

HOUSE BILL NO. 336

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES MILLETT, Saddler, Spohnholz, Kopp, Tuck, Gara, Grenn, LeDoux, Kito, Johnston, Claman, Zulkosky, Tarr, Josephson, Kawasaki, Drummond

Introduced: 2/7/18

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to supported decision-making agreements to provide for decision-**
2 **making assistance; and amending Rule 402, Alaska Rules of Evidence."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 13 is amended by adding a new chapter to read:

5 **Chapter 56. Supported Decision-Making Agreements.**

6 **Sec. 13.56.010. Agreements authorized.** (a) Except as provided in (b) and (c)
7 of this section, an adult may enter into a supported decision-making agreement. A
8 supported decision-making agreement allows an adult to receive decision-making
9 assistance with the adult's affairs from another adult.

10 (b) The adult wanting to receive decision-making assistance may not enter
11 into a supported decision-making agreement unless the adult

12 (1) enters into the agreement voluntarily and without coercion or
13 undue influence; and

14 (2) understands the nature and effect of the agreement.

1 (c) An adult may not enter into a supported decision-making agreement under
 2 this section if the agreement directly conflicts with an order appointing a guardian for
 3 the adult under AS 13.26.201 - 13.26.316 or a similar law of another state, or a
 4 conservator under AS 13.26.401 - 13.26.595 or a similar law of another state.

5 **Sec. 13.56.020. Eligibility of supporters.** A supporter must be an adult, but
 6 may not be

7 (1) an employer or employee of the principal, unless the employer or
 8 employee is an immediate family member of the principal;

9 (2) a person who provides paid support services, except decision-
 10 making assistance, directly to the principal, unless the person is an immediate family
 11 member of the principal; or

12 (3) a person against whom a protective order or restraining order has
 13 been entered by a court on request of or on behalf of the principal.

14 **Sec. 13.56.030. Contents of agreement.** (a) A supported decision-making
 15 agreement must

16 (1) name one or more adults to provide a principal with decision-
 17 making assistance; and

18 (2) describe the decision-making assistance that the supporter may
 19 provide the principal.

20 (b) A supported decision-making agreement may

21 (1) name an alternate supporter to act in the place of a supporter and
 22 the circumstances under which the alternate supporter may act;

23 (2) authorize a supporter to share information with another supporter
 24 named in the agreement, including an alternate supporter.

25 **Sec. 13.56.040. Requirements for validity.** A supported decision-making
 26 agreement is valid if the agreement

27 (1) is dated and in writing;

28 (2) satisfies the requirements of AS 13.56.010 - 13.56.030, and
 29 13.56.050;

30 (3) contains substantially the same elements as the form provided by
 31 the department under AS 13.56.185; and

1 (4) has been signed by the principal and each named supporter,
2 including any alternate supporter; and

3 (A) the signing takes place in the presence of two witnesses
4 who also sign the agreement; or

5 (B) the signatures of the principal and each named supporter,
6 including any alternate supporter, are notarized.

7 **Sec. 13.56.050. Declarations by supporters.** A supported decision-making
8 agreement must contain a separate declaration for each supporter that states the
9 supporter's relationship with the principal, states the willingness of the supporter to act
10 as a supporter for the principal, and indicates that the supporter acknowledges the
11 duties of a supporter under this chapter. Each declaration must be signed by the
12 supporter making the declaration.

13 **Sec. 13.56.060. Witnesses.** (a) Each witness under AS 13.56.040 must be an
14 adult who understands the means of communication used by the principal, except, if
15 there is an individual who understands the principal's means of communication present
16 to assist during the execution of the supported decision-making agreement, the
17 witnesses are not required to understand the means of communication used by the
18 principal.

19 (b) A witness under AS 13.56.040 may not be a supporter named in the
20 supported decision-making agreement or an employee or agent of a supporter named
21 in the agreement.

22 **Sec. 13.56.070. Term of agreement.** A supported decision-making agreement
23 may indicate the date it becomes effective and its duration. If the supported decision-
24 making agreement does not indicate the date it becomes effective, the agreement
25 becomes effective immediately. If the supported decision-making agreement does not
26 indicate its duration, the agreement remains effective until terminated under
27 AS 13.56.080.

28 **Sec. 13.56.080. Termination or limitation of agreement.** (a) A principal or a
29 supporter may terminate a supported decision-making agreement at any time. The
30 termination must be in writing, signed, and

31 (1) the signing must take place in the presence of two witnesses who

1 also sign the termination; or

2 (2) the signature must be notarized.

3 (b) The principal or supporter terminating the supported decision-making
4 agreement shall notify, in person, by certified mail, or by electronic means, the other
5 party to the agreement that the agreement has been terminated.

