

HB0197S02 compared with HB0197

{deleted text} shows text that was in HB0197 but was deleted in HB0197S02.

inserted text shows text that was not in HB0197 but was inserted into HB0197S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Marsha Judkins proposes the following substitute bill:

REQUIREMENTS FOR SUPPORTED DECISION-MAKING

AGREEMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: { } **Marsha Judkins**

Senate Sponsor: { _____ } Wayne A. Harper

LONG TITLE

General Description:

This bill addresses supported decision-making agreements and guardianship.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions concerning the rights of certain individuals who are under a court-ordered guardianship;
- ▶ prescribes the principles by which provisions related to supported decision-making agreements should be interpreted;
- ▶ describes the requirements for a supported decision-making agreement;

HB0197S02 compared with HB0197

- ▶ authorizes the use of a supported decision-making agreement by certain individuals, subject to the permission of an individual's guardian or conservator if the supported decision-making agreement includes an area over which a court has granted authority to the guardian or conservator;
- ▶ describes the duties of an individual who is a supporter under a supported decision-making agreement;
- ▶ provides that a supported decision-making agreement may be revoked or terminated, with certain conditions;
- ▶ describes how a supported decision-making agreement interacts with and affects other laws and principles; and
- ▶ provides protections for a person who relies, in good faith, on the provisions of a supported decision-making agreement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

75-1-201, as last amended by Laws of Utah 2013, Chapter 364

75-5-301.5, as enacted by Laws of Utah 2022, Chapter 358 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 358

ENACTS:

75-5-701, Utah Code Annotated 1953

75-5-702, Utah Code Annotated 1953

75-5-703, Utah Code Annotated 1953

75-5-704, Utah Code Annotated 1953

75-5-705, Utah Code Annotated 1953

75-5-706, Utah Code Annotated 1953

75-5-707, Utah Code Annotated 1953

75-5-708, Utah Code Annotated 1953

75-5-709, Utah Code Annotated 1953

HB0197S02 compared with HB0197

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **75-1-201** is amended to read:

75-1-201. General definitions.

Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in this code:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

(5) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

HB0197S02 compared with HB0197

(6) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(8) "Court" means any of the courts of record in this state having jurisdiction in matters relating to the affairs of decedents.

(9) "Descendant" of an individual means all of his descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. For the purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.

(12) "Disability" means cause for a protective order as described by Section 75-5-401.

(13) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(14) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.

HB0197S02 compared with HB0197

(15) "Exempt property" means that property of a decedent's estate which is described in Section 75-2-403.

(16) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(17) "Foreign personal representative" means a personal representative of another jurisdiction.

(18) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(19) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, a supported decision-making agreement, or a dispositive, appointive, or nominative instrument of any similar type.

(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

(21) "Heirs," except as controlled by Section 75-2-711, means persons, including the surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated" or "incapacity" is measured by functional limitations and means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with [~~appropriate technological~~] assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:

- (a) receive and evaluate information;
- (b) make and communicate decisions; or
- (c) provide for necessities such as food, shelter, clothing, health care, or safety.

(23) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the

HB0197S02 compared with HB0197

estate of a decedent, ward, or protected person. It also includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

(25) "Issue" of a person means descendant as defined in Subsection (9).

(26) "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(27) "Lease" includes an oil, gas, or other mineral lease.

(28) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(29) "Minor" means a person who is under 18 years ~~[of age]~~ old.

(30) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(32) "Organization" includes a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(33) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(34) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(35) "Person" means an individual or an organization.

HB0197S02 compared with HB0197

(36) (a) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(b) "General personal representative" excludes special administrator.

(37) "Petition" means a written request to the court for an order after notice.

(38) "Proceeding" includes action at law and suit in equity.

(39) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(40) "Protected person" means a person for whom a conservator has been appointed. A "minor protected person" means a minor for whom a conservator has been appointed because of minority.

(41) "Protective proceeding" means a proceeding described in Section 75-5-401.

(42) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(43) "Registrar" refers to the official of the court designated to perform the functions of registrar as provided in Section 75-1-307.

(44) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, and, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(45) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(46) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(47) "Special administrator" means a personal representative as described in Sections

HB0197S02 compared with HB0197

75-3-614 through 75-3-618.

(48) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States, or a Native American tribe or band recognized by federal law or formally acknowledged by a state.

(49) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(50) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.

