YPL4NN-1 03/03/2023 GP (L) GP 2023-691 House Judiciary Engrossed Substitute for HB105



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5	A BILL
6	TO BE ENTITLED
7	AN ACT
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9	Relating to guardianships and conservatorships; to
10	create the Colby Act; to provide for a supported
11	decision-making agreement as an alternative to a guardianship
12	or conservatorship; and to provide the scope and limitations
13	of a supported decision-making agreement.
14	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
15	Section 1. This act shall be known and may be cited as
16	the Colby Act.
17	Section 2. For the purposes of this act, the following
18	terms have the following meanings:
19	(1) SUPPORTED DECISION-MAKING. The process of
20	supporting and accommodating an adult in the decision-making
21	process without impeding the self-determination of the adult.
22	This term includes assistance in making, communicating, and
23	effectuating life decisions.
24	(2) SUPPORTED DECISION-MAKING AGREEMENT. A written
25	agreement detailing decision-making supports and
26	accommodations that an adult chooses to receive from one or
27	more supporters.
28	(3) SUPPORTER. An individual at least 18 years of age



29 who has voluntarily entered into a supported decision-making 30 agreement with an adult and is designated as such in a 31 supported decision-making agreement.

32 Section 3. (a) An adult may not enter into a supported 33 decision-making agreement as an alternative to guardianship or 34 conservatorship unless the adult meets both of the following 35 conditions:

36 (1) The adult enters into the agreement voluntarily and 37 without coercion or undue influence.

38 (2) The adult understands the nature and effect of the39 agreement.

40 (b) An adult may make, change, or revoke a supported41 decision-making agreement.

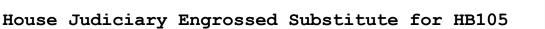
42 (c) A court may not consider an adult's execution of a 43 supported decision-making agreement as evidence of the adult's 44 incapacity. The existence of an executed supported 45 decision-making agreement does not preclude the adult from 46 acting independently of the supported decision-making 47 agreement.

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

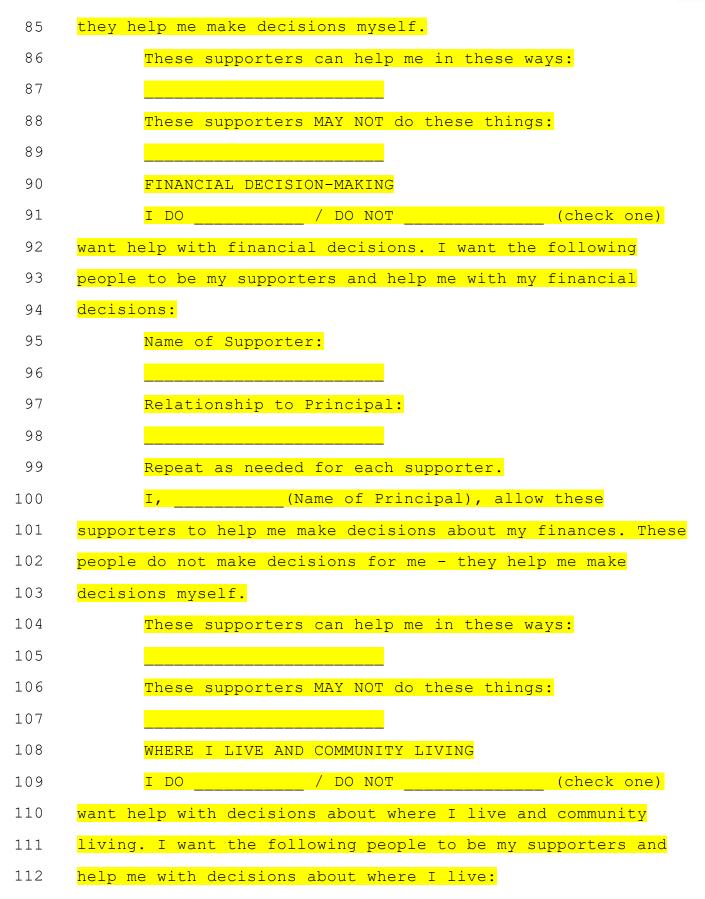
(e) No third-party individual or entity may require an adult to execute a supported decision-making agreement for any purpose. For the purposes of this act, the term "third-party individual or entity" does not include a guardian or conservator.



