

FORENSIC PHLEBOTOMY

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill amends the Utah Health Code, the Traffic Code, the Public Safety Code, the Utah Medical Practice Act, the Utah Osteopathic Medical Practice Act, the Naturopathic Physician Practice Act, and the Transportation Code.

Highlighted Provisions:

This bill:

- ▶ amends the duties of the Department of Health;
- ▶ amends who is authorized to draw blood to determine its alcohol or drug content;
- ▶ amends related immunity from liability provisions;
- ▶ amends who is authorized to draw a blood DNA specimen;
- ▶ amends related exemption from licensure provisions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-1-30, as last amended by Laws of Utah 2011, Chapter 177

41-6a-523, as enacted by Laws of Utah 2005, Chapter 2

53-10-405, as last amended by Laws of Utah 2010, Chapter 405

58-67-305, as last amended by Laws of Utah 2011, Chapter 214

30 **58-68-305**, as last amended by Laws of Utah 2011, Chapter 214

31 **58-71-305**, as last amended by Laws of Utah 2005, Chapter 2

32 **72-10-502**, as last amended by Laws of Utah 2005, Chapter 2

33

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

35 Section 1. Section **26-1-30** is amended to read:

36 **26-1-30. Powers and duties of department.**

37 (1) The department shall:

38 (a) enter into cooperative agreements with the Department of Environmental Quality to
39 delineate specific responsibilities to assure that assessment and management of risk to human
40 health from the environment are properly administered; and

41 (b) consult with the Department of Environmental Quality and enter into cooperative
42 agreements, as needed, to ensure efficient use of resources and effective response to potential
43 health and safety threats from the environment, and to prevent gaps in protection from potential
44 risks from the environment to specific individuals or population groups.

45 (2) In addition to all other powers and duties of the department, it shall have and
46 exercise the following powers and duties:

47 (a) promote and protect the health and wellness of the people within the state;

48 (b) establish, maintain, and enforce rules necessary or desirable to carry out the
49 provisions and purposes of this title to promote and protect the public health or to prevent
50 disease and illness;

51 (c) investigate and control the causes of epidemic, infectious, communicable, and other
52 diseases affecting the public health;

53 (d) provide for the detection, reporting, prevention, and control of communicable,
54 infectious, acute, chronic, or any other disease or health hazard which the department considers
55 to be dangerous, important, or likely to affect the public health;

56 (e) collect and report information on causes of injury, sickness, death, and disability
57 and the risk factors that contribute to the causes of injury, sickness, death, and disability within

58 the state;

59 (f) collect, prepare, publish, and disseminate information to inform the public
60 concerning the health and wellness of the population, specific hazards, and risks that may affect
61 the health and wellness of the population and specific activities which may promote and protect
62 the health and wellness of the population;

63 (g) establish and operate programs necessary or desirable for the promotion or
64 protection of the public health and the control of disease or which may be necessary to
65 ameliorate the major causes of injury, sickness, death, and disability in the state, except that the
66 programs may not be established if adequate programs exist in the private sector;

67 (h) establish, maintain, and enforce isolation and quarantine, and for this purpose only,
68 exercise physical control over property and individuals as the department finds necessary for
69 the protection of the public health;

70 (i) close theaters, schools, and other public places and forbid gatherings of people
71 when necessary to protect the public health;

72 (j) abate nuisances when necessary to eliminate sources of filth and infectious and
73 communicable diseases affecting the public health;

74 (k) make necessary sanitary and health investigations and inspections in cooperation
75 with local health departments as to any matters affecting the public health;

76 (l) establish laboratory services necessary to support public health programs and
77 medical services in the state;

78 (m) establish and enforce standards for laboratory services which are provided by any
79 laboratory in the state when the purpose of the services is to protect the public health;

80 (n) cooperate with the Labor Commission to conduct studies of occupational health
81 hazards and occupational diseases arising in and out of employment in industry, and make
82 recommendations for elimination or reduction of the hazards;

83 (o) cooperate with the local health departments, the Department of Corrections, the
84 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
85 Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders,

