

1 **Local Government Drug Testing Amendments**

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor:

3 **LONG TITLE**

4 **General Description:**

5 This bill amends provisions relating to drug testing by government entities.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▶ modifies the definition of "sample" to include oral fluid;
- 9 ▶ provides that a local government entity or state institution of higher education may

10 require that a donor submit a blood, breath, oral fluid, hair, or urine sample for drug
11 testing; and

- 12 ▶ modifies the requirement that an entity independent of the local governmental entity or
13 state institution of higher education collect samples for drug testing by allowing a
14 collection method that complies with instructions prepared by an independent entity.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **34-41-101**, as last amended by Laws of Utah 2024, Chapter 352

22 **34-41-103**, as repealed and reenacted by Laws of Utah 2024, Chapter 352

23 **34-41-104**, as last amended by Laws of Utah 2024, Chapter 352

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

26 Section 1. Section **34-41-101** is amended to read:

27 **34-41-101 . Definitions.**

28 As used in this chapter:

- 29 (1) "Donor" means an employee, a volunteer, a prospective employee, or a prospective
30 volunteer of a local government entity or a state institution of higher education.

- 31 (2) "Drug" means any substance recognized as a drug in the United States Pharmacopeia,
32 the National Formulary, the Homeopathic Pharmacopeia, or other drug compendia,
33 including Title 58, Chapter 37, Utah Controlled Substances Act, or supplement to any of
34 those compendia.
- 35 (3) "Drug testing" means the scientific analysis for the presence of drugs or their
36 metabolites in the human body in accordance with the definitions and terms of this
37 chapter.
- 38 (4) "Local governmental employee" means any person or officer in the service of a local
39 governmental entity or state institution of higher education for compensation.
- 40 (5)(a) "Local governmental entity" means any political subdivision of Utah including
41 any county, municipality, local school district, special district, special service district,
42 or any administrative subdivision of those entities.
- 43 (b) "Local governmental entity" does not mean Utah state government or its
44 administrative subdivisions provided for in Sections 63A-17-1001 through
45 63A-17-1006.
- 46 (6) "Periodic testing" means preselected and preannounced drug testing of employees or
47 volunteers conducted on a regular schedule.
- 48 (7) "Prospective employee" means any person who has made a written or oral application to
49 become an employee of a local governmental entity or a state institution of higher
50 education.
- 51 (8) "Random testing" means the unannounced drug testing of an employee or volunteer
52 who was selected for testing by using a method uninfluenced by any personal
53 characteristics other than job category.
- 54 (9) "Reasonable suspicion for drug testing" means an articulated belief based on the
55 recorded specific facts and reasonable inferences drawn from those facts that a local
56 government employee or volunteer is in violation of the drug-free workplace policy.
- 57 (10) "Rehabilitation testing" means unannounced but preselected drug testing done as part
58 of a program of counseling, education, and treatment of an employee or volunteer in
59 conjunction with the drug-free workplace policy.
- 60 (11) "Safety sensitive position" means any local governmental or state institution of higher
61 education position involving duties which directly affects the safety of governmental
62 employees, the general public, or positions where there is access to controlled
63 substances, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, during
64 the course of performing job duties.

- 65 (12) "Sample" means urine, blood, breath, [~~saliva~~] oral fluid, or hair.
- 66 (13) "State institution of higher education" means the institution as defined in Section
67 53B-3-102.
- 68 (14) "Volunteer" means any person who donates services as authorized by the local
69 governmental entity or state institution of higher education without pay or other
70 compensation except expenses actually and reasonably incurred.
- 71 Section 2. Section **34-41-103** is amended to read:
- 72 **34-41-103 . Policy requirements.**
- 73 (1)(a) A local governmental entity or a state institution of higher education may not test
74 a donor for the presence of drugs, unless the local government entity or state
75 institution of higher education:
- 76 (i) adopts a written policy or ordinance for the testing;
- 77 (ii) distributes the policy or ordinance to employees and volunteers; and
- 78 (iii) makes the policy or ordinance available for review by prospective employees
79 and prospective volunteers.
- 80 (b) The local governmental entity or state institution of higher education may only test
81 or retest for the presence of drugs in accordance with the policy or ordinance
82 described in Subsection (1)(a).
- 83 (2) The local government entity or state institution of higher education:
- 84 (a) shall collect and test samples in accordance with Section 34-41-104; and
- 85 (b) if otherwise permitted by law, is not limited only to collecting or testing in
86 circumstances where there are indications of job-related impairment of an employee
87 or volunteer.
- 88 (3) The use and disposition of all drug test results are subject to the limitations of Title 63G,
89 Chapter 2, Government Records Access and Management Act, and the Americans with
90 Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.
- 91 (4) A donor who is subject to testing under a policy or ordinance described in Subsection
92 (1)(a) shall:
- 93 (a) submit [~~an oral~~] a blood, breath, oral fluid, or hair sample for testing; or
- 94 (b) submit a split urine sample for testing or retesting.
- 95 (5) Unless the policy or ordinance described in Subsection (1)(a) provides otherwise, the
96 local governmental entity or state institution of higher education may specify the type of
97 sample, described in Subsection (4), that the donor is required to submit.
- 98 (6) A split urine sample shall consist of at least 45 milliliters of urine, divided into two

99 specimen bottles with:

100 (a) at least 30 milliliters of urine in one bottle, for the initial test; and

101 (b) at least 15 milliliters of urine in the other bottle for retesting, if requested under
102 Subsection (7).

