

LOCAL GOVERNMENTAL ENTITY DRUG-FREE WORKPLACE POLICIES AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill amends provisions related to local government entity drug-free workplace policies.

Highlighted Provisions:

This bill:

- defines terms;
- amends the requirements for a written policy or ordinance of certain local government entities for drug testing of employees, volunteers, potential employees, and potential volunteers;
- permits oral drug testing in addition to urine testing; and
- makes technical changes.

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 2023, Chapter 16

34-41-104, as last amended by Laws of Utah 1998, Chapter 13

34A-2-302, as last amended by Laws of Utah 2020, Chapter 18

REPEALS AND REENACTS:

34-41-103, as last amended by Laws of Utah 2008, Chapter 382

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

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

28 **34-41-101 . Definitions.**

29 As used in this chapter:

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

32 [~~(1)~~] (2) "Drug" means any substance recognized as a drug in the United States
33 Pharmacopeia, the National Formulary, the Homeopathic Pharmacopeia, or other drug
34 compendia, including Title 58, Chapter 37, Utah Controlled Substances Act, or
35 supplement to any of those compendia.

36 [~~(2)~~] (3) "Drug testing" means the scientific analysis for the presence of drugs or their
37 metabolites in the human body in accordance with the definitions and terms of this
38 chapter.

39 [~~(3)~~] (4) "Local governmental employee" means any person or officer in the service of a
40 local governmental entity or state institution of higher education for compensation.

41 [~~(4)~~] (5) (a) "Local governmental entity" means any political subdivision of Utah
42 including any county, municipality, local school district, special district, special
43 service district, or any administrative subdivision of those entities.

44 (b) "Local governmental entity" does not mean Utah state government or its
45 administrative subdivisions provided for in Sections 63A-17-1001 through
46 63A-17-1006.

47 [~~(5)~~] (6) "Periodic testing" means preselected and preannounced drug testing of employees
48 or volunteers conducted on a regular schedule.

49 [~~(6)~~] (7) "Prospective employee" means any person who has made a written or oral
50 application to become an employee of a local governmental entity or a state institution
51 of higher education.

52 [~~(7)~~] (8) "Random testing" means the unannounced drug testing of an employee or volunteer
53 who was selected for testing by using a method uninfluenced by any personal
54 characteristics other than job category.

55 [~~(8)~~] (9) "Reasonable suspicion for drug testing" means an articulated belief based on the
56 recorded specific facts and reasonable inferences drawn from those facts that a local
57 government employee or volunteer is in violation of the drug-free workplace policy.

58 [~~(9)~~] (10) "Rehabilitation testing" means unannounced but preselected drug testing done as
59 part of a program of counseling, education, and treatment of an employee or volunteer in
60 conjunction with the drug-free workplace policy.

61 [(10)] (11) "Safety sensitive position" means any local governmental or state institution of
62 higher education position involving duties which directly affects the safety of
63 governmental employees, the general public, or positions where there is access to
64 controlled substances, as defined in Title 58, Chapter 37, Utah Controlled Substances
65 Act, during the course of performing job duties.

66 [(11)] (12) "Sample" means urine, blood, breath, saliva, or hair.

67 [(12)] (13) "State institution of higher education" means the institution as defined in Section
68 53B-3-102.

69 [(13)] (14) "Volunteer" means any person who donates services as authorized by the local
70 governmental entity or state institution of higher education without pay or other
71 compensation except expenses actually and reasonably incurred.

72 Section 2. Section **34-41-103** is repealed and reenacted to read:

73 **34-41-103 . Policy requirements.**

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

- 77 (i) adopts a written policy or ordinance for the testing;
78 (ii) distributes the policy or ordinance to employees and volunteers; and
79 (iii) makes the policy or ordinance available for review by prospective employees
80 and prospective volunteers.

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

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

- 85 (a) shall collect and test samples in accordance with Section 34-41-104; and
86 (b) if otherwise permitted by law, is not limited only to collecting or testing in
87 circumstances where there are indications of job-related impairment of an employee
88 or volunteer.