86 convicted sexual offenders, and any victims of a sexual offense;

87 (p) investigate the ~~[cause]~~ causes of maternal and infant mortality;

88 (q) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians
89 and drivers of motor vehicles killed in highway accidents be examined for the presence and
90 concentration of alcohol;

91 (r) provide the Commissioner of Public Safety with monthly statistics reflecting the
92 results of the examinations provided for in Subsection (2)(q) and provide safeguards so that
93 information derived from the examinations is not used for a purpose other than the compilation
94 of statistics authorized in this Subsection (2)(r);

95 (s) establish qualifications for individuals permitted to draw blood pursuant to ~~[Section~~
96 ~~41-6a-523]~~ Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or 72-10-502(5)(a)(vi), and to
97 issue permits to individuals it finds qualified, which permits may be terminated or revoked by
98 the department;

99 (t) establish a uniform public health program throughout the state which includes
100 continuous service, employment of qualified employees, and a basic program of disease
101 control, vital and health statistics, sanitation, public health nursing, and other preventive health
102 programs necessary or desirable for the protection of public health;

103 (u) adopt rules and enforce minimum sanitary standards for the operation and
104 maintenance of:

105 (i) orphanages;

106 (ii) boarding homes;

107 (iii) summer camps for children;

108 (iv) lodging houses;

109 (v) hotels;

110 (vi) restaurants and all other places where food is handled for commercial purposes,
111 sold, or served to the public;

112 (vii) tourist and trailer camps;

113 (viii) service stations;

- 114 (ix) public conveyances and stations;
- 115 (x) public and private schools;
- 116 (xi) factories;
- 117 (xii) private sanatoria;
- 118 (xiii) barber shops;
- 119 (xiv) beauty shops;
- 120 (xv) [~~physicians~~] physician offices;
- 121 (xvi) [~~dentists~~] dentist offices;
- 122 (xvii) workshops;
- 123 (xviii) industrial, labor, or construction camps;
- 124 (xix) recreational resorts and camps;
- 125 (xx) swimming pools, public baths, and bathing beaches;
- 126 (xxi) state, county, or municipal institutions, including hospitals and other buildings,
- 127 centers, and places used for public gatherings; and
- 128 (xxii) [~~of~~] any other facilities in public buildings [~~and~~] or on public grounds;
- 129 (v) conduct health planning for the state;
- 130 (w) monitor the costs of health care in the state and foster price competition in the
- 131 health care delivery system;
- 132 (x) adopt rules for the licensure of health facilities within the state pursuant to Title 26,
- 133 Chapter 21, Health Care Facility Licensing and Inspection Act;
- 134 (y) license the provision of child care;
- 135 (z) accept contributions to and administer the funds contained in the Organ Donation
- 136 Contribution Fund created in Section 26-18b-101; and
- 137 (aa) serve as the collecting agent, on behalf of the state, for the nursing care facility
- 138 assessment fee imposed under Title 26, Chapter 35a, Nursing Care Facility Assessment Act,
- 139 and adopt rules for the enforcement and administration of the nursing facility assessment
- 140 consistent with the provisions of Title 26, Chapter 35a.
- 141 Section 2. Section **41-6a-523** is amended to read:

142 **41-6a-523. Persons authorized to draw blood -- Immunity from liability.**

143 (1) (a) Only ~~[a physician, registered nurse, practical nurse, or person authorized under~~
144 ~~Section 26-1-30]~~ the following, acting at the request of a peace officer, may ~~[withdraw]~~ draw
145 blood to determine ~~[the alcoholic]~~ its alcohol or drug content[-]:

146 ~~[(b) The limitation in]~~

147 (i) a physician;

148 (ii) a registered nurse;

149 (iii) a licensed practical nurse;

150 (iv) a paramedic;

151 (v) as provided in Subsection (1)(b), emergency medical service personnel other than
152 paramedics; or

153 (vi) a person with a valid permit issued by the Department of Health under Section
154 26-1-30.