103 (7) If the test results of a [~~urine or oral~~] sample test indicate the presence of drugs, the local
104 governmental entity or state institution of higher education shall:

105 (a) give notice to the donor:

106 (i) of the test results; and

107 (ii) for a urine test, that the donor may, within 72 hours after the local government
108 entity or state institution of higher education provides the notice, request testing of
109 the second sample; and

110 (b) test the second sample if the donor timely requests testing of the second sample.

111 (8) The expense of testing the second urine sample will be equally divided between the
112 donor and the local governmental entity or state institution of higher education.

113 (9) The test results of the samples shall be considered at any subsequent disciplinary
114 hearing if the requirements of this section and Section 34-41-104 are complied with in
115 the collection, handling, and testing of the samples.

116 Section 3. Section **34-41-104** is amended to read:

117 **34-41-104 . Requirements for identification, collection, and testing of samples.**

118 (1) The local governmental entity or state institution of higher education shall ensure that:

119 (a) all sample collection under this chapter is performed in accordance with instructions
120 prepared by an entity independent of the local government or state institution of
121 higher education;

122 (b) all testing for drugs under this chapter is performed by an independent laboratory
123 certified for employment drug testing by either the Substance Abuse and Mental
124 Health Services Administration or the College of American Pathology;

125 (c) the instructions, chain of custody forms, and collection kits, including containers and
126 seals, used for sample collection are prepared by an independent laboratory certified
127 for employment drug testing by either the Substance Abuse and Mental Health
128 Services Administration or the College of American Pathology; and

129 (d) sample collection and testing for drugs under this chapter is in accordance with the
130 requirements of this section.

131 (2) The local governmental entity or state institution of higher education may:

132 (a) in accordance with a policy or ordinance described in Subsection 34-41-103(1)(a),

- 133 require samples from a donor;
- 134 (b) require presentation of reliable identification to the person collecting the samples; and
- 135 (c) in order to dependably test for the presence of drugs, designate the type of sample to
- 136 be used for testing.
- 137 (3) The local governmental entity or state institution of higher education shall ensure that
- 138 the local governmental entity's or state institution of higher education's ordinance or
- 139 policy requires that:
- 140 (a) the collection of samples is performed under reasonable and sanitary conditions;
- 141 (b) samples are collected and tested:
- 142 (i) to ensure the privacy of the individual being tested; and
- 143 (ii) in a manner reasonably calculated to prevent substitutions or interference with the
- 144 collection or testing of reliable samples;
- 145 (c) sample collection is appropriately documented to ensure that:
- 146 (i) samples are labeled and sealed to reasonably preclude the probability of
- 147 erroneous identification of test results; and
- 148 (ii) a donor has the opportunity to provide notification of any information:
- 149 (A) that a donor considers relevant to the test, including identification of currently
- 150 or recently used prescription or nonprescription drugs or other relevant medical
- 151 information; and
- 152 (B) in compliance with the Americans with Disabilities Act of 1990, 42 U.S.C.
- 153 12101 through 12213;
- 154 (d) sample collection, storage, and transportation to the place of testing are performed in
- 155 a manner that reasonably precludes the probability of sample misidentification,
- 156 contamination, or adulteration; and
- 157 (e) sample testing conforms to scientifically accepted analytical methods and procedures.
- 158 (4) Before the result of any test may be used as a basis for any action by a local
- 159 governmental entity or state institution of higher education under Section 34-41-105, the
- 160 local governmental entity or state institution of higher education shall[-]:
- 161 (a) verify or confirm any positive initial screening test by gas chromatography, gas
- 162 chromatography-mass spectroscopy, or other comparably reliable analytical methods;
- 163 and
- 164 (b) provide the notice described in Subsection 34-41-103(7), as soon as possible after a
- 165 positive test result, at the last known address or telephone number of the donor.
- 166 (5) ~~[Any drug testing]~~ Except for drug testing of a prospective employee or a prospective

167 volunteer, drug testing by a local governmental entity or state institution of higher
168 education shall occur during or immediately after the regular work period of the
169 employee or volunteer and shall be considered as work time for purposes of
170 compensation and benefits.

171 (6) The local governmental entity or state institution of higher education shall pay[-] :
172 (a) all costs of sample collection and initial testing for drugs required under the policy or
173 ordinance described in Subsection 34-41-103(1)(a)[-] ; and
174 (b) [including the costs of transportation if the testing of an] if the donor is a current
175 employee or current volunteer and testing is conducted at a place other than the
176 workplace, the costs of transportation to the testing location.

177 Section 4. **Effective Date.**

178 This bill takes effect on May 7, 2025.