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

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

- 94 (a) submit an oral sample for testing; or

- 95 (b) submit a split urine sample for testing or retesting.
- 96 (5) Unless the policy or ordinance described in Subsection (1)(a) provides otherwise, the
97 local governmental entity or state institution of higher education may specify the type of
98 sample, described in Subsection (4), that the donor is required to submit.
- 99 (6) A split urine sample shall consist of at least 45 milliliters of urine, divided into two
100 specimen bottles with:
- 101 (a) at least 30 milliliters of urine in one bottle, for the initial test; and
- 102 (b) at least 15 milliliters of urine in the other bottle for retesting, if requested under
103 Subsection (7).
- 104 (7) If the test results of a urine or oral test indicate the presence of drugs, the local
105 governmental entity or state institution of higher education shall:
- 106 (a) give notice to the donor:
- 107 (i) of the test results; and
- 108 (ii) for a urine test, that the donor may, within 72 hours after the local government
109 entity or state institution of higher education provides the notice, request testing of
110 the second sample; and
- 111 (b) test the second sample if the donor timely requests testing of the second sample.
- 112 (8) The expense of testing the second urine sample will be equally divided between the
113 donor and the local governmental entity or state institution of higher education.
- 114 (9) The test results of the samples shall be considered at any subsequent disciplinary
115 hearing if the requirements of this section and Section 34-41-104 are complied with in
116 the collection, handling, and testing of the samples.

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

118 **34-41-104 . Requirements for identification, collection, and testing of samples.**

- 119 (1) The local governmental entity or state institution of higher education shall ensure that:
- 120 (a) all sample collection under this chapter is performed by an entity independent of the
121 local government or state institution of 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 [bottles]
126 containers and seals, used for sample collection are prepared by an independent
127 laboratory certified for employment drug testing by either the Substance Abuse and
128 Mental Health 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 ~~conditions established in~~] 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 [its employees, volunteers, prospective employees, or~~
134 ~~prospective volunteers]~~ a donor;
- 135 (b) require presentation of reliable identification to the person collecting the samples; and
- 136 (c) in order to dependably test for the presence of drugs, designate the type of sample to
137 be used for testing.
- 138 (3) The local governmental entity or state institution of higher education shall ensure that [
139 ~~its]~~ the local governmental entity's or state institution of higher education's ordinance or
140 policy requires that:
- 141 (a) the collection of samples is performed under reasonable and sanitary conditions;
- 142 (b) samples are collected and tested:
- 143 (i) to ensure the privacy of the individual being tested; and
- 144 (ii) in a manner reasonably calculated to prevent substitutions or interference with the
145 collection or testing of reliable samples;
- 146 (c) sample collection is appropriately documented to ensure that:
- 147 (i) samples are labeled and sealed [~~so as~~] to reasonably [~~to~~] preclude the probability of
148 erroneous identification of test results; and
- 149 (ii) [~~employees, volunteers, prospective employees, or prospective volunteers have~~] a
150 donor has the opportunity to provide notification of any information:
- 151 (A) that [~~any person named in Subsection (3)(e)(ii)]~~ a donor considers relevant to
152 the test, including identification of currently or recently used prescription or
153 nonprescription drugs or other relevant medical information; and
- 154 (B) in compliance with the Americans with Disabilities Act of 1990, 42 U.S.C.
155 12101 through 12213;
- 156 (d) sample collection, storage, and transportation to the place of testing are performed in
157 a manner that reasonably precludes the probability of sample misidentification,
158 contamination, or adulteration; and
- 159 (e) sample testing conforms to scientifically accepted analytical methods and procedures.
- 160 (4) Before the result of any test may be used as a basis for any action by a local
161 governmental entity or state institution of higher education under Section 34-41-105, the
162 local governmental entity or state institution of higher education shall :

163 (a) verify or confirm any positive initial screening test by gas chromatography, gas
 164 chromatography-mass spectroscopy, or other comparably reliable analytical methods;
 165 and ~~[shall provide that the employee, prospective employee, volunteer, or prospective~~
 166 ~~volunteer be notified as soon as possible by telephone or in writing at the last-known~~
 167 ~~address or telephone number of the result of the initial test, if it is positive, and told~~
 168 ~~of his option to have the 15-ml urine sample tested, at an expense equally divided~~
 169 ~~between the donor and the employer. In addition to the initial test results, the test~~
 170 ~~results of the 15-ml urine sample shall be considered at any subsequent disciplinary~~
 171 ~~hearing if the requirements of this section and Section 34-41-104 have been complied~~
 172 ~~with in the collection, handling, and testing of these samples.]~~

173 (b) provide the notice described in Subsection 34-41-103(7), as soon as possible after a
 174 positive test result, at the last known address or telephone number of the donor.

