personnel other than paramedics; or
  - (vi) a person with a valid permit issued by the Department of Health under Section 26-1-30.
- (b) The Department of Health may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section 26-8a-102, are authorized to draw blood under Subsection (5)(a)(v), based on their type of certification under Section 26-8a-302.
- (c) Subsection (5)(a) does not apply to taking a urine, breath, or oral fluid specimen.
- (d) The following are immune from civil or criminal liability arising from drawing a blood sample from a person who a peace officer has reason to believe is flying in violation of this chapter if the sample is drawn in accordance with standard medical practice:
- (i) a person authorized to draw blood under Subsection (5)(a); and
  - (ii) if the blood is drawn at a hospital or other medical facility, the medical facility.
- (6)
- (a) The person to be tested may, at the person's own expense, have a physician of the person's own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.
  - (b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.
  - (c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.
- (7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.
- (8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of an aircraft while under the influence of alcohol, any drug, or combination of alcohol and any drug.
- (9) The results of any test taken under this section or the refusal to be tested shall be reported to the Federal Aviation Administration by the peace officer requesting the test.