

HB105 INTRODUCED



1 T8YH99-1
2 By Representatives Almond, Faulkner
3 RFD: Judiciary
4 First Read: 07-Mar-23
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SYNOPSIS:

Under existing law, an adult with a disability may be the subject of a guardianship or conservatorship.

Also under existing law, an adult with a guardianship or conservatorship may not make certain major decisions for himself or herself. The guardian or conservator generally holds the decision-making authority.

This bill would provide that, in lieu of a guardianship or conservatorship, an adult may enter into a supported decision-making agreement with supporters who may assist and advise the adult with making certain decisions without impeding the adult's self-determination.

This bill would also provide for the procedures and limitations related to a supported decision-making agreement.

A BILL
TO BE ENTITLED
AN ACT

Relating to guardianships and conservatorships; to



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29 create the Colby Act; to provide for a supported
30 decision-making agreement as an alternative to a guardianship
31 or conservatorship; and to provide the scope and limitations
32 of a supported decision-making agreement.

33 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

34 Section 1. This act shall be known and may be cited as
35 the Colby Act.

36 Section 2. For the purposes of this act, the following
37 terms have the following meanings:

38 (1) SUPPORTED DECISION-MAKING. The process of
39 supporting and accommodating an adult in the decision-making
40 process without impeding the self-determination of the adult.
41 This term includes assistance in making, communicating, and
42 effectuating life decisions.

43 (2) SUPPORTED DECISION-MAKING AGREEMENT. A written
44 agreement detailing decision-making supports and
45 accommodations that an adult chooses to receive from one or
46 more supporters.

47 (3) SUPPORTER. An individual at least 18 years of age
48 who has voluntarily entered into a supported decision-making
49 agreement with an adult and is designated as such in a
50 supported decision-making agreement.

51 Section 3. (a) An adult may not enter into a supported
52 decision-making agreement as an alternative to guardianship or
53 conservatorship unless the adult meets both of the following
54 conditions:

55 (1) The adult enters into the agreement voluntarily and
56 without coercion or undue influence.



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57 (2) The adult understands the nature and effect of the
58 agreement.

59 (b) An adult may make, change, or revoke a supported
60 decision-making agreement.

61 (c) A court may not consider an adult's execution of a
62 supported decision-making agreement as evidence of the adult's
63 incapacity. The existence of an executed supported
64 decision-making agreement does not preclude the adult from
65 acting independently of the supported decision-making
66 agreement.

67 (d) An adult may not enter into a supported
68 decision-making agreement under this section if the agreement
69 supplants the authority of a guardian or conservator of the
70 adult.

71 Section 4. (a) A supporter shall do all of the
72 following:

73 (1) Support the will and preference of the adult and
74 not the supporter's opinion of the adult's best interest.

75 (2) Act honestly, diligently, and in good faith.

76 (3) Act within the scope set forth in the adult's
77 supported decision-making agreement.

78 (4) Avoid conflicts of interest.

79 (5) Timely notify the adult in writing, in the adult's
80 preferred language and mode of communication, of his or her
81 intent to resign as a supporter.

82 (b) A supporter is a fiduciary and shall make and
83 communicate decisions in cooperation with the adult and
84 preserve the adult's authority to make decisions.



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85 (c) A supporter shall not do any of the following:

86 (1) Exert undue influence upon the adult.

87 (2) Receive a fee or compensation for services
88 performed in the role of supporter.

89 (3) Obtain, without the consent of the adult,
90 information for a purpose other than assisting the adult in
91 making a specific decision authorized by the supported
92 decision-making agreement.

93 (4) Obtain, without the consent of the adult, nonpublic
94 personal information, as defined by 15 U.S.C. § 6809(4).

95 (5) Act outside the scope of authority provided in the
96 supported decision-making agreement.

97 (d) A supporter who is expressly given relevant
98 authority in a power of attorney may act within the scope of
99 that authority to sign instructions or other documents on
100 behalf of the adult, or to communicate or implement decisions
101 made by the adult.

