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ENGROSSED SUBSTITUTE HOUSE BILL 1197

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State of Washington

67th Legislature

2021 Regular Session

By House Civil Rights & Judiciary (originally sponsored by Representatives Riccelli, Tharinger, Cody, Pollet, and Harris-Talley)

READ FIRST TIME 02/02/21.

1 AN ACT Relating to health care decisions made by a designated  
2 person; amending RCW 7.70.065; reenacting and amending RCW 7.70.065;  
3 providing an effective date; and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 7.70.065 and 2019 c 232 s 8 and 2019 c 209 s 1 are  
6 each reenacted and amended to read as follows:

7 (1) Informed consent for health care for a patient who is not  
8 competent, as defined in RCW 11.88.010(1)(e), to consent may be  
9 obtained from a person authorized to consent on behalf of such  
10 patient.

11 (a) Persons authorized to provide informed consent to health care  
12 on behalf of a patient who is not competent to consent, based upon a  
13 reason other than incapacity as defined in RCW 11.88.010(1)(d), shall  
14 be a member of one of the following classes of persons in the  
15 following order of priority:

16 (i) The appointed guardian of the patient, if any;

17 (ii) The individual, if any, to whom the patient has given a  
18 durable power of attorney that encompasses the authority to make  
19 health care decisions;

20 (iii) The individual to whom the patient has designated to make  
21 health care decisions by orally or personally informing a physician,

1 nurse practitioner, or physician assistant as outlined in (e) of this  
2 subsection;

3 (iv) The patient's spouse or state registered domestic partner;  
4 ~~((iv))~~ (v) Children of the patient who are at least eighteen  
5 years of age;

6 ~~((v))~~ (vi) Parents of the patient;  
7 ~~((vi))~~ (vii) Adult brothers and sisters of the patient;  
8 ~~((vii))~~ (viii) Adult grandchildren of the patient who are  
9 familiar with the patient;

10 ~~((viii))~~ (ix) Adult nieces and nephews of the patient who are  
11 familiar with the patient;

12 ~~((ix))~~ (x) Adult aunts and uncles of the patient who are  
13 familiar with the patient; and

14 ~~((x))~~ (xi) (A) An adult who:  
15 (I) Has exhibited special care and concern for the patient;  
16 (II) Is familiar with the patient's personal values;  
17 (III) Is reasonably available to make health care decisions;  
18 (IV) Is not any of the following: A physician to the patient or  
19 an employee of the physician; the owner, administrator, or employee  
20 of a health care facility, nursing home, or long-term care facility  
21 where the patient resides or receives care; or a person who receives  
22 compensation to provide care to the patient; and

23 (V) Provides a declaration under (a) ~~((x))~~ (xi) (B) of this  
24 subsection.

25 (B) An adult who meets the requirements of (a) ~~((x))~~ (xi) (A) of  
26 this subsection shall provide a declaration, which is effective for  
27 up to six months from the date of the declaration, signed and dated  
28 under penalty of perjury pursuant to ~~((RCW 9A.72.085))~~ chapter 5.50  
29 RCW, that recites facts and circumstances demonstrating that he or  
30 she is familiar with the patient and that he or she:

31 (I) Meets the requirements of (a) ~~((x))~~ (xi) (A) of this  
32 subsection;

33 (II) Is a close friend of the patient;

34 (III) Is willing and able to become involved in the patient's  
35 health care;

36 (IV) Has maintained such regular contact with the patient as to  
37 be familiar with the patient's activities, health, personal values,  
38 and morals; and

1 (V) Is not aware of a person in a higher priority class willing  
2 and able to provide informed consent to health care on behalf of the  
3 patient.

4 (C) A health care provider may, but is not required to, rely on a  
5 declaration provided under (a) (~~(\*)~~) (xi) (B) of this subsection. The  
6 health care provider or health care facility where services are  
7 rendered is immune from suit in any action, civil or criminal, or  
8 from professional or other disciplinary action when such reliance is  
9 based on a declaration provided in compliance with (a) (~~(\*)~~) (xi) (B)  
10 of this subsection.