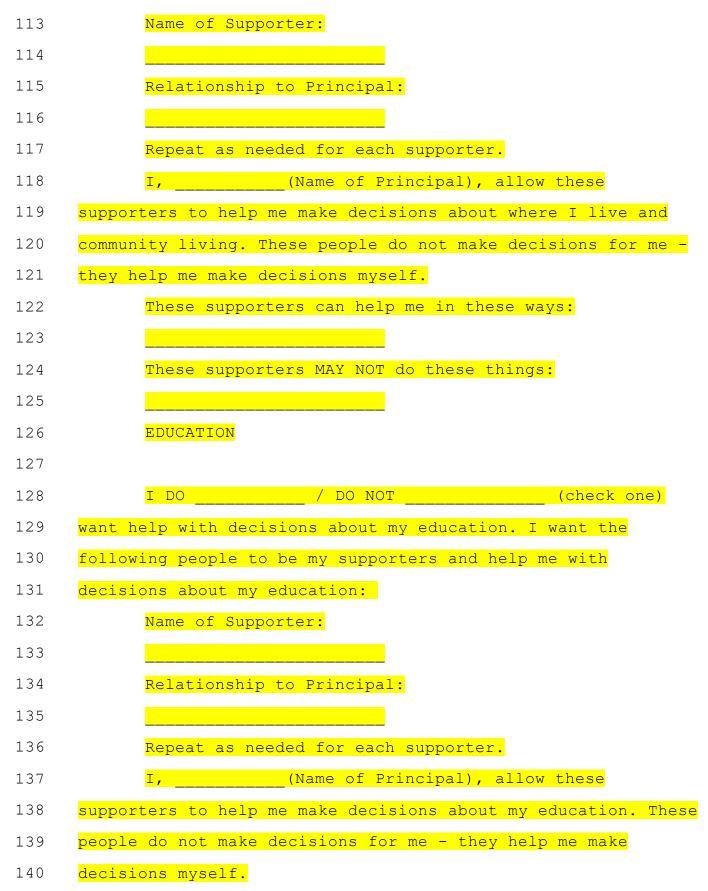
57	Section 4. A document substantially in the following
58	format may be used to create a supported decision-making
59	agreement that has the meaning and effect prescribed by this
60	act.
61	This document IS / IS NOT
62	(check one) legally binding. Only a person with the legal
63	right and capacity to contract can make a legally binding
64	agreement.
65	I,(Name of Principal), make
66	this supported decision-making agreement to choose supporters
67	to help me make decisions. I am choosing to make this
68	agreement. I may end this agreement at any time. These
69	supporters DO NOT make decisions for me. They give me
70	information, advice, and other support so I can make decisions
71	for myself.
71 72	for myself. DESIGNATION OF SUPPORTERS
72	DESIGNATION OF SUPPORTERS
72 73	DESIGNATION OF SUPPORTERS
72 73 74	DESIGNATION OF SUPPORTERS HEALTH CARE I DO / DO NOT (check one)
72 73 74 75	DESIGNATION OF SUPPORTERS HEALTH CARE I DO / DO NOT (check one) want help with health care. I want the following people to be
72 73 74 75 76	DESIGNATION OF SUPPORTERS HEALTH CARE I DO/ DO NOT (check one) want help with health care. I want the following people to be my supporters and help me with my health care decisions:
72 73 74 75 76 77	DESIGNATION OF SUPPORTERS HEALTH CARE I DO/ DO NOT (check one) want help with health care. I want the following people to be my supporters and help me with my health care decisions:
72 73 74 75 76 77 78	DESIGNATION OF SUPPORTERS HEALTH CARE I DO / DO NOT (check one) want help with health care. I want the following people to be my supporters and help me with my health care decisions: Name of Supporter:
72 73 74 75 76 77 78 79	DESIGNATION OF SUPPORTERS HEALTH CARE I DO / DO NOT (check one) want help with health care. I want the following people to be my supporters and help me with my health care decisions: Name of Supporter:
72 73 74 75 76 77 78 79 80	DESIGNATION OF SUPPORTERS HEALTH CARE I DO / DO NOT (check one) want help with health care. I want the following people to be my supporters and help me with my health care decisions: Name of Supporter: Relationship to Principal:
72 73 74 75 76 77 78 79 80 81	DESIGNATION OF SUPPORTERS HEALTH CARE I DO / DO NOT (check one) want help with health care. I want the following people to be my supporters and help me with my health care decisions: Name of Supporter: Relationship to Principal: Repeat as needed for each supporter.



