

# SENATE BILL REPORT

## SB 5271

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As of February 8, 2021

**Title:** An act relating to amending the necessary elements of proof of injury during the state of emergency declared due to the COVID-19 pandemic.

**Brief Description:** Amending the necessary elements of proof of injury during the state of emergency declared due to the COVID-19 pandemic.

**Sponsors:** Senators Wagoner, Pedersen and Dhingra.

**Brief History:**

**Committee Activity:** Law & Justice: 2/09/21.

**Brief Summary of Bill**

- Provides a method for determining the standard of care during the state of emergency in response to the COVID-19 pandemic.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Alicia Kinne-Clawson (786-7407)

**Background:** The standard of care established under current law is the level and types of care of a reasonably prudent practitioner possessing the degree of skill, care, and learning possessed by other members of the same profession.

As a result of the COVID-19 pandemic, some states have begun enacting liability protections for physicians for changes in the provision of care. Throughout the course of the COVID-19 pandemic, the governor has issued executive orders imposing restrictions on non-urgent medical procedures, personal protective equipment use, and other services and practices as they relate to the provision of care by healthcare providers.

**Summary of Bill:** The necessary elements of proof that an injury resulted from the failure

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of a health care provider to follow the accepted standard of care during the state of emergency enacted by the Governor in response to the COVID-19 pandemic include:

- The health care provider failed to exercise the degree of care, skill, and learning expected of a reasonably prudent practitioner in the profession, in the state of Washington, acting in similar circumstances and at the same time; and
- such a failure to exercise the standard of care was the primary cause of the injury.

In determining whether or not a health care provider failed to follow the accepted standard of care during the state of emergency, the court must consider if:

- the health care provider was acting in good faith based on guidance, direction, or recommendations from federal, state, or local officials in response to the pandemic and applicable to the health care provider; or
- the injury was due to a lack of resources directly attributable to the COVID-19 pandemic.

The necessary elements for determining proof of injury during the pandemic only apply if they are relevant to the determination of whether the health care provider followed the standard of care.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.