11 (b) If the health care provider seeking informed consent for  
12 proposed health care of the patient who is not competent to consent  
13 under RCW 11.88.010(1)(e), other than a person determined to be  
14 incapacitated because he or she is under the age of majority and who  
15 is not otherwise authorized to provide informed consent, makes  
16 reasonable efforts to locate and secure authorization from a  
17 competent person in the first or succeeding class and finds no such  
18 person available, authorization may be given by any person in the  
19 next class in the order of descending priority. However, no person  
20 under this section may provide informed consent to health care:

21 (i) If a person of higher priority under this section has refused  
22 to give such authorization; or

23 (ii) If there are two or more individuals in the same class and  
24 the decision is not unanimous among all available members of that  
25 class.

26 (c) Before any person authorized to provide informed consent on  
27 behalf of a patient not competent to consent under RCW  
28 11.88.010(1)(e), other than a person determined to be incapacitated  
29 because he or she is under the age of majority and who is not  
30 otherwise authorized to provide informed consent, exercises that  
31 authority, the person must first determine in good faith that that  
32 patient, if competent, would consent to the proposed health care. If  
33 such a determination cannot be made, the decision to consent to the  
34 proposed health care may be made only after determining that the  
35 proposed health care is in the patient's best interests.

36 (d) No rights under Washington's death with dignity act, chapter  
37 70.245 RCW, may be exercised through a person authorized to provide  
38 informed consent to health care on behalf of a patient not competent  
39 to consent under RCW 11.88.010(1)(e).

40 (e) For purposes of (a)(iii) of this subsection:

1 (i) An employee of the medical facility where the patient is  
2 receiving care is prohibited from serving as a designated health care  
3 surrogate.

4 (ii) A patient is presumed to have capacity, unless a health care  
5 provider reasonably determines the patient lacks capacity due to the  
6 patient's demonstrated inability to understand and appreciate the  
7 nature and consequences of designating an individual to make health  
8 care decisions on the patient's behalf as a result of a cognitive  
9 impairment. A patient is presumed not to have the capacity to make a  
10 health care designation if the patient has been determined to be  
11 incapacitated under RCW 11.125.090 or if the patient is an adult  
12 subject to a guardianship that includes health care decision making  
13 under RCW 11.88.010.

14 (iii) The physician, nurse practitioner, or physician assistant  
15 to whom a health care surrogate designation has been communicated  
16 must enter a document with this information into the patient's health  
17 care record, provided that the physician, nurse practitioner, or  
18 physician assistant determines that the patient has capacity at the  
19 time of the designation and documents it in the patient's health  
20 record. The designation must be signed by the patient, unless the  
21 physician, nurse practitioner, or physician assistant determines that  
22 the patient is unable to physically sign. If the patient is unable to  
23 sign, he or she may make the designation orally.

24 (iv) A designation may be revoked by the patient at any time, in  
25 the following methods:

26 (A) A written revocation by the patient expressing his or her  
27 intent to revoke, signed and dated by the patient. Such revocation  
28 shall become effective only upon communication to the attending  
29 physician by the patient or by a person acting on behalf of the  
30 patient. The attending physician shall record in the patient's  
31 medical record the time and date when the physician received  
32 notification of the written revocation.

33 (B) A verbal expression by the patient of his or her intent to  
34 revoke the designation. Such designation shall become effective only  
35 upon communication to the attending physician by the patient. The  
36 attending physician shall record in the patient's medical record the  
37 time, date, and place of the revocation and shall obtain a signature  
38 from the patient, unless the physician determines that the patient is  
39 unable to physically sign. If the patient is unable to sign, he or  
40 she may make the revocation orally.

1       (v) A health care provider that relies upon the consent of an  
2 individual designated to provide care to a patient is immune from  
3 suit in any action, civil or criminal, or from professional or other  
4 disciplinary action for relying upon such consent unless the health  
5 care provider had actual knowledge of the patient's revocation of  
6 that designation at the time consent was obtained.

7       (2) Informed consent for health care, including mental health  
8 care, for a patient who is not competent, as defined in RCW  
9 11.88.010(1)(e), because he or she is under the age of majority and  
10 who is not otherwise authorized to provide informed consent, may be  
11 obtained from a person authorized to consent on behalf of such a  
12 patient.