(51) "Supervised administration" refers to the proceedings described in Title 75, Chapter 3, Part 5, Supervised Administration.

(52) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security Registration Act, means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under Section 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived," "survivor," and "surviving."

(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(54) "Testator" includes an individual of either sex.

(55) "Trust" includes a health savings account, as defined in Section 223, Internal Revenue Code, any express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any

HB0197S02 compared with HB0197

arrangement under which a person is nominee or escrowee for another.

(56) "Trustee" includes an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.

(57) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

(58) "Will" includes codicil and any testamentary instrument which merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Section 2. Section 75-5-301.5 is amended to read:

75-5-301.5. Rights of a person alleged to be incapacitated -- Rights of an incapacitated person.

(1) Except as otherwise provided by this chapter or any other law, a person alleged to be incapacitated has the right to:

- (a) be represented by counsel before a guardianship is imposed and have counsel represent the person during the guardianship proceeding;
- (b) receive a copy of all documents filed in a guardianship proceeding;
- (c) have a relative, a physician, or any interested person speak about or raise any issue of concern on behalf of the person during the guardianship proceeding;
- (d) receive information about guardianships from the court; and
- (e) be treated with respect and dignity.

(2) Except as otherwise provided by this chapter or any other law, and except as provided in Subsection (5), an incapacitated person for whom a guardian is appointed has right to:

- (a) have counsel represent the incapacitated person at any time after the guardian is appointed;
- (b) have a relative, a physician, or any interested person speak about or raise any issue of concern on behalf of the person in any court hearing about the guardianship;
- (c) receive a copy of all documents filed in court regarding the guardianship;
- (d) receive information about guardianships from the court;
- (e) ask questions and express concerns or complaints about a guardian and the actions

HB0197S02 compared with HB0197

of a guardian to the court;

(f) participate in developing an individualized plan for the incapacitated person's care, including:

- (i) managing the incapacitated person's assets and property;
- (ii) determining the incapacitated person's residence; and
- (iii) determining the services to be received by the incapacitated person;

(g) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs;

(h) remain as independent as possible, including giving deference to the incapacitated person's preference for the incapacitated person's residence and standard of living:

- (i) as expressed or demonstrated before a determination of capacity was made; or
- (ii) as currently expressed or demonstrated by the incapacitated person if the preference is reasonable under the circumstances;

(i) be granted the greatest degree of freedom possible that is consistent with the reasons

for the guardianship;

(j) be able to exercise control over all aspects of the incapacitated person's life that are

not granted to the guardian in the order of appointment;

(k) engage in any activity that the court has not expressly reserved for the guardian, including marriage or domestic partnership, traveling, working, or having a driver license;

(l) be treated with respect and dignity;

(m) be treated fairly by the incapacitated person's guardian;

(n) maintain privacy and confidentiality in personal matters, except as needed by the incapacitated person's guardian to conduct necessary affairs for the incapacitated person;

(o) receive telephone calls and personal mail and associate with relatives and acquaintances unless the guardian and the court determine that the association should be restricted or prohibited in accordance with Section 75-5-312.5;

(p) receive timely, effective, and appropriate health care and medical treatment that does not violate the incapacitated person's rights;

(q) have all services provided by a guardian at a reasonable rate of compensation;

(r) have a court review any request for payment by a guardian to avoid excessive or

HB0197S02 compared with HB0197

unnecessary fees or duplicative billing;

(s) receive prudent financial management of the incapacitated person's property;

(t) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), and subject to the exception provided in Subsection 75-5-312(7)(d). receive a copy of an accounting report regarding the incapacitated person's estate that is submitted to the court by the guardian under Section 75-5-312 or the conservator under Section 75-5-417 if a conservator is appointed for the incapacitated person;

(u) receive and control the incapacitated person's salary;

(v) maintain a bank account and manage the incapacitated person's personal money;

and

(w) ask the court to:

(i) review the management activity of a guardian if a dispute cannot be resolved regarding the guardian's management;

(ii) continue to review the need for a guardianship or to modify or terminate a guardianship; and

(iii) enter an order restoring the incapacitated person's capacity at the earliest possible time.

(3) The rights of an incapacitated person under this section do not abrogate any remedy provided by law.

(4) Any right described in this section may be:

(a) addressed in a guardianship proceeding; or

(b) enforced through a private cause of action.