155 (b) The Department of Health may designate by rule, in accordance with Title 63G,
156 Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel,
157 as defined in Section 26-8a-102, are authorized to draw blood under Subsection (1)(a)(v),
158 based on their type of certification under Section 26-8a-302.

159 (c) Subsection (1)(a) does not apply to taking a urine, breath, or oral fluid specimen.

160 (2) ~~[Any physician, registered nurse, practical nurse, or person authorized under~~
161 ~~Section 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any]~~
162 The following are immune from civil or criminal liability arising from drawing a blood sample
163 from a person whom a peace officer has reason to believe is driving in violation of this chapter,
164 [or hospital or medical facility at which the sample is drawn, is immune from any civil or
165 criminal liability arising from drawing the sample, if the test is administered according to] if
166 the sample is drawn in accordance with standard medical practice[-]:

167 (a) a person authorized to draw blood under Subsection (1)(a); and

168 (b) if the blood is drawn at a hospital or other medical facility, the medical facility.

169 Section 3. Section **53-10-405** is amended to read:

170 **53-10-405. DNA specimen analysis -- Saliva sample to be obtained by agency --**
 171 **Blood sample to be drawn by professional.**

172 (1) (a) A saliva sample shall be obtained by the responsible agency under Subsection
 173 53-10-404(5).

174 (b) The sample shall be obtained in a professionally acceptable manner, using
 175 appropriate procedures to ensure the sample is adequate for DNA analysis.

176 (2) (a) A blood sample shall be drawn in a medically acceptable manner by [~~a licensed~~
 177 ~~professional nurse;~~] any of the following:

178 (i) a physician;

179 (ii) a registered nurse;

180 (iii) a licensed practical nurse[;];

181 (iv) a paramedic[~~, a qualified medical technician, a licensed physician, or other person~~
 182 licensed by the state for this purpose.];

183 (v) as provided in Subsection (2)(b), emergency medical service personnel other than
 184 paramedics; or

185 (vi) a person with a valid permit issued by the Department of Health under Section
 186 26-1-30.

187 (b) The Department of Health may designate by rule, in accordance with Title 63G,
 188 Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel,
 189 as defined in Section 26-8a-102, are authorized to draw blood under Subsection (2)(a)(v),
 190 based on their type of certification under Section 26-8a-302.

191 [~~(b)~~] (c) A person authorized by this section to draw a blood sample may not be held
 192 civilly liable for drawing a sample in a medically acceptable manner.

193 (3) A test result or opinion based upon a test result regarding a DNA specimen may not
 194 be rendered inadmissible as evidence solely because of deviations from procedures adopted by
 195 the department that do not affect the reliability of the opinion or test result.

196 (4) A DNA specimen is not required to be obtained if:

197 (a) the court or the responsible agency confirms with the department that the

198 department has previously received an adequate DNA specimen obtained from the person in
199 accordance with this section; or

200 (b) the court determines that obtaining a DNA specimen would create a substantial and
201 unreasonable risk to the health of the person.

202 Section 4. Section **58-67-305** is amended to read:

203 **58-67-305. Exemptions from licensure.**

204 In addition to the exemptions from licensure in Section 58-1-307, the following
205 individuals may engage in the described acts or practices without being licensed under this
206 chapter:

207 (1) an individual rendering aid in an emergency, when no fee or other consideration of
208 value for the service is charged, received, expected, or contemplated;

209 (2) an individual administering a domestic or family remedy;

210 (3) (a) (i) a person engaged in the sale of vitamins, health foods, dietary supplements,
211 herbs, or other products of nature, the sale of which is not otherwise prohibited by state or
212 federal law; and

213 (ii) a person acting in good faith for religious reasons, as a matter of conscience, or
214 based on a personal belief, when obtaining or providing any information regarding health care
215 and the use of any product under Subsection (3)(a)(i); and

216 (b) Subsection (3)(a) does not:

217 (i) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity,
218 pain, or other condition; or

219 (ii) prohibit providing truthful and non-misleading information regarding any of the
220 products under Subsection (3)(a)(i);

