

# FINAL BILL REPORT

## SSB 5185

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C 270 L 21  
Synopsis as Enacted

**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.).

**Senate Committee on Law & Justice**  
**House Committee on Civil Rights & Judiciary**

**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 a 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 The term competent and its definition as it applies to informed consent and guardianships was repealed in 2019, effective January 1, 2022, by the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act.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.

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*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.*

**Summary:** A person who is of the age of consent to make a health care decision is presumed to have capacity. 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.

**Votes on Final Passage:**

Senate	30	17	
House	97	1	(House amended)
Senate	35	14	(Senate concurred)

**Effective:** January 1, 2022