(5) Subsections (2)(h), (j), (k), (u), and (v) do not apply to an individual who:

(a) before May 1, 2024, was under a court-ordered full guardianship; and

(b) has a severe intellectual disability and significant limitations in adaptive behavior.

Section ~~2~~3. Section 75-5-701 is enacted to read:

Part 7. Supported Decision-making Agreements

75-5-701. Definitions.

As used in this part:

(1) "Abuse" means the same as that term is defined in Section 26B-6-201.

(2) "Coercion" means influencing or attempting to influence a principal using force,

HB0197S02 compared with HB0197

threats, or intimidation.

(3) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(4) "Exploitation" means the same as that term is defined in Section 26B-6-201.

(5) "Good faith" means honesty in fact in the conduct or transaction concerned.

(6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, 50 Pub. L. No. 104-191, 110 Stat. 1936, as amended.

(7) "Neglect" means the same as that term is defined in Section 26B-6-201.

(8) "Principal" means an individual who:

(a) is 18 years old or older;

(b) has a disability, as that term is defined in Section 26B-6-801;

(c) seeks to enter or has entered into a supported decision-making agreement with at least one supporter; and

(d) has the permission of the individual's guardian or conservator to enter into a supported decision-making agreement, if the supported decision-making agreement includes an area over which a court has granted authority to the guardian or conservator.

(9) "Protected health information" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(10) "Supported decision-making" means the process of supporting and accommodating an individual in the decision-making process to make, communicate, and effectuate life decisions, without impeding the self-determination of the individual.

(11) "Supported decision-making agreement" means an agreement between a principal and at least one supporter that meets the requirements of Section 75-5-704.

(12) "Supporter" means an individual:

(a) who is 18 years old or older;

(b) without:

(i) a substantiated allegation of abuse, neglect, or exploitation;

(ii) a protective or restraining order; or

(iii) a conviction for:

(A) harm of another;

(B) theft; or

(C) financial crime; and

HB0197S02 compared with HB0197

(c) who has agreed to provide specified assistance to a principal by entering into a supported decision-making agreement with the principal.

(13) "Undue influence" means the same as that term is defined in Section 26B-6-201.

Section ~~{3}~~4. Section 75-5-702 is enacted to read:

75-5-702. Purposes of part.

The purposes of this part are to:

(1) provide a principal assistance in:

(a) gathering and assessing information;

(b) understanding options, responsibilities, and consequences of a decision; and

(c) communicating decisions for a principal if the principal wants assistance with communicating decisions;

(2) give a supporter legal status, as specified in a supported decision-making agreement, to be with a principal, to access information on behalf of a principal, and to participate in discussions with others when a principal is making decisions or seeking to obtain information; and

(3) enable a supporter to assist in making and communicating decisions for a principal, but not to substitute as the decision maker for a principal.

Section ~~{4}~~5. Section 75-5-703 is enacted to read:

75-5-703. Interpretation of part.

This part shall be construed and applied in accordance with the following principles:

(1) a principal should be able to:

(a) live in the manner in which the principal wishes; and

(b) make decisions about accepting or refusing support, assistance, or protection, as long as doing so does not cause serious bodily injury, as that term is defined in Section 26B-5-301, to the principal, or harm to others;

(2) a principal should be informed about and, to the best of the principal's abilities, participate in the management of the principal's affairs;

(3) a principal should receive the most effective, yet least restrictive and intrusive, form of support, assistance, or protection when the principal is unable to manage the principal's affairs alone; and

(4) the values, beliefs, wishes, cultural norms, and traditions that a principal holds

HB0197S02 compared with HB0197

should be respected in supporting the principal.

Section ~~5~~6. Section 75-5-704 is enacted to read:

75-5-704. Supported decision-making agreement.

(1) Subject to Subsection (7), a principal may enter into a supported decision-making agreement at any time if the principal:

(a) enters into the agreement voluntarily and without coercion or undue influence; and

(b) understands the nature and effect of the agreement.

(2) A principal is presumed to understand the nature and effect of a supported decision-making agreement unless the supported decision-making agreement involves an area over which a court has granted authority to a guardian or conservator.

