Supported Decision-making Agreements Act; SB 84

SB 84 creates the Supported Decision-making Agreements Act (Act) allowing adults, or "principals," to enter into supported decision-making agreements to receive decision-making assistance with the adult's affairs from one or more other adults, or "supporters."

Principals

The bill defines a "principal" as an adult who enters into a supported decision-making agreement under the Act to receive decision-making assistance.

Supporters

A "supporter" is defined by the bill as an adult who enters into a supported decision-making agreement and provides decision-making assistance.

A supporter may not be a person against whom a protective order or restraining order has been entered by a court at the request of or on behalf of the principal.

A supporter is required to:

- Act as a fiduciary to the principal in accordance with the agreement; and
- Keep information collected on behalf of the principal:
    - Confidential;
    - Protected from unauthorized access, use, or disclosure; and
    - Only for the use authorized by the principal.

A supporter may provide the principal with assistance:

- Making decisions, communicating decisions, and understanding information about, options for, the responsibilities of, and consequences of decisions;
- Accessing, obtaining, and understanding information relevant to decisions necessary for managing the principal's affairs:
    - This includes medical, psychological, financial, educational, treatment, and other records; and
    - A supporter may also use dated consent to assist the principal in obtaining protected health information or educational records;

- Ascertaining the wishes and decisions of the principal, assisting in communicating those wishes and decisions to others, and advocating to ensure implementation of the principal's wishes and decisions; and

- Accompanying the principal and participating in discussions with other persons when the principal is making decisions or attempting to obtain information for such decisions.

The bill defines accessing or obtaining financial information; the definition does not include access to online banking accounts.

A supporter is prohibited from:

- Exerting undue influence on the principal;

- Making decisions for or on behalf of the principal;

- Signing for the principal or providing the electronic signature of the principal to a third party;

- Obtaining information not reasonably related to the matters the supporter is authorized to assist the principal with under the agreement, without the consent of the principal; or

- Using information acquired for a purpose authorized under the agreement for a purpose other than assisting the principal with a decision authorized by the agreement, without the consent of the principal.

A supporter acting in good faith and in accordance with the Act is not liable to the principal or a third party for injuries, damages, or other losses arising from a decision made by a principal in which the supporter assisted or was otherwise involved.

Entering Agreements

The bill requires supported decision-making agreements to be entered into voluntarily and without coercion or undue influence, and the adult entering into one (the principal) must understand the nature and effect of the agreement. Such agreements may not be entered into if they encroach on the authority of a guardian or conservator of the adult making the agreement, unless approved in writing by the guardian or conservator.

The bill specifies adults who enter into supported decision-making agreements may act without the decision-making assistance of the supporter, and the execution of a supported decision-making agreement does not constitute evidence that the principal does not have capacity.

Requirements for Agreements

The bill requires supported decision-making agreements to:

- Name one or more adults to provide a principal with decision-making assistance;
- Describe the assistance each supporter may provide the principal;
- Contain a notice to third parties that summarizes the rights and obligations of each supporter under the agreement and expressly identifies the provisions of the Act; and
- Contain a separate declaration by each supporter or alternate supporter, signed by the supporter, stating:
    - The supporter's relationship with the principal;
    - The supporter's willingness to act as a supporter for the principal; and
    - The supporter acknowledges the duties of a supporter under the Act.

Validity of Agreements

A supported decision-making agreement is valid if:

- It is dated;
- It is in writing;
- It is signed by the principal and each named supporter or alternative supporter, under penalty of perjury;
- A guardian or conservator, if any, has been notified of the agreement by the principal; and
- The agreement otherwise complies with the provisions of the Act.

The bill requires supported decision-making agreements to be substantially in compliance with a form the bill directs the Judicial Council to establish.

Terminating Agreements

Supported decision-making agreements may indicate their effective dates and duration. If no effective date is specified, the agreement becomes valid immediately. A principal is able to terminate all or any portion of an agreement at any time. A supporter is able to terminate all or a portion of their obligations under the agreement at any time.

If no duration is specified, the agreement is effective until a dated termination is made in writing and signed by the terminating party.

The bill requires notice of a termination to be given to the other party (supporter or principal) in person, by certified mail, or by electronic means.

If a portion of the agreement is terminated and the termination is consistent with the provisions of the Act, the remainder of the agreement remains in effect.

Effect of Agreements

Decisions or requests made or communicated with the assistance of a supporter under the Act are recognized as a decision of the principal.

Persons who act in good faith are not subject to civil or criminal liability or discipline for unprofessional conduct for:

- Complying with an authorization pursuant to a supported decision-making agreement based on an assumption the agreement is valid and not terminated;

- Declining to comply with an authorization based on actual knowledge that the agreement is unauthorized because:

    - The financial institution cannot in good faith comply with the limitation set forth in the agreement; or

    - The person makes or has actual knowledge that another person has made a report pursuant to continuing law stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the supporter; or

- Declining to comply with an authorization related to health care if the person declines because the action proposed is contrary to the good faith medical judgment of the person declining or a written policy of a health care institution based on reasons of conscience.

Application of the Act

The bill specifies that, in the application of the Act:

- All adults are assumed to have capacity to manage their affairs as defined in the Act;

- The Act does not preclude the ability of the adult who has entered into such an agreement to act independently of the agreement;

- A decision that a principal is incapable of managing the principal's affairs may not be based on the manner in which the principal communicates with others; and

- Execution of an agreement may not be used as evidence for the petition or appointment of a guardianship or conservatorship.

Definitions

The bill defines, for purposes of the Act, the following terms in addition to "principal" and "supporter": "adult," "affairs," "capacity," "conservator," "decision," "decision-making assistance," "good faith," "guardian," "immediate family member," "person," "support services," and "supported decision-making agreement."

Criminal Penalties

Violation of the Act is added to the crime of mistreatment of a dependent adult or an elder person, for which felony or misdemeanor penalties apply, depending on the amount of financial resources involved.