221 (4) a person engaged in good faith in the practice of the religious tenets of any church
222 or religious belief, without the use of prescription drugs;

223 (5) an individual authorized by the Department of Health under Section 26-1-30, to
224 [~~withdraw~~ draw blood [~~to determine the alcohol or drug content~~] pursuant to [Section
225 ~~41-6a-523~~] Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or 72-10-502(5)(a)(vi);

226 (6) a medical assistant while working under the direct and immediate supervision of a
227 licensed physician and surgeon, to the extent the medical assistant is engaged in tasks
228 appropriately delegated by the supervisor in accordance with the standards and ethics of the
229 practice of medicine;

230 (7) an individual engaging in the practice of medicine when:

231 (a) the individual is licensed in good standing as a physician in another state with no
232 licensing action pending and no less than 10 years of professional experience;

233 (b) the services are rendered as a public service and for a noncommercial purpose;

234 (c) no fee or other consideration of value is charged, received, expected, or
235 contemplated for the services rendered beyond an amount necessary to cover the proportionate
236 cost of malpractice insurance; and

237 (d) the individual does not otherwise engage in unlawful or unprofessional conduct;

238 (8) an individual providing expert testimony in a legal proceeding; and

239 (9) an individual who is invited by a school, association, society, or other body
240 approved by the division to conduct a clinic or demonstration of the practice of medicine in
241 which patients are treated, if:

242 (a) the individual does not establish a place of business in this state;

243 (b) the individual does not regularly engage in the practice of medicine in this state;

244 (c) the individual holds a current license in good standing to practice medicine issued
245 by another state, district or territory of the United States, or Canada;

246 (d) the primary purpose of the event is the training of others in the practice of
247 medicine; and

248 (e) neither the patient nor an insurer is billed for the services performed.

249 Section 5. Section **58-68-305** is amended to read:

250 **58-68-305. Exemptions from licensure.**

251 In addition to the exemptions from licensure in Section 58-1-307, the following
252 individuals may engage in the described acts or practices without being licensed under this
253 chapter:

254 (1) an individual rendering aid in an emergency, when no fee or other consideration of
255 value for the service is charged, received, expected, or contemplated;

256 (2) an individual administering a domestic or family remedy;

257 (3) (a) (i) a person engaged in the lawful sale of vitamins, health foods, dietary
258 supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited
259 by state or federal law; and

260 (ii) a person acting in good faith for religious reasons, as a matter of conscience, or
261 based on a personal belief, when obtaining or providing any information regarding health care
262 and the use of any product under Subsection (3)(a)(i); and

263 (b) Subsection (3)(a) does not:

264 (i) permit a person to diagnose any human disease, ailment, injury, infirmity,
265 deformity, pain, or other condition; or

266 (ii) prohibit providing truthful and non-misleading information regarding any of the
267 products under Subsection (3)(a)(i);

268 (4) a person engaged in good faith in the practice of the religious tenets of any church
269 or religious belief without the use of prescription drugs;

270 (5) an individual authorized by the Department of Health under Section 26-1-30, to
271 [~~withdraw~~ draw blood [~~to determine the alcohol or drug content~~] pursuant to [Section
272 ~~41-6a-523~~] Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or 72-10-502(5)(a)(vi);

273 (6) a medical assistant while working under the direct and immediate supervision of a
274 licensed osteopathic physician, to the extent the medical assistant is engaged in tasks
275 appropriately delegated by the supervisor in accordance with the standards and ethics of the
276 practice of medicine;

277 (7) an individual engaging in the practice of osteopathic medicine when:

278 (a) the individual is licensed in good standing as an osteopathic physician in another
279 state with no licensing action pending and no less than 10 years of professional experience;

280 (b) the services are rendered as a public service and for a noncommercial purpose;

281 (c) no fee or other consideration of value is charged, received, expected, or

282 contemplated for the services rendered beyond an amount necessary to cover the proportionate
283 cost of malpractice insurance; and

284 (d) the individual does not otherwise engage in unlawful or unprofessional conduct;

285 (8) an individual providing expert testimony in a legal proceeding; and

286 (9) an individual who is invited by a school, association, society, or other body

287 approved by the division in collaboration with the board to conduct a clinic or demonstration of
288 the practice of medicine in which patients are treated, if:

289 (a) the individual does not establish a place of business in this state;

290 (b) the individual does not regularly engage in the practice of medicine in this state;

291 (c) the individual holds a current license in good standing to practice medicine issued
292 by another state, district or territory of the United States, or Canada;

293 (d) the primary purpose of the event is the training of others in the practice of
294 medicine; and

295 (e) neither the patient nor an insurer is billed for the services performed.

