

1 HB522
2 218821-1
3 By Representative Isbell
4 RFD: Judiciary
5 First Read: 29-MAR-22

8 SYNOPSIS: Under existing law, an adult with a
9 disability may be the subject of a guardianship,
10 conservatorship, or protective arrangement.

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

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

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

27 A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 Relating to guardianships and conservatorships; to
5 create the Colby Act; to provide for a supported
6 decision-making agreement as an alternative to a guardianship;
7 and to provide the scope and limitations of a supported
8 decision-making agreement.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known and may be cited
11 as the Colby Act.

12 Section 2. For the purposes of this act, the
13 following terms shall have the following meanings:

14 (1) SUPPORTED DECISION-MAKING. The process of
15 supporting and accommodating an adult in the decision-making
16 process without impeding the self-determination of the adult.
17 This term includes assistance in making, communicating, and
18 effectuating life decisions.

19 (2) SUPPORTED DECISION-MAKING AGREEMENT. A written
20 agreement detailing decision-making supports and
21 accommodations that an adult chooses to receive from one or
22 more supporters.

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

1 Section 3. (a) An adult may not enter into a
2 supported decision-making agreement as an alternative to
3 guardianship unless the adult meets both of the following
4 conditions:

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

7 (2) The adult understands the nature and effect of
8 the agreement.

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

11 (c) A court may not consider an adult's execution of
12 a supported decision-making agreement as evidence of the
13 adult's incapacity. The existence of an executed supported
14 decision-making agreement does not preclude the adult from
15 acting independently of the supported decision-making
16 agreement.

17 (d) An adult may not enter into a supported
18 decision-making agreement under this section if the agreement
19 supplants the authority of a guardian of the adult.

20 Section 4. (a) A supporter shall do all of the
21 following:

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

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

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

27 (4) Avoid conflicts of interest.

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

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

7 (c) A supporter shall not:

8 (1) Exert undue influence upon the adult.

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

11 (3) Obtain, without the consent of the adult,
12 information for a purpose other than assisting the adult in
13 making a specific decision authorized by the supported
14 decision-making agreement.

15 (4) Obtain, without the consent of the adult,
16 nonpublic personal information, as defined by 15 U.S.C. §
17 6809(4).

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

20 (d) A supporter who is expressly given relevant
21 authority in a power of attorney may act within the scope of
22 that authority to sign instructions or other documents on
23 behalf of the adult, or to communicate or implement decisions
24 made by the adult.

25 (e) A request or decision made or communicated with
26 the assistance of a supporter in conformity with the supported
27 decision-making agreement shall be recognized as the request

1 or decision of the adult for the purposes of any provision of
2 law.

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

5 (1) Name at least one supporter.

6 (2) Describe the decision-making assistance that
7 each supporter may provide to the adult and how supporters may
8 work together.

9 (3) If the adult is subject to a limited
10 guardianship as provided by Section 6 of this act, be executed
11 by the adult's guardian.

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

14 (5) Contain a separate consent signed by each
15 supporter named in the agreement indicating each of the
16 following:

17 a. The supporter's relationship to the adult.

18 b. The supporter's willingness to act as a
19 supporter.

20 c. The supporter's acknowledgement of his or her
21 duties as a supporter.

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

24 (1) Appoint more than one supporter.

25 (2) Appoint an alternate supporter to act in the
26 place of a supporter under circumstances specified in the
27 agreement.

1 (3) Authorize a supporter to share information with
2 any other supporter, or others named in the agreement.

3 Section 6. (a) An adult may revoke a supported
4 decision-making agreement at any time. A revocation under this
5 section must be in writing, and a copy of the revocation must
6 be provided to each supporter.

7 (b) Except as provided in the supported
8 decision-making agreement, a supported decision-making
9 agreement terminates in each the following situations:

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

12 (2) The adult who is the subject of the supported
13 decision-making agreement revokes the agreement under
14 subsection (a) of this section.

15 (3) All of the named supporters withdraw their
16 participation, without arranging for successor supporters
17 approved by the adult.

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

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

24 (6) A court of competent jurisdiction appoints a
25 temporary or permanent guardian for the person or property of
26 the adult, unless the court's order of appointment does each
27 of the following:

1 a. Expressly modifies, but continues, the supported
2 decision-making agreement alongside a partial guardianship.

3 b. Limits the powers and duties of the guardian.

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

8 (c) The court may enter an order pursuant to
9 subdivision (b) (4), (b) (5), or (b) (6) of this section only
10 after providing notice and a hearing to the adult and all
11 supporters named in the agreement.

12 Section 7. A supported decision-making agreement
13 that complies with Section 5 of this act is presumed valid. A
14 party may rely on the presumption of validity unless the party
15 has actual knowledge that the supported decision-making
16 agreement was not validly executed.

17 Section 8. (a) Except as provided in subsection (c),
18 a person who in good faith relies on an authorization in a
19 supported decision-making agreement is not subject to civil or
20 criminal liability or to discipline for unprofessional
21 conduct.

22 (b) Except as provided in subsection (c), a
23 supporter who performs supported decision-making in good faith
24 as specified in a supported decision-making agreement is
25 immune from civil or criminal liability resulting from the
26 adult's decision.

1 (c) This section does not apply to a person whose
2 act or omission amounts to fraud, misrepresentation,
3 recklessness, or willful or wanton misconduct.

4 Section 9. (a) The meaning and effect of a supported
5 decision-making agreement is determined by the law of the
6 jurisdiction in which the supported decision-making agreement
7 was executed, unless the supported decision-making agreement
8 provides otherwise.

9 (b) A person who receives a copy of a supported
10 decision-making agreement or is aware of the existence of a
11 supported decision-making agreement and reasonably believes
12 that an adult is being abused, neglected, or exploited shall
13 report the alleged abuse, neglect, or exploitation to an adult
14 protective services agency or an authorized law enforcement
15 agency.

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