

BILL ANALYSIS

Senate Research Center

S.B. 1881
By: Zaffirini et al.
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this legislation is to support and respect the independence of Texans who are elderly and persons with disabilities. Persons with disabilities are being placed into guardianship before they have the opportunity to exercise their civil rights and liberties and time to learn decision-making.

State law directs courts to encourage the development or maintenance of maximum self-reliance and independence but unfortunately it is not uncommon for courts to create full guardianships that deprive persons with disabilities and seniors of the right to make fundamental decisions about their lives. An alternative option to guardianships are supported decision-making agreements which support protections of civil rights and well-being of people to make important decisions. Similar to executing a power of attorney, a supported decision-making agreement is an informal agreement that does not require court involvement or the associated costs, is voluntary and may be terminated by either party at any time. These types of agreements could delay or negate the need for guardianship as a legal tool used to allow a person to make decisions for another person.

S.B. 1881 adds supported decision-making agreements to the Estate Code as an informal alternative to guardianship to maximize the autonomy and rights by people with a disability.

The committee substitute would strike unnecessary and confusing language; provide a technical clarification; and align language with other code.

S.B. 1881 amends current law relating to authorizing supported decision-making agreements for certain adults with disabilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle I, Title 3, Estates Code, by adding Chapter 1357, as follows:

CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1357.001. SHORT TITLE. Authorizes this chapter to be cited as the Supported Decision-Making Agreement Act.

Sec. 1357.002. DEFINITIONS. Defines "adult," "disability," "supported decision-making," "supported decision-making agreement," and "supporter."

Sec. 1357.003. PURPOSE. Provides that the purpose of this chapter is to recognize a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING AGREEMENT. Authorizes an adult with a disability to voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the adult with a disability authorizes the supporter to do any or all of the following:

- (1) provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;
- (2) subject to Section 1357.054, assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person;
- (3) assist the adult with a disability in understanding the information described by Subdivision (2); and
- (4) assist the adult in communicating the adult's decisions to appropriate persons.

Sec. 1357.052. AUTHORITY OF SUPPORTER. Authorizes a supporter to exercise the authority granted to the supporter in the supported decision-making agreement.

Sec. 1357.053. TERM OF AGREEMENT. (a) Provides that, except as provided by Subsection (b), the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

(b) Provides that the support decision-making agreement is terminated if:

- (1) the Department of Family and Protective Services (DFPS) finds that the adult with a disability has been abused, neglected, or exploited by the supporter; or
- (2) the supporter is found criminally liable for conduct described by Subdivision (1).

Sec. 1357.054. ACCESS TO PERSONAL INFORMATION. (a) Provides that a supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(b) Requires the supporter to ensure the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure, if a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(c) Provides that the existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED DECISION-MAKING AGREEMENT. (a) Requires a supported decision-making agreement to be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.

(b) Requires the attesting witnesses to be at least 14 years of age if signed before two witnesses.

Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING AGREEMENT. (a) Provides that a supported decision-making agreement, subject to Subsection (b), is only valid if it is in substantially a certain form as set forth.

(b) Authorizes a supported decision-making agreement to be in any form not inconsistent with Subsection (a) and the other requirements of this chapter.

SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF LIABILITY. (a) Requires a person who receives the original or a copy of a supported decision-making agreement to rely on the agreement.

(b) Provides that a person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLIGENCE, OR EXPLOITATION. Requires a person, if a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, to report the alleged abuse, neglect, or exploitation to DFPS in accordance with Section 48.051 (Report), Human Resources Code.

SECTION 2. Effective date: upon passage or September 1, 2015.