175 (5) Any drug testing by a local governmental entity or state institution of higher education
 176 shall occur during or immediately after the regular work period of the employee or
 177 volunteer and shall be considered as work time for purposes of compensation and
 178 benefits.

179 (6) The local governmental entity or state institution of higher education shall pay all costs
 180 of sample collection and initial testing for drugs required under ~~[its ordinance or]~~ the
 181 policy or ordinance described in Subsection 34-41-103(1)(a), including the costs of
 182 transportation if the testing of ~~[a current]~~ an employee or volunteer is conducted at a
 183 place other than the workplace.

184 Section 4. Section **34A-2-302** is amended to read:

185 **34A-2-302 . Employee's willful misconduct -- Penalty.**

186 (1) For purposes of this section:

187 (a) "Controlled substance" is as defined in Section 58-37-2.

188 (b) "Local government employee" is as defined in Section 34-41-101.

189 (c) "Local governmental entity" is as defined in Section 34-41-101.

190 (d) "State institution of higher education" is as defined in Section 34-41-101.

191 (e) "Valid prescription" is a prescription, as defined in Section 58-37-2, that:

192 (i) is prescribed for a controlled substance for use by the employee for whom it was
 193 prescribed; and

194 (ii) has not been altered or forged.

195 (2) An employee may not:

196 (a) remove, displace, damage, destroy, or carry away any safety device or safeguard

- 197 provided for use in any employment or place of employment;
- 198 (b) interfere in any way with the use of a safety device or safeguard described in
199 Subsection (2)(a) by any other person;
- 200 (c) interfere with the use of any method or process adopted for the protection of any
201 employee in the employer's employment or place of employment; or
- 202 (d) fail or neglect to follow and obey orders and to do every other thing reasonably
203 necessary to protect the life, health, and safety of employees.
- 204 (3) Except in case of injury resulting in death:
- 205 (a) compensation provided for by this chapter shall be reduced 15% when injury is
206 caused by the willful failure of the employee:
- 207 (i) to use safety devices when provided by the employer; or
208 (ii) to obey any order or reasonable rule adopted by the employer for the safety of the
209 employee; and
- 210 (b) except when the employer permitted, encouraged, or had actual knowledge of the
211 conduct described in Subsection (4):
- 212 (i) disability compensation may not be awarded under this chapter or Chapter 3, Utah
213 Occupational Disease Act, to an employee when the major contributing cause of
214 the employee's injury is the employee's conduct described in Subsection (4); or
215 (ii) disability compensation to an employee under this chapter or Chapter 3, Utah
216 Occupational Disease Act, shall be reduced by 15% when the employee's conduct
217 is a contributing cause of the employee's injury but not the major contributing
218 cause.
- 219 (4) The conduct described in Subsection (3)(b) is the employee's:
- 220 (a) knowing use of a controlled substance that the employee did not obtain under a valid
221 prescription;
- 222 (b) intentional abuse of a controlled substance that the employee obtained under a valid
223 prescription if the employee uses the controlled substance intentionally:
- 224 (i) in excess of prescribed therapeutic amounts; or
225 (ii) in an otherwise abusive manner; or
- 226 (c) intoxication from alcohol with a blood or breath alcohol concentration of .05 grams
227 or greater as shown by a chemical test.
- 228 (5) (a) For purposes of Subsections (3) and (4), as shown by a chemical test that
229 conforms to scientifically accepted analytical methods and procedures and includes
230 verification or confirmation of any positive test result by gas chromatography, gas