6 (c) The superior court may terminate or limit a supported decision-making
7 agreement if the principal lacks the capacity to make or engage in the making of all or
8 certain specific decisions covered by the agreement despite the decision-making
9 assistance of a supporter.

10 **Sec. 13.56.090. Duties of supporter.** A supporter shall act with the care,
11 competence, and diligence ordinarily exercised by individuals in similar
12 circumstances.

13 **Sec. 13.56.100. Decision-making assistance of supporter.** (a) Except as
14 limited by a supported decision-making agreement, a supporter may provide to a
15 principal the following decision-making assistance about the principal's affairs:

16 (1) assisting with making decisions, communicating decisions, and
17 understanding information about, options for, the responsibilities of, and the
18 consequences of decisions;

19 (2) accessing, obtaining, and understanding information that is relevant
20 to decisions necessary to manage the principal's affairs, including medical,
21 psychological, financial, educational information, medical treatment records, and other
22 records;

23 (3) ascertaining the wishes and decisions of the principal, assisting in
24 communicating those wishes and decisions to other persons, and advocating to ensure
25 the implementation of the principal's wishes and decisions; and

26 (4) accompanying the principal and participating in discussions with
27 other persons when the principal is making decisions or attempting to obtain
28 information for decisions.

29 (b) Under (a)(2) of this section, a supporter may use the principal's dated
30 consent to assist the principal in obtaining protected health information under the
31 Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) or

1 educational records under 20 U.S.C. 1232g (Family Educational Rights and Privacy
2 Act of 1974).

3 **Sec. 13.56.110. Prohibited activities.** A supporter may not

4 (1) exert undue influence on the principal;
5 (2) make decisions for or on behalf of the principal;
6 (3) obtain, without the consent of the principal, information that is not
7 reasonably related to matters with which the supporter may assist under the supported
8 decision-making agreement; or

9 (4) use, without the consent of the principal, information acquired for a
10 purpose authorized by this chapter for a purpose other than assisting the principal to
11 make a decision under the supported decision-making agreement.

12 **Sec. 13.56.120. Confidentiality, handling, and disposal of information.** A
13 supporter shall keep the information collected by the supporter on behalf of the
14 principal under this chapter confidential, may not use the information for a use that is
15 not authorized by the principal, shall protect the information from unauthorized
16 access, use, or disclosure, and shall dispose of the information properly when
17 appropriate.

18 **Sec. 13.56.130. Recognition of decisions and requests.** A person shall
19 recognize a decision or request made or communicated with the decision-making
20 assistance of a supporter under this chapter as the decision or request of the principal
21 for the purposes of a provision of law, and the principal or supporter may enforce the
22 decision or request in law or equity on the same basis as a decision or request of the
23 principal.

24 **Sec. 13.56.140. Limitation of liability.** (a) A person who, in good faith, either
25 acts in reliance on an authorization in a supported decision-making agreement or
26 declines to honor an authorization in a supported decision-making agreement is not
27 subject to civil or criminal liability or to discipline for unprofessional conduct for

28 (1) complying with an authorization in a supported decision-making
29 agreement, if the person is complying based on an assumption that the underlying
30 supported decision-making agreement was valid when made and has not been
31 terminated or limited under AS 13.56.080;

1 (2) declining to comply with an authorization in a supported decision-
 2 making agreement if the person is declining based on actual knowledge that the
 3 agreement is invalid or has been terminated or limited under AS 13.56.080;

4 (3) declining to comply with an authorization related to health care in a
 5 supported decision-making agreement, if the person is declining because the action
 6 proposed to be taken under the agreement is contrary to the conscience or good faith
 7 medical judgment of the person or to a written policy of a health care institution that is
 8 based on reasons of conscience.

9 (b) In this section, "good faith" means honesty in fact and the observance of
 10 reasonable standards of fair dealing.

11 **Sec. 13.56.150. Principles for providing decision-making assistance.** When
 12 implementing this chapter, the following principles shall be applied:

13 (1) the principal should be able to live in the manner in which the
 14 principal wishes and may accept or refuse support, assistance, or protection as long as
 15 the principal is not likely to cause harm to others and has the capacity to make
 16 decisions relating to those matters;

17 (2) the principal should be informed of the principal's affairs and, to
 18 the best of the principal's ability, should participate in the management of the
 19 principal's affairs;

20 (3) the principal should receive the most effective and least restrictive
 21 and intrusive form of support, assistance, or protection when the principal is unable to
 22 care for or manage the affairs of the principal alone; and

23 (4) in managing the principal's affairs, the values, beliefs, wishes,
 24 cultural norms, and traditions that the principal holds should be respected.