296 Section 6. Section **58-71-305** is amended to read:

297 **58-71-305. Exemptions from licensure.**

298 In addition to the exemptions from licensure in Section 58-1-307, the following
299 individuals may engage in the described acts or practices without being licensed under this
300 chapter:

301 (1) an individual rendering aid in an emergency, when no fee or other consideration of
302 value for the service is charged, received, expected, or contemplated;

303 (2) an individual administering a domestic or family remedy;

304 (3) a person engaged in the sale of vitamins, health foods, dietary supplements, herbs,
305 or other products of nature, the sale of which is not otherwise prohibited under state or federal
306 law, but this subsection does not:

307 (a) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity,
308 pain, or other condition[:]; or

309 (b) prohibit providing truthful and nonmisleading information regarding any of the

310 products under this subsection;

311 (4) a person engaged in good faith in the practice of the religious tenets of any church
312 or religious belief, without the use of prescription drugs;

313 (5) a person acting in good faith for religious reasons as a matter of conscience or
314 based on a personal belief when obtaining or providing information regarding health care and
315 the use of any product under Subsection (3);

316 (6) an individual authorized by the Department of Health under Section 26-1-30, to
317 [~~withdraw~~ draw] blood [~~to determine the alcohol or drug content~~] pursuant to [~~Section~~
318 ~~41-6a-523~~] Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), or 72-10-502(5)(a)(vi);

319 (7) a naturopathic medical assistant while working under the direct and immediate
320 supervision of a licensed naturopathic physician to the extent the medical assistant is engaged
321 in tasks appropriately delegated by the supervisor in accordance with the standards and ethics
322 of the practice of naturopathic medicine; and

323 (8) an individual who has completed all requirements for licensure under this chapter
324 except the clinical experience required under Section 58-71-302, for a period of one year while
325 that individual is completing that clinical experience requirement and who is working under the
326 provisions of a temporary license issued by the division.

327 Section 7. Section **72-10-502** is amended to read:

328 **72-10-502. Implied consent to chemical tests for alcohol or drugs -- Number of**
329 **tests -- Refusal -- Person incapable of refusal -- Results of test available -- Who may give**
330 **test -- Evidence -- Immunity from liability.**

331 (1) (a) A person operating an aircraft in this state consents to a chemical test or tests of
332 the person's breath, blood, urine, or oral fluids:

333 (i) for the purpose of determining whether the person was operating or in actual
334 physical control of an aircraft while having a blood or breath alcohol content statutorily
335 prohibited under Section 72-10-501, or while under the influence of alcohol, any drug, or
336 combination of alcohol and any drug under Section 72-10-501, if the test is or tests are
337 administered at the direction of a peace officer having grounds to believe that person to have

338 been operating or in actual physical control of an aircraft in violation of Section 72-10-501; or
339 (ii) if the person operating the aircraft is involved in an accident that results in death,
340 serious injury, or substantial aircraft damage.

341 (b) (i) The peace officer determines which of the tests are administered and how many
342 of them are administered.

343 (ii) The peace officer may order any or all tests of the person's breath, blood, urine, or
344 oral fluids.

345 (iii) If an officer requests more than one test, refusal by a person to take one or more
346 requested tests, even though the person does submit to any other requested test or tests, is a
347 refusal under this section.

348 (c) (i) A person who has been requested under this section to submit to a chemical test
349 or tests of the person's breath, blood, urine, or oral fluids may not select the test or tests to be
350 administered.