- 231 chromatography-mass spectroscopy, or other comparably reliable analytical method,
232 before the result of the test may be used as a basis for the presumption, it is presumed
233 that the major contributing cause of the employee's injury is the employee's conduct
234 described in Subsection (4) if at the time of the injury:
- 235 (i) the employee has in the employee's system:
 - 236 (A) any amount of a controlled substance or its metabolites if the employee did
237 not obtain the controlled substance under a valid prescription; or
 - 238 (B) a controlled substance the employee obtained under a valid prescription or the
239 metabolites of the controlled substance if the amount in the employee's system
240 is consistent with the employee using the controlled substance intentionally:
 - 241 (I) in excess of prescribed therapeutic amounts; or
 - 242 (II) in an otherwise abusive manner; or
 - 243 (ii) the employee has a blood or breath alcohol concentration of .05 grams or greater.
- 244 (b) The presumption created under Subsection (5)(a) may be rebutted by a
245 preponderance of the evidence showing that:
- 246 (i) the chemical test creating the presumption is inaccurate because the employer
247 failed to comply with:
 - 248 (A) Sections 34-38-4 through 34-38-6; or
 - 249 (B) if the employer is a local governmental entity or state institution of higher
250 education, Section 34-41-104[~~and~~] , Subsection [~~34-41-103(5)~~] 34-41-103(7),
251 or, if applicable, Subsection 34-41-103(6);
 - 252 (ii) the employee did not engage in the conduct described in Subsection (4);
 - 253 (iii) the test results do not exclude the possibility of passive inhalation of marijuana
254 because the concentration of total urinary cannabinoids is less than 50
255 nanograms/ml as determined by a test conducted in accordance with:
 - 256 (A) Sections 34-38-4 through 34-38-6; or
 - 257 (B) if the employer is a local governmental entity or state institution of higher
258 education, Section 34-41-104[~~and~~] , Subsection [~~34-41-103(5)~~] 34-41-103(7),
259 or, if applicable, Subsection 34-41-103(6);
 - 260 (iv) a competent medical opinion from a physician verifies that the amount of
261 controlled substances, metabolites, or alcohol in the employee's system does not
262 support a finding that the conduct described in Subsection (4) was the major
263 contributing cause of the employee's injury or a contributing cause of the
264 employee's injury; or

- 265 (v) (A) the conduct described in Subsection (4) was not a contributing cause of the
266 employee's injury; or
267 (B) the employee's mental and physical condition were not impaired at the time of
268 the injury.
- 269 (c) (i) Except as provided in Subsections (5)(c)(ii) and (iii), if a chemical test that
270 creates the presumption under Subsection (5)(a) is taken at the request of the
271 employer, the employer shall comply with:
- 272 (A) Title 34, Chapter 38, Drug and Alcohol Testing; or
273 (B) if the employee is a local governmental employee or an employee of a state
274 institution of higher education, Title 34, Chapter 41, Local Governmental
275 Entity Drug-Free Workplace Policies.
- 276 (ii) Notwithstanding Section 34-38-13, the results of a test taken under Title 34,
277 Chapter 38, Drug and Alcohol Testing, may be disclosed to the extent necessary
278 to establish or rebut the presumption created under Subsection (5)(a).
- 279 (iii) Notwithstanding Section 34-41-103, the results of a test taken under Title 34,
280 Chapter 41, Local Governmental Entity Drug-Free Workplace Policies, may be
281 disclosed to the extent necessary to establish or rebut the presumption created
282 under Subsection (5)(a).
- 283 (6) (a) A test sample taken pursuant to this section shall be taken as a split sample.
284 (b) One part of the sample is to be used by the employer for testing pursuant to
285 Subsection (5)(a):
286 (i) at a testing facility selected by the employer; and
287 (ii) at the employer's or the employer's workers' compensation carrier's expense.
- 288 (c) The testing facility selected under Subsection (6)(b) shall hold the part of the sample
289 not used under Subsection (6)(b) until the sooner of:
290 (i) six months from the date of the original test; or
291 (ii) when the employee requests that the sample be tested.
- 292 (d) The employee has only six months from the date of the original test to have the
293 remaining sample tested:
294 (i) at the employee's expense; and
295 (ii) at the testing facility selected by the employee, except that the test shall meet the
296 requirements of Subsection (5)(a).
- 297 (7) If any provision of this section, or the application of any provision of this section to any
298 person or circumstance, is held invalid, the remainder of this section shall be given

299 effect without the invalid provision or application.

300 Section 5. **Effective date.**

301 This bill takes effect on May 1, 2024.