25 **Sec. 13.56.160. Capability and capacity.** (a) In the application of this chapter,

26 (1) unless otherwise determined by the superior court, a principal is
 27 presumed to be capable of managing the principal's affairs and to have capacity; and

28 (2) a decision that a principal is incapable of managing the principal's
 29 affairs may not be based on the manner in which the principal communicates with
 30 others.

31 (b) An adult who enters into a supported decision-making agreement may act

1 without the decision-making assistance of the supporter.

2 (c) A person may not use the execution of a supported decision-making
3 agreement as evidence that the principal does not have capacity.

4 (d) In this chapter, a principal is considered to have capacity even if the
5 capacity is achieved by the principal's receiving decision-making assistance.

6 **Sec. 13.56.170. Principal's affairs.** This chapter applies to decisions related to
7 the following affairs of a principal:

8 (1) monitoring health, obtaining, scheduling, implementing, and
9 coordinating health and support services, understanding health care information and
10 options, providing for care and comfort, and other health care and personal matters in
11 which the principal makes decisions about the principal's health care;

12 (2) managing income and assets and the use of which for clothing,
13 support, care, comfort, education, shelter, and payment of other liabilities of the
14 principal;

15 (3) handling personal, health care, and financial matters that arise in
16 the course of daily living;

17 (4) monitoring information about the principal's support services,
18 including future necessary or recommended support services;

19 (5) living arrangements, including where and with whom the principal
20 wants to live; and

21 (6) working arrangements, including where the principal wants to
22 work.

23 **Sec. 13.56.180. Support services.** The following are considered support
24 services under this chapter:

25 (1) house repair, home cleaning, laundry, shopping, and providing
26 meals;

27 (2) transportation, accompanying a principal, and facilitating a
28 principal's written, oral, and electronic communication;

29 (3) nurse visitations and attendant care;

30 (4) provision of health care;

31 (5) physical and psychosocial assessments;

1 (6) financial assessments and advice on banking, taxes, loans,
2 investments, and management of real property;

3 (7) legal assessments and advice;

4 (8) education and educational assessments and advice;

5 (9) assistance with bathing, dressing, eating, range of motion, toileting,
6 transferring, ambulation, and other direct assistance with the activities of daily living;

7 (10) care planning;

8 (11) services that assist in maintaining the independence of a principal.

9 **Sec. 13.56.185. Regulatory authority; forms.** The department may adopt
10 regulations necessary to implement this chapter under AS 44.62 (Administrative
11 Procedure Act), and shall establish the forms necessary to implement this chapter.

12 **Sec. 13.56.190. Definitions.** In this chapter, unless the context indicates
13 otherwise,

14 (1) "adult" means an individual who is 18 years of age or older;

15 (2) "affairs" means the affairs described in AS 13.56.170;

16 (3) "capacity" means the ability to understand and appreciate the
17 nature and consequences of a decision and the ability to reach and communicate an
18 informed decision;

19 (4) "decision" means a decision relating to the affairs of a principal;

20 (5) "decision-making assistance" means the decision-making
21 assistance described in AS 13.56.100;

22 (6) "department" means the Department of Health and Social Services;

23 (7) "immediate family member" means a spouse, child, sibling, parent,
24 grandparent, grandchild, stepparent, stepchild, or stepsibling;

25 (8) "person" means an individual, health care institution, health care
26 provider, corporation, partnership, limited liability company, association, joint
27 venture, government, governmental subdivision, governmental agency, governmental
28 instrumentality, public corporation, or another legal or commercial entity;

29 (9) "principal" means an adult who enters into a supported decision-
30 making agreement under this chapter to receive decision-making assistance;

31 (10) "supported decision-making agreement" means an agreement

1 authorized under AS 13.56.010;

2 (11) "supporter" means an adult who enters a supported decision-
3 making agreement and provides decision-making assistance;

4 (12) "support services" means the support services described in
5 AS 13.56.180.

6 **Sec. 13.56.195. Short title.** This chapter may be cited as the Supported
7 Decision-Making Agreements Act.

8 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **INDIRECT COURT RULE AMENDMENT.** AS 13.56.160(c), added by sec. 1 of this
11 Act, has the effect of changing Rule 402, Alaska Rules of Evidence, by prohibiting the
12 execution of a supported decision-making agreement from being used as evidence of a
13 principal's incapacity. In this section, "principal" and "supported decision-making agreement"
14 have the meanings given in AS 13.56.190, added by sec. 1 of this Act.

15 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **CONDITIONAL EFFECT.** AS 13.56.160(c), added by sec. 1 of this Act, takes effect
18 only if sec. 2 of this Act receives the two-thirds majority vote of each house required by art.
19 IV, sec. 15, Constitution of the State of Alaska.