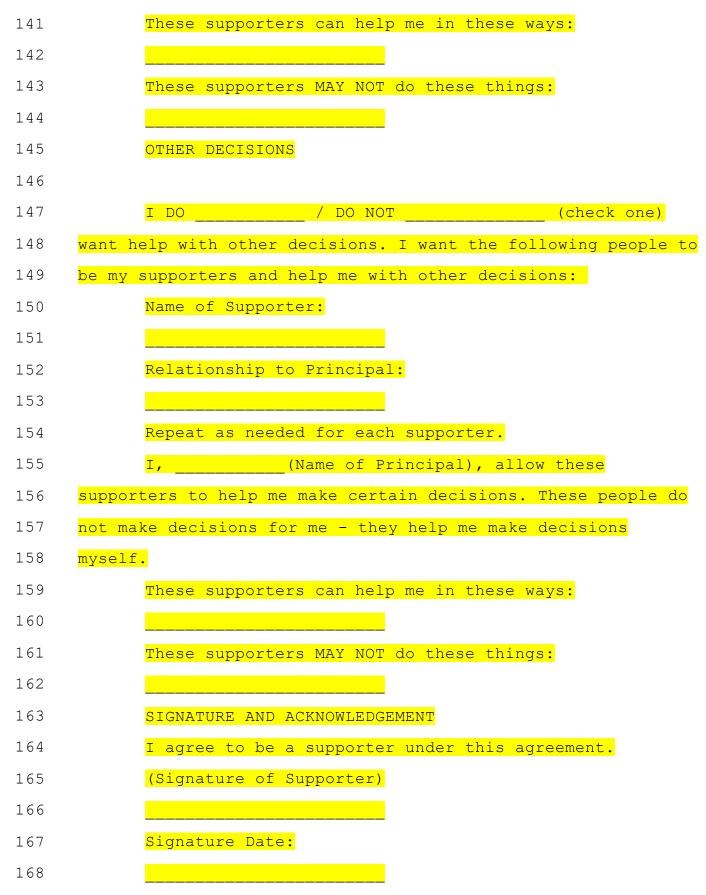




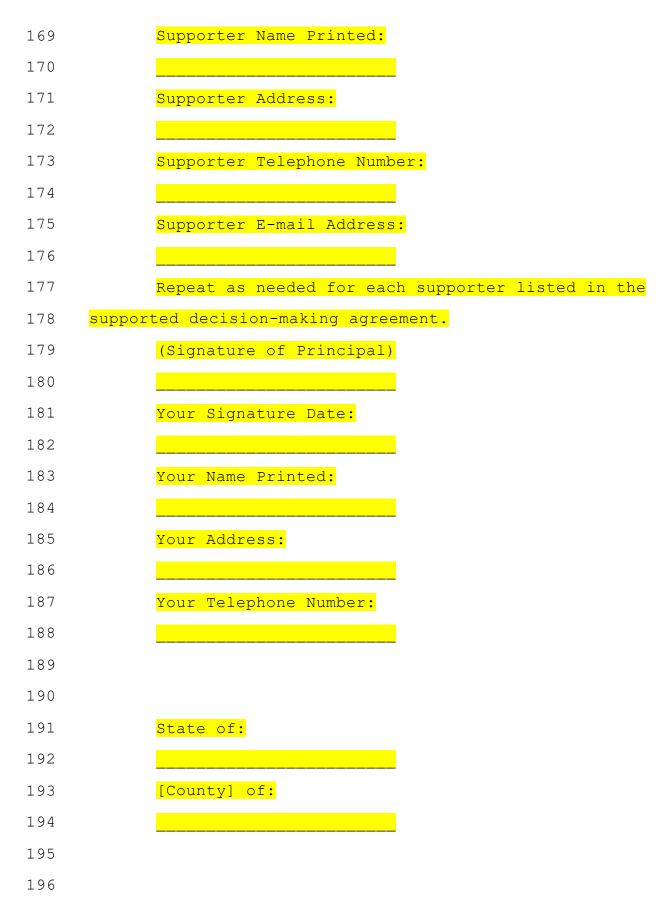














197	I,, a Notary Public, in and for the County
198	in this State, hereby certify that, whose name is
199	signed to the foregoing document, and who is known to me,
200	acknowledged before me on this day that, being informed of the
201	contents of the document, he or she executed the same
202	voluntarily on the day the same bears date.
203	Given under my hand this the day of
204	, 2
205	
206	(Seal, if any)
207	Signature of Notary
208	
209	My commission expires:
210	
211	[This document prepared by:
212	]
213	
214	<del>Section 4.</del> Section 5. (a) A supporter shall do all of
215	the following:
216	(1) Support the will and preference of the adult and
217	not the supporter's opinion of the adult's best interest.
218	(2) Act honestly, diligently, and in good faith.
219	(3) Act within the scope set forth in the adult's
220	supported decision-making agreement.
221	(4) Avoid conflicts of interest.
222	(5) Timely notify the adult in writing, in the adult's
223	preferred language and mode of communication, of his or her
224	intent to resign as a supporter.



225 (b) A supporter is a fiduciary and shall make and 226 communicate decisions in cooperation with the adult and 227 preserve the adult's authority to make decisions. 228 (c) A supporter shall not do any of the following: 229 (1) Exert undue influence upon the adult. 230 (2) Receive a fee or compensation for services 231 performed in the role of supporter. 232 (3) Obtain, without the consent of the adult, 233 information for a purpose other than assisting the adult in 234 making a specific decision authorized by the supported 235 decision-making agreement. (4) Obtain, without the consent of the adult, nonpublic 236 237 personal information, as defined by 15 U.S.C. § 6809(4). 238 (5) Act outside the scope of authority provided in the 239 supported decision-making agreement. 240 (d) A supporter who is expressly given relevant 241 authority in a power of attorney may act within the scope of 242 that authority to sign instructions or other documents on 243 behalf of the adult, or to communicate or implement decisions 244 made by the adult. 245 (e) A request or decision made or communicated with the 246 assistance of a supporter in conformity with the supported 247 decision-making agreement shall be recognized as the request 248 or decision of the adult for the purposes of any provision of 249 law. Section 5. Section 6. (a) A supported decision-making 250

250 Section 5. Section 6. (a) A supported decision-making 251 agreement shall meet all of the following requirements: 252 (1) Name at least one supporter.



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

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

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

(5) Contain a separate consent signed by each supporternamed in the agreement indicating each of the following:

a. The supporter's relationship to the adult.

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

265 c. The supporter's acknowledgment of his or her duties266 as a supporter.

(b) A supported decision-making agreement may do any ofthe following:

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(1) Appoint more than one supporter.

(2) Appoint an alternate supporter to act in the placeof a supporter under circumstances specified in the agreement.

(3) Authorize a supporter to share information with anyother supporter or others named in the agreement.

274 Section 6.Section 7. (a) An adult may revoke a 275 supported decision-making agreement at any time. A revocation 276 under this section shall be in writing, and a copy of the 277 revocation shall be provided to each supporter.

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



(1) The adult who is the subject of the supporteddecision-making agreement dies.

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

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

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

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

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

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

302 b. Limits the powers and duties of the guardian or 303 conservator.

304 (7) The adult signs a valid durable power of attorney, 305 except to the extent that the power of attorney expressly 306 continues, in whole or in part, the supported decision-making 307 agreement.

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(c) The court may enter an order pursuant to



309 subdivision (b)(4), (b)(5), or (b)(6) only after providing 310 notice and a hearing to the adult and all supporters named in 311 the agreement.

312 Section 7.Section 8. A supported decision-making 313 agreement that complies with Section 5 is presumed valid. A 314 party may rely on the presumption of validity unless the party 315 has actual knowledge that the supported decision-making 316 agreement was not validly executed.

317 Section 8.Section 9. (a) A person who in good faith 318 relies on an authorization in a supported decision-making 319 agreement is not subject to discipline for unprofessional 320 conduct.

321 (b) This section does not apply to a person whose act 322 or omission amounts to fraud, misrepresentation, recklessness, 323 or willful or wanton misconduct.

324 Section 9.Section 10. (a) The meaning and effect of a 325 supported decision-making agreement is determined by the law 326 of the jurisdiction in which the supported decision-making 327 agreement was executed, unless the supported decision-making 328 agreement provides otherwise.

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

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Section 10.Section 11. This act shall become effective



337 on the first day of the third month following its passage and 338 approval by the Governor, or its otherwise becoming law.