102 (e) A request or decision made or communicated with the
103 assistance of a supporter in conformity with the supported
104 decision-making agreement shall be recognized as the request
105 or decision of the adult for the purposes of any provision of
106 law.

107 Section 5. (a) A supported decision-making agreement
108 shall meet all of the following requirements:

109 (1) Name at least one supporter.

110 (2) Describe the decision-making assistance that each
111 supporter may provide to the adult and how supporters may work
112 together.



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113 (3) If the adult is subject to a limited guardianship
114 or conservatorship as provided by Section 6, be executed by
115 the adult's guardian or conservator.

116 (4) Be in writing, dated, and signed by the adult in
117 the presence of a notary public.

118 (5) Contain a separate consent signed by each supporter
119 named in the agreement indicating each of the following:

- 120 a. The supporter's relationship to the adult.
- 121 b. The supporter's willingness to act as a supporter.
- 122 c. The supporter's acknowledgment of his or her duties
123 as a supporter.

124 (b) A supported decision-making agreement may do any of
125 the following:

- 126 (1) Appoint more than one supporter.
- 127 (2) Appoint an alternate supporter to act in the place
128 of a supporter under circumstances specified in the agreement.
- 129 (3) Authorize a supporter to share information with any
130 other supporter or others named in the agreement.

131 Section 6. (a) An adult may revoke a supported
132 decision-making agreement at any time. A revocation under this
133 section shall be in writing, and a copy of the revocation
134 shall be provided to each supporter.

135 (b) Except as provided in the supported decision-making
136 agreement, a supported decision-making agreement terminates in
137 each the following situations:

138 (1) The adult who is the subject of the supported
139 decision-making agreement dies.

140 (2) The adult who is the subject of the supported



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141 decision-making agreement revokes the agreement under
142 subsection (a).

143 (3) All of the named supporters withdraw their
144 participation without arranging for successor supporters
145 approved by the adult.

146 (4) A court of competent jurisdiction determines that
147 the adult does not have the capacity to execute or consent to
148 a supported decision-making agreement.

149 (5) A court of competent jurisdiction determines that a
150 supporter has used the supported decision-making agreement to
151 financially exploit, abuse, or neglect the adult.

152 (6) A court of competent jurisdiction appoints a
153 temporary or permanent guardian or conservator for the person
154 or property of the adult, unless the court's order of
155 appointment does each of the following:

156 a. Expressly modifies, but continues, the supported
157 decision-making agreement alongside a partial guardianship or
158 conservatorship.

159 b. Limits the powers and duties of the guardian or
160 conservator.

161 (7) The adult signs a valid durable power of attorney,
162 except to the extent that the power of attorney expressly
163 continues, in whole or in part, the supported decision-making
164 agreement.

165 (c) The court may enter an order pursuant to
166 subdivision (b) (4), (b) (5), or (b) (6) only after providing
167 notice and a hearing to the adult and all supporters named in
168 the agreement.



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169 Section 7. A supported decision-making agreement that
170 complies with Section 5 is presumed valid. A party may rely on
171 the presumption of validity unless the party has actual
172 knowledge that the supported decision-making agreement was not
173 validly executed.

174 Section 8. (a) A person who in good faith relies on an
175 authorization in a supported decision-making agreement is not
176 subject to discipline for unprofessional conduct.

177 (b) This section does not apply to a person whose act
178 or omission amounts to fraud, misrepresentation, recklessness,
179 or willful or wanton misconduct.

180 Section 9. (a) The meaning and effect of a supported
181 decision-making agreement is determined by the law of the
182 jurisdiction in which the supported decision-making agreement
183 was executed, unless the supported decision-making agreement
184 provides otherwise.

185 (b) A person who receives a copy of a supported
186 decision-making agreement or is aware of the existence of a
187 supported decision-making agreement and reasonably believes
188 that an adult is being abused, neglected, or exploited shall
189 report the alleged abuse, neglect, or exploitation to an adult
190 protective services agency or an authorized law enforcement
191 agency.

192 Section 10. This act shall become effective on the
193 first day of the third month following its passage and
194 approval by the Governor, or its otherwise becoming law.