(3) A supported decision-making agreement shall:

(a) be in writing;

(b) state the date on which the agreement is effective;

(c) designate at least one supporter;

(d) describe:

(i) how the principal uses supported decision-making to make decisions;

(ii) the rights of the principal;

(iii) the responsibilities of each supporter;

(iv) the decision-making supports and accommodations the principal chooses to receive from each supporter; and

(v) the types of decisions, if any, with which a supporter is not authorized to assist the principal;

(e) include the ink or electronic signature of:

(i) the principal;

(ii) each supporter;

(iii) a guardian or conservator, if required under Subsection 75-5-701(4)(d); and

(iv) (A) two witnesses; or

(B) a notary public; and

(f) describe how any perceived or actual conflict of interest between a supporter and the principal will be mitigated.

(4) (a) A supported decision-making agreement executed other than in this state is

HB0197S02 compared with HB0197

valid in this state if, when the supported decision-making agreement was executed, the execution complied with the law of the jurisdiction that determines the meaning and effect of the supported decision-making agreement.

(b) The meaning and effect of a supported decision-making agreement is determined by the law of the jurisdiction indicated in the supported decision-making agreement and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the supported decision-making agreement was executed.

(5) (a) A supported decision-making agreement may include a release or other document by which the principal authorizes a supporter to access the principal's confidential information, subject to the terms of the supported decision-making agreement described in Subsection (2)(d) and the supporter's duties described in Section 75-5-705.

(b) Before a covered entity may share a principal's protected health information with a supporter, the principal shall sign a HIPAA consent form authorizing release of the protected health information to the supporter.

(c) Nothing in this part shall be construed to alter or preempt the requirements for protecting health information under HIPAA.

(6) Each supporter shall include with the supporter's signature:

(a) a description of the supporter's relationship to the principal;

(b) a statement of the supporter's willingness to act as a supporter;

(c) an acknowledgment of the supporter's duties; and

(d) an attestation that the supporter:

(i) agrees to honor the right of the principal to make decisions;

(ii) will not make decisions for the principal, including health care decisions; and

(iii) will respect and work to further the independence of the principal.

(7) A supported decision-making agreement may do one or more of the following:

(a) specify a time period for which the supported decision-making agreement is valid;

(b) designate more than one supporter;

(c) designate an alternate individual to act in the place of a supporter under circumstances specified in the supported decision-making agreement; or

(d) authorize a supporter to share information with another supporter or other individual named in the supported decision-making agreement.

HB0197S02 compared with HB0197

Section ~~67~~7. Section 75-5-705 is enacted to read:

75-5-705. Supporter duties.

(1) A supporter shall:

(a) act with the care, competence, and diligence ordinarily exercised by individuals in similar circumstances, and in accordance with the supporter's skills or expertise;

(b) act in good faith;

(c) comply with the terms of the supported decision-making agreement;

(d) maintain records, which the supporter shall make available to the principal upon request, concerning:

(i) the supporter's actions under the supported decision-making agreement; and

(ii) how the principal communicates and expresses opinions to the supporter; and

(e) ensure that all information collected on behalf of the principal pursuant to the supported decision-making agreement and this section is:

(i) kept confidential, as appropriate;

(ii) not subject to unauthorized access, use, or disclosure; and

(iii) properly disposed of when appropriate.

(2) Except as otherwise provided in the supported decision-making agreement or Subsection (3), a supporter may, as directed by the principal:

(a) assist the principal in understanding information, options, responsibilities, and consequences of the principal's life decisions, including decisions relating to the principal's affairs or supportive services;

(b) help the principal access, obtain, and understand information that is relevant to a life decision, including medical, psychological, financial, or educational decisions, or any treatment records or records related to the management of the principal's affairs or supportive services;

(c) assist the principal with finding, obtaining, and making appointments for supportive services, and implement the principal's plans for supportive services;

(d) help the principal monitor information about the principal's affairs or supportive services, including tracking future necessary or recommended services;

(e) ascertain the wishes and decisions of the principal, assist in communicating those wishes and decisions to others, and advocate to ensure that the wishes and decisions of the

HB0197S02 compared with HB0197

principal are implemented; or

(f) assist the principal with obtaining information to which the principal is entitled.

(3) A supporter may not:

(a) coerce, exploit, exert undue influence on, or make decisions on behalf of the

principal;

(b) sign for the principal or provide an electronic signature of the principal to a third

party;

(c) make health care decisions for the principal; or

(d) without the principal's consent:

(i) obtain information that is not reasonably related to matters with which the supporter is authorized to support or assist the principal pursuant to the supported decision-making agreement;

(ii) use information acquired in connection with the supported decision-making agreement for a purpose other than supporting or assisting the principal pursuant to the supported decision-making agreement; or

(iii) delegate the supporter's duties to a third party.