13       (a) Persons authorized to provide informed consent to health  
14 care, including mental health care, on behalf of a patient who is  
15 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she  
16 is under the age of majority and who is not otherwise authorized to  
17 provide informed consent, shall be a member of one of the following  
18 classes of persons in the following order of priority:

19       (i) The appointed guardian, or legal custodian authorized  
20 pursuant to Title 26 RCW, of the minor patient, if any;

21       (ii) A person authorized by the court to consent to medical care  
22 for a child in out-of-home placement pursuant to chapter 13.32A or  
23 13.34 RCW, if any;

24       (iii) Parents of the minor patient;

25       (iv) The individual, if any, to whom the minor's parent has given  
26 a signed authorization to make health care decisions for the minor  
27 patient; and

28       (v) A competent adult representing himself or herself to be a  
29 relative responsible for the health care of such minor patient or a  
30 competent adult who has signed and dated a declaration under penalty  
31 of perjury pursuant to chapter 5.50 RCW stating that the adult person  
32 is a relative responsible for the health care of the minor patient.  
33 Such declaration shall be effective for up to six months from the  
34 date of the declaration.

35       (b)(i) Informed consent for health care on behalf of a patient  
36 who is incapacitated, as defined in RCW 11.88.010(1)(e), because he  
37 or she is under the age of majority and who is not otherwise  
38 authorized to provide informed consent may be obtained from a school  
39 nurse, school counselor, or homeless student liaison when:

1 (A) Consent is necessary for nonemergency, outpatient, primary  
2 care services, including physical examinations, vision examinations  
3 and eyeglasses, dental examinations, hearing examinations and hearing  
4 aids, immunizations, treatments for illnesses and conditions, and  
5 routine follow-up care customarily provided by a health care provider  
6 in an outpatient setting, excluding elective surgeries;

7 (B) The minor patient meets the definition of a "homeless child  
8 or youth" under the federal McKinney-Vento homeless education  
9 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,  
10 115 Stat. 2005; and

11 (C) The minor patient is not under the supervision or control of  
12 a parent, custodian, or legal guardian, and is not in the care and  
13 custody of the department of social and health services.

14 (ii) A person authorized to consent to care under this subsection  
15 (2)(b) and the person's employing school or school district are not  
16 subject to administrative sanctions or civil damages resulting from  
17 the consent or nonconsent for care, any care, or payment for any  
18 care, rendered pursuant to this section. Nothing in this section  
19 prevents a health care facility or a health care provider from  
20 seeking reimbursement from other sources for care provided to a minor  
21 patient under this subsection (2)(b).

22 (iii) Upon request by a health care facility or a health care  
23 provider, a person authorized to consent to care under this  
24 subsection (2)(b) must provide to the person rendering care a  
25 declaration signed and dated under penalty of perjury pursuant to  
26 chapter 5.50 RCW stating that the person is a school nurse, school  
27 counselor, or homeless student liaison and that the minor patient  
28 meets the elements under (b)(i) of this subsection. The declaration  
29 must also include written notice of the exemption from liability  
30 under (b)(ii) of this subsection.

31 (c) A health care provider may, but is not required to, rely on  
32 the representations or declaration of a person claiming to be a  
33 relative responsible for the care of the minor patient, under (a)(v)  
34 of this subsection, or a person claiming to be authorized to consent  
35 to the health care of the minor patient under (b) of this subsection,  
36 if the health care provider does not have actual notice of the  
37 falsity of any of the statements made by the person claiming to be a  
38 relative responsible for the health care of the minor patient, or  
39 person claiming to be authorized to consent to the health care of the  
40 minor patient.

1 (d) A health care facility or a health care provider may, in its  
2 discretion, require documentation of a person's claimed status as  
3 being a relative responsible for the health care of the minor  
4 patient, or a person claiming to be authorized to consent to the  
5 health care of the minor patient under (b) of this subsection.  
6 However, there is no obligation to require such documentation.

7 (e) The health care provider or health care facility where  
8 services are rendered shall be immune from suit in any action, civil  
9 or criminal, or from professional or other disciplinary action when  
10 such reliance is based on a declaration signed under penalty of  
11 perjury pursuant to chapter 5.50 RCW stating that the adult person is  
12 a relative responsible for the health care of the minor patient under  
13 (a)(v) of this subsection, or a person claiming to be authorized to  
14 consent to the health care of the minor patient under (b) of this  
15 subsection.

