

1 TOBACCO CESSATION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Thomas W. Peterson

Senate Sponsor: Michael S. Kennedy

3 LONG TITLE

4 General Description:

5 This bill permits a minor to consent to and participate in tobacco and nicotine cessation
6 services.

7 Highlighted Provisions:

8 This bill:

9 ▶ permits a minor to consent to and participate in tobacco and nicotine cessation services
10 that are delivered or contracted for by the Department of Health and Human Services or a local
11 health department.

12 Money Appropriated in this Bill:

13 None

14 Other Special Clauses:

15 None

16 Utah Code Sections Affected:

17 AMENDS:

18 78B-3-406, as last amended by Laws of Utah 2021, Chapter 262

19 ENACTS:

20 26B-7-522, as Utah Code Annotated 1953

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

23 Section 1. Section 26B-7-522 is enacted to read:

24 **26B-7-522 . Tobacco and nicotine cessation services for minors.**

25 (1) As used in this section:

26 (a) "Minor" means an individual who is younger than 18 years old.

27 (b) "Tobacco and nicotine cessation services" means a program that:

28 (i) is specifically designed for minors who use tobacco products, electronic cigarette

- 29 products, or nicotine products;
- 30 (ii) is operated by the department, a local health department, or a contractor that is
- 31 approved by the department or a local health department;
- 32 (iii) provides general information about the services offered by the department, the
- 33 local health department, or a contractor that is approved by the department or the
- 34 local health department before the minor's registration and participation in the
- 35 program;
- 36 (iv) provides the minor with access to any of the following:
- 37 (A) assessment;
- 38 (B) web-based resources; or
- 39 (C) coaching through technology-based communication tools; and
- 40 (v) does not provide:
- 41 (A) any form of nicotine replacement therapy; or
- 42 (B) any other service not described in Subsection (1)(b)(iii) or (iv).
- 43 (2) Consent to tobacco and nicotine cessation services executed by a minor who is or
- 44 professes to be afflicted with nicotine dependence shall have the same legal effect upon
- 45 the minor and the same legal obligations with regard to the giving of consent as consent
- 46 given by an individual of full legal age and capacity.
- 47 (3) A person providing tobacco and nicotine cessation services shall actively encourage a
- 48 minor to inform the minor's parent or guardian for support.
- 49 (4) Nothing in this section authorizes a violation of Section 53E-9-203.

50 Section 2. Section **78B-3-406** is amended to read:

51 **78B-3-406 . Failure to obtain informed consent -- Proof required of patient --**

52 **Defenses -- Consent to health care.**

- 53 (1) (a) When a person submits to health care rendered by a health care provider, it is
- 54 presumed that actions taken by the health care provider are either expressly or
- 55 impliedly authorized to be done.
- 56 (b) For a patient to recover damages from a health care provider in an action based upon
- 57 the provider's failure to obtain informed consent, the patient must prove the following:
- 58 (i) that a provider-patient relationship existed between the patient and health care
- 59 provider;
- 60 (ii) the health care provider rendered health care to the patient;
- 61 (iii) the patient suffered personal injuries arising out of the health care rendered;
- 62 (iv) the health care rendered carried with it a substantial and significant risk of

- 63 causing the patient serious harm;
- 64 (v) the patient was not informed of the substantial and significant risk;
- 65 (vi) a reasonable, prudent person in the patient's position would not have consented to
- 66 the health care rendered after having been fully informed as to all facts relevant to
- 67 the decision to give consent; and
- 68 (vii) the unauthorized part of the health care rendered was the proximate cause of
- 69 personal injuries suffered by the patient.
- 70 (2) In determining what a reasonable, prudent person in the patient's position would do
- 71 under the circumstances, the finder of fact shall use the viewpoint of the patient before
- 72 health care was provided and before the occurrence of any personal injuries alleged to
- 73 have arisen from said health care.
- 74 (3) It shall be a defense to any malpractice action against a health care provider based upon
- 75 alleged failure to obtain informed consent if:
- 76 (a) the risk of the serious harm which the patient actually suffered was relatively minor;
- 77 (b) the risk of serious harm to the patient from the health care provider was commonly
- 78 known to the public;
- 79 (c) the patient stated, prior to receiving the health care complained of, that he would
- 80 accept the health care involved regardless of the risk; or that he did not want to be
- 81 informed of the matters to which he would be entitled to be informed;
- 82 (d) the health care provider, after considering all of the attendant facts and
- 83 circumstances, used reasonable discretion as to the manner and extent to which risks
- 84 were disclosed, if the health care provider reasonably believed that additional
- 85 disclosures could be expected to have a substantial and adverse effect on the patient's
- 86 condition; or
- 87 (e) the patient or the patient's representative executed a written consent which sets forth
- 88 the nature and purpose of the intended health care and which contains a declaration
- 89 that the patient accepts the risk of substantial and serious harm, if any, in hopes of
- 90 obtaining desired beneficial results of health care and which acknowledges that
- 91 health care providers involved have explained the patient's condition and the
- 92 proposed health care in a satisfactory manner and that all questions asked about the
- 93 health care and its attendant risks have been answered in a manner satisfactory to the
- 94 patient or the patient's representative.
- 95 (4) The written consent shall be a defense to an action against a health care provider based
- 96 upon failure to obtain informed consent unless the patient proves that the person giving

97 the consent lacked capacity to consent or shows by clear and convincing evidence that
98 the execution of the written consent was induced by the defendant's affirmative acts of
99 fraudulent misrepresentation or fraudulent omission to state material facts.

100 (5) This act may not be construed to prevent any person 18 years old or over from refusing
101 to consent to health care for the patient's own person upon personal or religious grounds.

102 (6) Except as provided in Section 76-7-304.5, the following persons are authorized and
103 empowered to consent to any health care not prohibited by law:

104 (a) any parent, whether an adult or a minor, for the parent's minor child;

105 (b) any married person, for a spouse;

106 (c) any person temporarily standing in loco parentis, whether formally serving or not, for
107 the minor under that person's care and any guardian for the guardian's ward;

108 (d) any person 18 years old or ~~over~~ older for that person's parent who is unable by
109 reason of age, physical or mental condition, to provide such consent;

110 (e) any patient 18 years old or ~~over~~ older;

111 (f) any female regardless of age or marital status, when given in connection with her
112 pregnancy or childbirth;

113 (g) in the absence of a parent, any adult for the adult's minor brother or sister;

114 (h) in the absence of a parent, any grandparent for the grandparent's minor grandchild;

115 (i) an emancipated minor as provided in Section 80-7-105;

116 (j) a minor who has contracted a lawful marriage; ~~and~~

117 (k) an unaccompanied homeless minor, as that term is defined in the McKinney-Vento
118 Homeless Assistance Act of 1987, Pub. L. 100-77, as amended, who is 15 years old
119 or older~~[-]~~ ; and

120 (l) a minor receiving tobacco and nicotine cessation services under Section 26B-7-522.

121 (7) A person who in good faith consents or authorizes health care treatment or procedures
122 for another as provided by this act may not be subject to civil liability.

123 (8) Notwithstanding any other provision of this section, if a health care provider fails to
124 comply with the requirement in Section 58-1-509, the health care provider is presumed
125 to have lacked informed consent with respect to the patient examination, as defined in
126 Section 58-1-509.

127 Section 3. **Effective date.**

128 This bill takes effect on May 1, 2024.