Section ~~{7}~~8. Section 75-5-706 is enacted to read:

75-5-706. Revocation -- Withdrawal.

(1) A principal may revoke a supported decision-making agreement at any time by providing written notice to all other parties to the agreement.

(2) A supporter may withdraw from a supported decision-making agreement at any time by providing written notice to all other parties to the agreement.

(3) A written notice of revocation or withdrawal under this section may be provided by electronic means.

Section ~~{8}~~9. Section 75-5-707 is enacted to read:

75-5-707. Termination.

Unless otherwise provided in the supported decision-making agreement, a supported decision-making agreement is terminated upon the occurrence of any of the following:

(1) the death of the principal;

(2) revocation by the principal pursuant to Section 75-5-706;

(3) as to a specific supporter, if the supporter is no longer qualified by reason of failure

HB0197S02 compared with HB0197

to meet the requirements of Subsection 75-5-701(8)(b):

(4) withdrawal by all of the supporters pursuant to Section 75-5-706 without the designation of a successor supporter;

(5) the principal's execution of a valid power of attorney, healthcare directive, or declaration for mental health treatment, except to the extent the executed document expressly continues, in whole or in part, the supported decision-making agreement; or

(6) a court's:

(a) determination that the principal does not have capacity to execute or consent to a supported decision-making agreement; or

(b) appointment of a temporary or permanent guardian or conservator, unless the court's order of appointment:

(i) modifies but continues the supported decision-making agreement; and

(ii) limits the powers and duties of the guardian.

Section ~~9~~10. Section 75-5-708 is enacted to read:

75-5-708. Impact of supported decision-making agreement.

(1) A decision or request made or communicated by a principal with the assistance of a supporter in accordance with the terms of a supported decision-making agreement and this part shall, for the purposes of any provision of law, be recognized as the decision or request of the principal and may be enforced on the same basis as a decision or request of the principal without support.

(2) The availability of a supported decision-making agreement does not limit the informal use of supported decision making, or preclude judicial consideration of informal supported decision-making arrangements as a less restrictive alternative to a guardianship or conservatorship.

(3) Execution of a supported decision-making agreement may not be a condition of participating in any activity, service, or program.

(4) A court may not consider a principal's execution of a supported decision-making agreement as evidence of the principal's incapacity.

(5) The existence of a supported decision-making agreement does not preclude the principal from acting independently of the supported decision-making agreement.

Section ~~10~~11. Section 75-5-709 is enacted to read:

HB0197S02 compared with HB0197

75-5-709. Liability.

(1) A person who is not a party to a supported decision-making agreement, including a provider of health care or financial services, that in good faith accepts or relies upon a supported decision-making agreement:

(a) may presume that the signatures on the supported decision-making agreement are genuine, unless the person has actual knowledge that any signature on the supported decision-making agreement is not genuine;

(b) may presume that a supported decision-making agreement is valid and that a purported supporter's authority is valid, unless the person has actual knowledge that the supported decision-making agreement or the purported supporter's authority has been revoked, terminated, or is otherwise void or invalid; and

(c) is not subject to civil or criminal liability, or discipline for unprofessional conduct, for giving effect to a provision in a supported decision-making agreement, or for following the direction of a supporter given in accordance with the supported decision-making agreement.

(2) If a person has reason to believe a principal is or has been the subject of abuse, neglect, or exploitation, or observes a principal being subjected to conditions or circumstances that would reasonably result in abuse, neglect, or exploitation, the person shall immediately report the suspected abuse, neglect, or exploitation to Adult Protective Services.

(3) The provisions of this part may not be construed to affect mandatory reporting obligations related to abuse, neglect, or exploitation.

(4) A supporter who violates this part or the terms of a supported decision-making agreement is liable to the principal or the principal's successor in interest for the amount required to restore the value of the principal's property to what it would have been had the violation not occurred.

(5) A transaction between a supporter and a principal that occurs while a supported decision-making agreement is in effect, or while the supporter is in a position of trust with the principal, and from which the supporter obtains a benefit or advantage, is voidable by the principal unless the supporter establishes that the transaction was fair to the principal.

Section ~~{11}~~12. **Effective date.**

This bill takes effect on May 1, 2024.