16 (3) For the purposes of this section, "health care," "health care  
17 provider," and "health care facility" shall be defined as established  
18 in RCW 70.02.010.

19 (4) A person who knowingly provides a false declaration under  
20 this section shall be subject to criminal penalties under chapter  
21 9A.72 RCW.

22 **Sec. 2.** RCW 7.70.065 and 2020 c 312 s 705 are each amended to  
23 read as follows:

24 (1) Informed consent for health care for a patient who is a minor  
25 or, to consent may be obtained from a person authorized to consent on  
26 behalf of such patient.

27 (a) Persons authorized to provide informed consent to health care  
28 on behalf of a patient who has been placed under a guardianship under  
29 RCW 11.130.265 a minor or, shall be a member of one of the following  
30 classes of persons in the following order of priority:

31 (i) The appointed guardian of the patient, if any;

32 (ii) The individual, if any, to whom the patient has given a  
33 durable power of attorney that encompasses the authority to make  
34 health care decisions;

35 (iii) The individual to whom the patient has designated to make  
36 health care decisions by orally or personally informing a physician,  
37 nurse practitioner, or physician assistant as outlined in (e) of this  
38 subsection;

39 (iv) The patient's spouse or state registered domestic partner;

1       (~~(iv)~~) (v) Children of the patient who are at least eighteen  
2 years of age;

3       (~~(v)~~) (vi) Parents of the patient;

4       (~~(vi)~~) (vii) Adult brothers and sisters of the patient;

5       (~~(vii)~~) (viii) Adult grandchildren of the patient who are  
6 familiar with the patient;

7       (~~(viii)~~) (ix) Adult nieces and nephews of the patient who are  
8 familiar with the patient;

9       (~~(ix)~~) (x) Adult aunts and uncles of the patient who are  
10 familiar with the patient; and

11       (~~(x)~~) (xi) (A) An adult who:

12       (I) Has exhibited special care and concern for the patient;

13       (II) Is familiar with the patient's personal values;

14       (III) Is reasonably available to make health care decisions;

15       (IV) Is not any of the following: A physician to the patient or  
16 an employee of the physician; the owner, administrator, or employee  
17 of a health care facility, nursing home, or long-term care facility  
18 where the patient resides or receives care; or a person who receives  
19 compensation to provide care to the patient; and

20       (V) Provides a declaration under (a)(~~(x)~~) (xi) (B) of this  
21 subsection.

22       (B) An adult who meets the requirements of (a)(~~(x)~~) (xi) (A) of  
23 this subsection shall provide a declaration, which is effective for  
24 up to six months from the date of the declaration, signed and dated  
25 under penalty of perjury pursuant to chapter 5.50 RCW, that recites  
26 facts and circumstances demonstrating that he or she is familiar with  
27 the patient and that he or she:

28       (I) Meets the requirements of (a)(~~(x)~~) (xi) (A) of this  
29 subsection;

30       (II) Is a close friend of the patient;

31       (III) Is willing and able to become involved in the patient's  
32 health care;

33       (IV) Has maintained such regular contact with the patient as to  
34 be familiar with the patient's activities, health, personal values,  
35 and morals; and

36       (V) Is not aware of a person in a higher priority class willing  
37 and able to provide informed consent to health care on behalf of the  
38 patient.

39       (C) A health care provider may, but is not required to, rely on a  
40 declaration provided under (a)(~~(x)~~) (xi) (B) of this subsection. The

1 health care provider or health care facility where services are  
2 rendered is immune from suit in any action, civil or criminal, or  
3 from professional or other disciplinary action when such reliance is  
4 based on a declaration provided in compliance with (a) ~~((x))~~ (xi) (B)  
5 of this subsection.

6 (b) If the health care provider seeking informed consent for  
7 proposed health care of the patient who has been placed under a  
8 guardianship under RCW 11.130.265 ~~((7))~~ makes reasonable efforts to  
9 locate and secure authorization from a competent person in the first  
10 or succeeding class and finds no such person available, authorization  
11 may be given by any person in the next class in the order of  
12 descending priority. However, no person under this section may  
13 provide informed consent to health care:

14 (i) If a person of higher priority under this section has refused  
15 to give such authorization; or

16 (ii) If there are two or more individuals in the same class and  
17 the decision is not unanimous among all available members of that  
18 class.

