

**TOBACCO CESSATION AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Thomas W. Peterson**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

ENACTS:

**26B-7-501**, Utah Code Annotated 1953

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

Section 1. Section **26B-7-501** is enacted to read:



28 **26B-7-501. Tobacco and nicotine cessation services for minors.**

29 (1) As used in this section:

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

31 (b) (i) "Tobacco and nicotine cessation services" means a program that is:

32 (A) specifically designed for minors who use tobacco products, electronic cigarette  
33 products, or nicotine products; and

34 (B) is operated by the department, a local health department, or a contractor that is  
35 approved by the department or a local health department.

36 (ii) "Tobacco and nicotine cessation services" includes:

37 (A) providing general information about the services offered by the department or a  
38 contractor that is approved by the department prior to the minor's registration and participation  
39 in the program; and

40 (B) providing the minor with access to guided cessation services which may include  
41 assessment, phone counseling, web-based resources, and coaching through technology-based  
42 communication tools.

43 (iii) "Tobacco and nicotine cessation services" does not include offering or distributing  
44 nicotine replacement therapy.

45 (2) A minor may consent to and participate in tobacco and nicotine cessation services.

46 (3) A minor is not required to inform or obtain consent from the minor's parent or legal  
47 guardian in order to participate in tobacco and nicotine cessation services.

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

49 **78B-3-406. Failure to obtain informed consent -- Proof required of patient --**  
50 **Defenses -- Consent to health care.**

51 (1) (a) When a person submits to health care rendered by a health care provider, it is  
52 presumed that actions taken by the health care provider are either expressly or impliedly  
53 authorized to be done.

54 (b) For a patient to recover damages from a health care provider in an action based  
55 upon the provider's failure to obtain informed consent, the patient must prove the following:

56 (i) that a provider-patient relationship existed between the patient and health care  
57 provider;

58 (ii) the health care provider rendered health care to the patient;

59 (iii) the patient suffered personal injuries arising out of the health care rendered;

60 (iv) the health care rendered carried with it a substantial and significant risk of causing  
61 the patient serious harm;

62 (v) the patient was not informed of the substantial and significant risk;

63 (vi) a reasonable, prudent person in the patient's position would not have consented to  
64 the health care rendered after having been fully informed as to all facts relevant to the decision  
65 to give consent; and

66 (vii) the unauthorized part of the health care rendered was the proximate cause of  
67 personal injuries suffered by the patient.

68 (2) In determining what a reasonable, prudent person in the patient's position would do  
69 under the circumstances, the finder of fact shall use the viewpoint of the patient before health  
70 care was provided and before the occurrence of any personal injuries alleged to have arisen  
71 from said health care.

72 (3) It shall be a defense to any malpractice action against a health care provider based  
73 upon alleged failure to obtain informed consent if:

74 (a) the risk of the serious harm which the patient actually suffered was relatively  
75 minor;

76 (b) the risk of serious harm to the patient from the health care provider was commonly  
77 known to the public;

78 (c) the patient stated, prior to receiving the health care complained of, that he would  
79 accept the health care involved regardless of the risk; or that he did not want to be informed of  
80 the matters to which he would be entitled to be informed;

81 (d) the health care provider, after considering all of the attendant facts and  
82 circumstances, used reasonable discretion as to the manner and extent to which risks were  
83 disclosed, if the health care provider reasonably believed that additional disclosures could be  
84 expected to have a substantial and adverse effect on the patient's condition; or

85 (e) the patient or the patient's representative executed a written consent which sets forth  
86 the nature and purpose of the intended health care and which contains a declaration that the  
87 patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired  
88 beneficial results of health care and which acknowledges that health care providers involved  
89 have explained the patient's condition and the proposed health care in a satisfactory manner and

90 that all questions asked about the health care and its attendant risks have been answered in a  
91 manner satisfactory to the patient or the patient's representative.

92 (4) The written consent shall be a defense to an action against a health care provider  
93 based upon failure to obtain informed consent unless the patient proves that the person giving  
94 the consent lacked capacity to consent or shows by clear and convincing evidence that the  
95 execution of the written consent was induced by the defendant's affirmative acts of fraudulent  
96 misrepresentation or fraudulent omission to state material facts.

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

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

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

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

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

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

108 (e) any patient 18 years old or over;

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

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

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

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

114 (j) a minor who has contracted a lawful marriage; [~~and~~]

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

118 (l) a minor receiving tobacco and nicotine cessation services under Section 26B-7-501.

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

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