

**CONFIDENTIALITY OF DRUG TESTING**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Paula F. Julander**

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**LONG TITLE**

**General Description:**

This bill modifies the Labor Code to address provisions related to employer drug testing.

**Highlighted Provisions:**

This bill:

- ▶ requires disclosure to the Division of Occupational and Professional Licensing of drug or alcohol test-related information concerning health care providers;
- ▶ explains when the Division of Occupational and Professional Licensing may use the information in an action;
- ▶ allows the Division of Occupational and Professional Licensing to examine the employer as a witness regarding the information; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**34-38-13**, as enacted by Chapter 234, Laws of Utah 1987

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

Section 1. Section **34-38-13** is amended to read:

**34-38-13. Confidentiality of test-related information.**

(1) ~~[A#]~~ For purposes of this section, "test-related information" means the following

received by the employer through the employer's drug or alcohol testing program:

- (a) information[;];
- (b) interviews[;];
- (c) reports[;];
- (d) statements[;];
- (e) memoranda[;]; or
- (f) test results [~~received by the employer through his drug or alcohol testing program~~ are].

(2) Except as provided in Subsections (3) and (6), test-related information is a confidential [communications] communication and may not be:

- (a) used or received in evidence[;];
- (b) obtained in discovery[;]; or
- (c) disclosed in any public or private proceeding[~~, except in a proceeding related to an action taken by an employer under Section 34-38-8 or an action under Section 34-38-11~~].

(3) Test-related information:

- (a) shall be disclosed to the Division of Occupational and Professional Licensing:
  - (i) in the manner provided in Subsection 58-13-5(3); and
  - (ii) only to the extent required under Subsection 58-13-5(3); and
  - (b) may only be used in a proceeding related to:
    - (i) an action taken by the Division of Occupational and Professional Licensing under Section 58-1-401 when the Division of Occupational and Professional Licensing is taking action in whole or in part on the basis of test-related information disclosed under Subsection (3)(a);
    - (ii) an action taken by an employer under Section 34-38-8; or
    - (iii) an action under Section 34-38-11.

~~[(2) The]~~ (4) Test-related information [described in Subsection (1)] shall be the property of the employer.

~~[(3)]~~ (5) An employer is entitled to use a drug or alcohol test result as a basis for action under Section 34-38-8.

~~[(4)]~~ (6) An employer may not be examined as a witness with regard to ~~[the]~~ test-related information ~~[described in Subsection (1)]~~, except:

- (a) in a proceeding related to an action taken by the employer under Section 34-38-8 ~~[or]~~;
- (b) in an action under Section 34-38-11[-]; or
- (c) in an action described in Subsection (3)(b)(i).