19 (c) Before any person authorized to provide informed consent on  
20 behalf of a patient who has been placed under a guardianship under  
21 RCW 11.130.265 ~~((7))~~ exercises that authority, the person must first  
22 determine in good faith that that patient, if competent, would  
23 consent to the proposed health care. If such a determination cannot  
24 be made, the decision to consent to the proposed health care may be  
25 made only after determining that the proposed health care is in the  
26 patient's best interests.

27 (d) No rights under Washington's death with dignity act, chapter  
28 70.245 RCW, may be exercised through a person authorized to provide  
29 informed consent to health care on behalf of a patient who is a minor  
30 or has been placed under a guardianship under RCW 11.130.265.

31 (e) For purposes of (a) (iii) of this subsection:

32 (i) An employee of the medical facility where the patient is  
33 receiving care is prohibited from serving as a designated health care  
34 surrogate.

35 (ii) A patient is presumed to have capacity, unless a health care  
36 provider reasonably determines the patient lacks capacity due to the  
37 patient's demonstrated inability to understand and appreciate the  
38 nature and consequences of designating an individual to make health  
39 care decisions on the patient's behalf as a result of a cognitive  
40 impairment. A patient is presumed not to have the capacity to make a

1 health care designation if the patient has been determined to be  
2 incapacitated under RCW 11.125.090 or if the patient is an adult  
3 subject to a guardianship that includes health care decision making  
4 under RCW 11.130.265.

5 (iii) The physician, nurse practitioner, or physician assistant  
6 to whom a health care surrogate designation has been communicated  
7 must enter a document with this information into the patient's health  
8 care record, provided that the physician, nurse practitioner, or  
9 physician assistant determines that the patient has capacity at the  
10 time of the designation and documents it in the patient's health  
11 record. The designation must be signed by the patient, unless the  
12 physician, nurse practitioner, or physician assistant determines that  
13 the patient is unable to physically sign. If the patient is unable to  
14 sign, he or she may make the designation orally.

15 (iv) A designation may be revoked by the patient at any time, in  
16 the following methods:

17 (A) A written revocation by the patient expressing his or her  
18 intent to revoke, signed and dated by the patient. Such revocation  
19 shall become effective only upon communication to the attending  
20 physician by the patient or by a person acting on behalf of the  
21 patient. The attending physician shall record in the patient's  
22 medical record the time and date when the physician received  
23 notification of the written revocation.

24 (B) A verbal expression by the patient of his or her intent to  
25 revoke the designation. Such designation shall become effective only  
26 upon communication to the attending physician by the patient. The  
27 attending physician shall record in the patient's medical record the  
28 time, date, and place of the revocation and shall obtain a signature  
29 from the patient, unless the physician determines that the patient is  
30 unable to physically sign. If the patient is unable to sign, he or  
31 she may make the revocation orally.

32 (v) A health care provider that relies upon the consent of an  
33 individual designated to provide care to a patient is immune from  
34 suit in any action, civil or criminal, or from professional or other  
35 disciplinary action for relying upon such consent unless the health  
36 care provider had actual knowledge of the patient's revocation of  
37 that designation at the time consent was obtained.

38 (2) Informed consent for health care, including mental health  
39 care, for a patient who is under the age of majority and who is not

1 otherwise authorized to provide informed consent, may be obtained  
2 from a person authorized to consent on behalf of such a patient.

3 (a) Persons authorized to provide informed consent to health  
4 care, including mental health care, on behalf of a patient who is  
5 under the age of majority and who is not otherwise authorized to  
6 provide informed consent, shall be a member of one of the following  
7 classes of persons in the following order of priority:

8 (i) The appointed guardian, or legal custodian authorized  
9 pursuant to Title 26 RCW, of the minor patient, if any;

10 (ii) A person authorized by the court to consent to medical care  
11 for a child in out-of-home placement pursuant to chapter 13.32A or  
12 13.34 RCW, if any;

13 (iii) Parents of the minor patient;

14 (iv) The individual, if any, to whom the minor's parent has given  
15 a signed authorization to make health care decisions for the minor  
16 patient; and

17 (v) A competent adult representing himself or herself to be a  
18 relative responsible for the health care of such minor patient or a  
19 competent adult who has signed and dated a declaration under penalty  
20 of perjury pursuant to chapter 5.50 RCW stating that the adult person  
21 is a relative responsible for the health care of the minor patient.  
22 Such declaration shall be effective for up to six months from the  
23 date of the declaration.

