Local Government Drug Testing Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor: Heidi Balderree

LONG TITLE

General Description:

This bill amends government entity drug testing provisions.

Highlighted Provisions:

This bill:

- modifies the definition of "sample" to include oral fluid;
- clarifies the type of sample that a local governmental entity or state institution of higher education may require that a donor submit for drug testing; and
- requires that sample collection be performed in accordance with instructions prepared by an independent entity.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-41-101, as last amended by Laws of Utah 2025, First Special Session, Chapter 9

34-41-103, as last amended by Laws of Utah 2025, First Special Session, Chapter 9

34-41-104, as last amended by Laws of Utah 2025, First Special Session, Chapter 9

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

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

34-41-101 . Definitions.

As used in this chapter:

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

(2) "Drug" means any substance recognized as a drug in the United States Pharmacopeia, the National Formulary, the Homeopathic [~~Pharmacopeia~~] Pharmacopoeia, or other drug compendia, including Title 58, Chapter 37, Utah Controlled Substances Act, or supplement to any of those compendia.

(3) "Drug testing" means the scientific analysis for the presence of drugs or their metabolites in the human body in accordance with the definitions and terms of this chapter.

(4) "Institution of higher education" means the same as that term is defined in Section 53H-1-101.

(5) "Local governmental employee" means any person or officer in the service of a local governmental entity or institution of higher education for compensation.

(6)(a) "Local governmental entity" means any political subdivision of Utah including any county, municipality, local school district, special district, special service district, or any administrative subdivision of those entities.

(b) "Local governmental entity" does not mean Utah state government or its administrative subdivisions provided for in Sections 63A-17-1001 through 63A-17-1006.

(7) "Periodic testing" means preselected and preannounced drug testing of employees or volunteers conducted on a regular schedule.

(8) "Prospective employee" means any person who has made a written or oral application to become an employee of a local governmental entity or an institution of higher education.

(9) "Random testing" means the unannounced drug testing of an employee or volunteer who was selected for testing by using a method uninfluenced by any personal characteristics other than job category.

(10) "Reasonable suspicion for drug testing" means an articulated belief based on the recorded specific facts and reasonable inferences drawn from those facts that a local government employee or volunteer is in violation of the drug-free workplace policy.

(11) "Rehabilitation testing" means unannounced but preselected drug testing done as part of a program of counseling, education, and treatment of an employee or volunteer in conjunction with the drug-free workplace policy.

(12) "Safety sensitive position" means any local governmental or institution of higher education position involving duties which directly affects the safety of governmental employees, the general public, or positions where there is access to controlled substances, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, during

the course of performing job duties.

(13) "Sample" means urine, blood, breath, [~~saliva~~] oral fluid, or hair.

(14) "Volunteer" means any person who donates services as authorized by the local governmental entity or institution of higher education without pay or other compensation except expenses actually and reasonably incurred.

Section 2. Section **34-41-103** is amended to read:

34-41-103 . Policy requirements.

(1)(a) A local governmental entity or institution of higher education may not test a donor for the presence of drugs, unless the local government entity or institution of higher education:

(i) adopts a written policy or ordinance for the testing;

(ii) distributes the policy or ordinance to employees and volunteers; and

(iii) makes the policy or ordinance available for review by prospective employees and prospective volunteers.

(b) The local governmental entity or institution of higher education may only test or retest for the presence of drugs in accordance with the policy or ordinance described in Subsection (1)(a).

(2) The local government entity or institution of higher education:

(a) shall collect and test samples in accordance with Section 34-41-104; and

(b) if otherwise permitted by law, is not limited only to collecting or testing in circumstances where there are indications of job-related impairment of an employee or volunteer.

(3) The use and disposition of all drug test results are subject to the limitations of Title 63G, Chapter 2, Government Records Access and Management Act, and the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.

(4) A donor who is subject to testing under a policy or ordinance described in Subsection (1)(a) shall:

(a) submit [~~an oral~~] a blood, breath, oral fluid, or hair sample for testing; or

(b) submit a split urine sample for testing or retesting.

(5) Unless the policy or ordinance described in Subsection (1)(a) provides otherwise, the local governmental entity or institution of higher education may specify the type of sample, described in Subsection (4), that the donor is required to submit.

(6) A split urine sample shall consist of at least 45 milliliters of urine, divided into two specimen bottles with:

(a) at least 30 milliliters of urine in one bottle, for the initial test; and
(b) at least 15 milliliters of urine in the other bottle for retesting, if requested under Subsection (7).
(7) If the test results of a [~~urine or oral~~] sample test indicate the presence of drugs, the local governmental entity or institution of higher education shall:
(a) give notice to the donor:
(i) of the test results; and
(ii) for a urine test, that the donor may, within 72 hours after the local government entity or institution of higher education provides the notice, request testing of the second sample; and
(b) test the second sample if the donor timely requests testing of the second sample.
(8) The expense of testing the second urine sample will be equally divided between the donor and the local governmental entity or institution of higher education.
(9) The test results of the samples shall be considered at any subsequent disciplinary hearing if the requirements of this section and Section 34-41-104 are complied with in the collection, handling, and testing of the samples.

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

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

(1) The local governmental entity or institution of higher education shall ensure that:
(a) all sample collection under this chapter is performed in accordance with instructions prepared by an entity independent of the local government or institution of higher education;
(b) all testing for drugs under this chapter is performed by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American [~~Pathology~~] Pathologists;
(c) the instructions, chain of custody forms, and collection kits, including containers and seals, used for sample collection are prepared by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American [~~Pathology~~] Pathologists; and
(d) sample collection and testing for drugs under this chapter is in accordance with the requirements of this section.
(2) The local governmental entity or institution of higher education may:
(a) in accordance with a policy or ordinance described in Subsection 34-41-103(1)(a), require samples from a donor;

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

shall occur during or immediately after the regular work period of the employee or volunteer and shall be considered as work time for purposes of compensation and benefits.

(6) The local governmental entity or institution of higher education shall pay:

(a) [-]all costs of sample collection and initial testing for drugs required under the policy or ordinance described in Subsection 34-41-103(1)(a)[~~,~~] ; and

(b) [~~ including the costs of transportation if the testing of an~~] if the donor is a current employee or current volunteer and testing is conducted at a place other than the workplace, the cost of transportation to the testing location.

Section 4. **Effective Date.**

This bill takes effect on May 6, 2026.