351 (ii) The failure or inability of a peace officer to arrange for any specific chemical test is
352 not a defense to taking a test requested by a peace officer, and it is not a defense in any
353 criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the
354 requested test or tests.

355 (2) (a) If the person has been placed under arrest and has then been requested by a
356 peace officer to submit to any one or more of the chemical tests provided in Subsection (1) and
357 refuses to submit to any chemical test, the person shall be warned by the peace officer
358 requesting the test that a refusal to submit to the test is admissible in civil or criminal
359 proceedings as provided under Subsection (8).

360 (b) Following this warning, unless the person immediately requests that the chemical
361 test offered by a peace officer be administered, a test may not be given.

362 (3) Any person who is dead, unconscious, or in any other condition rendering the
363 person incapable of refusal to submit to any chemical test or tests is considered to not have
364 withdrawn the consent provided for in Subsection (1), and the test or tests may be administered
365 whether the person has been arrested or not.

366 (4) Upon the request of the person who was tested, the results of the test or tests shall
367 be made available to that person.

368 (5) (a) Only ~~[a physician, registered nurse, practical nurse, or person authorized under~~
369 ~~Section 26-1-30 to draw blood under Section 41-6a-523]~~ the following, acting at the request of
370 a peace officer, may ~~[withdraw]~~ draw blood to determine ~~[the]~~ its alcohol or drug content~~[-~~
371 ~~This limitation]:~~

372 (i) a physician;

373 (ii) a registered nurse;

374 (iii) a licensed practical nurse;

375 (iv) a paramedic;

376 (v) as provided in Subsection (5)(b), emergency medical service personnel other than
377 paramedics; or

378 (vi) a person with a valid permit issued by the Department of Health under Section
379 26-1-30.

380 (b) The Department of Health may designate by rule, in accordance with Title 63G,
381 Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel,
382 as defined in Section 26-8a-102, are authorized to draw blood under Subsection (5)(a)(v),
383 based on their type of certification under Section 26-8a-302.

384 (c) Subsection (5)(a) does not apply to [the] taking [of] a urine, breath, or oral fluid
385 specimen.

386 ~~[(b) Any physician, registered nurse, practical nurse, or person authorized under~~
387 ~~Section 26-1-30 to draw blood under Section 41-6a-523 who, at the direction of a peace officer,~~
388 ~~draws a sample of blood from any]~~

389 (d) The following are immune from civil or criminal liability arising from drawing a
390 blood sample from a person [whom] who a peace officer has reason to believe is flying in
391 violation of this chapter[- or hospital or medical facility at which the sample is drawn, is
392 immune from any civil or criminal liability arising from drawing the sample, if the test is
393 administered according to] if the sample is drawn in accordance with standard medical

394 practice[-];

395 (i) a person authorized to draw blood under Subsection (5)(a); and

396 (ii) if the blood is drawn at a hospital or other medical facility, the medical facility.

397 (6) (a) The person to be tested may, at the person's own expense, have a physician of
398 the person's own choice administer a chemical test in addition to the test or tests administered
399 at the direction of a peace officer.

400 (b) The failure or inability to obtain the additional test does not affect admissibility of
401 the results of the test or tests taken at the direction of a peace officer, or preclude or delay the
402 test or tests to be taken at the direction of a peace officer.

403 (c) The additional test shall be subsequent to the test or tests administered at the
404 direction of a peace officer.

405 (7) For the purpose of determining whether to submit to a chemical test or tests, the
406 person to be tested does not have the right to consult an attorney or have an attorney, physician,
407 or other person present as a condition for the taking of any test.

408 (8) If a person under arrest refuses to submit to a chemical test or tests or any
409 additional test under this section, evidence of any refusal is admissible in any civil or criminal
410 action or proceeding arising out of acts alleged to have been committed while the person was
411 operating or in actual physical control of an aircraft while under the influence of alcohol, any
412 drug, or combination of alcohol and any drug.

413 (9) The results of any test taken under this section or the refusal to be tested shall be
414 reported to the Federal Aviation Administration by the peace officer requesting the test.