24 (b) (i) Informed consent for health care on behalf of a patient  
25 who is under the age of majority and who is not otherwise authorized  
26 to provide informed consent may be obtained from a school nurse,  
27 school counselor, or homeless student liaison when:

28 (A) Consent is necessary for nonemergency, outpatient, primary  
29 care services, including physical examinations, vision examinations  
30 and eyeglasses, dental examinations, hearing examinations and hearing  
31 aids, immunizations, treatments for illnesses and conditions, and  
32 routine follow-up care customarily provided by a health care provider  
33 in an outpatient setting, excluding elective surgeries;

34 (B) The minor patient meets the definition of a "homeless child  
35 or youth" under the federal McKinney-Vento homeless education  
36 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,  
37 115 Stat. 2005; and

38 (C) The minor patient is not under the supervision or control of  
39 a parent, custodian, or legal guardian, and is not in the care and  
40 custody of the department of social and health services.

1 (ii) A person authorized to consent to care under this subsection  
2 (2)(b) and the person's employing school or school district are not  
3 subject to administrative sanctions or civil damages resulting from  
4 the consent or nonconsent for care, any care, or payment for any  
5 care, rendered pursuant to this section. Nothing in this section  
6 prevents a health care facility or a health care provider from  
7 seeking reimbursement from other sources for care provided to a minor  
8 patient under this subsection (2)(b).

9 (iii) Upon request by a health care facility or a health care  
10 provider, a person authorized to consent to care under this  
11 subsection (2)(b) must provide to the person rendering care a  
12 declaration signed and dated under penalty of perjury pursuant to  
13 chapter 5.50 RCW stating that the person is a school nurse, school  
14 counselor, or homeless student liaison and that the minor patient  
15 meets the elements under (b)(i) of this subsection. The declaration  
16 must also include written notice of the exemption from liability  
17 under (b)(ii) of this subsection.

18 (c) A health care provider may, but is not required to, rely on  
19 the representations or declaration of a person claiming to be a  
20 relative responsible for the care of the minor patient, under (a)(v)  
21 of this subsection, or a person claiming to be authorized to consent  
22 to the health care of the minor patient under (b) of this subsection,  
23 if the health care provider does not have actual notice of the  
24 falsity of any of the statements made by the person claiming to be a  
25 relative responsible for the health care of the minor patient, or  
26 person claiming to be authorized to consent to the health care of the  
27 minor patient.

28 (d) A health care facility or a health care provider may, in its  
29 discretion, require documentation of a person's claimed status as  
30 being a relative responsible for the health care of the minor  
31 patient, or a person claiming to be authorized to consent to the  
32 health care of the minor patient under (b) of this subsection.  
33 However, there is no obligation to require such documentation.

34 (e) The health care provider or health care facility where  
35 services are rendered shall be immune from suit in any action, civil  
36 or criminal, or from professional or other disciplinary action when  
37 such reliance is based on a declaration signed under penalty of  
38 perjury pursuant to chapter 5.50 RCW stating that the adult person is  
39 a relative responsible for the health care of the minor patient under  
40 (a)(v) of this subsection, or a person claiming to be authorized to

1 consent to the health care of the minor patient under (b) of this  
2 subsection.

3 (3) For the purposes of this section, "health care," "health care  
4 provider," and "health care facility" shall be defined as established  
5 in RCW 70.02.010.

6 (4) A person who knowingly provides a false declaration under  
7 this section shall be subject to criminal penalties under chapter  
8 9A.72 RCW.

9 NEW SECTION. **Sec. 3.** Section 1 of this act expires January 1,  
10 2022.

11 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect January  
12 1, 2022.

--- END ---