

**SB55 INTRODUCED**



1    0W11GC-1  
2    By Senators Orr, Singleton, Coleman-Madison, Scofield,  
3    Hatcher, Jones, Albritton, Melson, Waggoner, Allen, Barfoot,  
4    Butler, Elliott, Weaver, Sessions, Williams, Chesteen,  
5    Figures, Kelley, Price, Roberts  
6    RFD: Judiciary  
7    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.