

# SENATE BILL REPORT

## SSB 5185

---

---

As Passed Senate, February 16, 2021

**Title:** An act relating to capacity to provide informed consent for health care decisions.

**Brief Description:** Concerning capacity to provide informed consent for health care decisions.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Pedersen and Wilson, C.).

**Brief History:**

**Committee Activity:** Law & Justice: 1/26/21, 1/28/21 [DPS, DNP, w/oRec].

**Floor Activity:** Passed Senate: 2/16/21, 30-17.

**Brief Summary of First Substitute Bill**

- Establishes a presumption that a person has the capacity to make health care decisions, if they are of age and not subject to a guardianship.
- Allows a health care provider to overcome the presumption of capacity by reasonably determining that the person has demonstrated an inability to understand and appreciate the nature and consequences of a health care condition or proposed treatment.
- Changes terminology referring to persons who have an appointed guardian, and persons who are competent or not legally competent, to instead refer to whether or not the person has capacity.

---

### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5185 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille, Holy, Kuderer, Salomon and Wagoner.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass.

Signed by Senator McCune, Assistant Ranking Member.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Padden, Ranking Member.

**Staff:** Kevin Black (786-7747)

**Background:** Washington law provides procedures for a person to give informed consent to a health care decision in place of another person who is not competent to provide the decision. Authorization to provide consent proceeds according to a priority list, starting with an appointed guardian, to an individual to whom the person has given a durable power of attorney to make medical decisions on the person's behalf, and then proceeds through a list of family members, such as spouse, children, and parents. A health care provider must make reasonable efforts to locate and secure authorization from the highest class of persons who is authorized to provide informed consent, before proceeding to the next class of persons. A decision authorizing health care must be unanimous among all persons in the class, and may not be contradicted by any person authorized to make a decision who is of a higher class.

Informed consent laws were amended in 2020, effective January 1, 2022, to remove the term competent. The term competent and its definition as applies to informed consent and guardianships was repealed in 2019, effective January 1, 2022, by the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act.

The age of majority in Washington is 18 years unless otherwise specified by law. Washington law allows adolescents to make health care decisions on their own behalf at age 13 related to behavioral health treatment, at age 14 related to testing for sexually transmitted diseases, and allows decisions related to personal reproductive health care to be made at any age.

**Summary of First Substitute Bill:** A person who is of the age of consent to make a health care decision is presumed to have capacity, unless subject to a guardianship that includes health care decision making. The presumption of capacity may be overcome if the health care provider reasonably determines the person lacks capacity to make a particular health care decision due to a demonstrated inability to understand and appreciate the nature and consequences of a health care condition or proposed treatment, and the health care provider documents the basis for the determination in the medical record.

For the purpose of providing informed consent, providing treatment during a recognized health care emergency, and the ability of an adolescent to prevent disclosure of information related to sexually transmitted diseases, terminology referring to persons who are placed under a guardianship and to persons who are competent, or not legally competent, to make health care decisions is replaced with terminology that refers to the individuals as persons

who do or do not have the capacity to make health care decisions.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2022.

**Staff Summary of Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: Last year's guardianship trailer bill created some problems by garbling some language in the informed consent statute. Fortunately we have a chance to fix these problems and make some improvements before it goes into effect. This is carefully crafted in a way that is clear and workable. The informed consent law is vitally important to hospitals and health care providers. Capacity is more appropriate terminology than competence. We appreciate the delineation of adults and minors who have the ability to make a medical decision from minors who do not have that ability due to their age.

**Persons Testifying:** PRO: Senator Jamie Pedersen, Prime Sponsor; Zosia Stanley, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** No one.