

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1005

5 By: Representative J. Mayberry
6

For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE SUPPORTED DECISION-MAKING
9 AGREEMENT ACT; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO ESTABLISH THE SUPPORTED DECISION-
12 MAKING AGREEMENT ACT.
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16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Title 28, Chapter 65, is amended to add an
20 additional subchapter to read as follows:
21

Subchapter 8 – Supported Decision-making Agreement Act

28-65-801. Short title.

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23
24 This subchapter shall be known and may be cited as the “Supported
25 Decision-making Agreement Act”.
26

28-65-802. Definitions.

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28
29 As used in this subchapter:

30 (1) “Adult” means an individual:

31 (A) Eighteen (18) years of age or older; or

32 (B) Under eighteen (18) years of age who has been
33 emancipated;

34 (2) “Disability” means a physical or mental impairment
35 that substantially limits one (1) or more activities of daily living;

36 (3) “Supported decision-making” means a process of



1 supporting and accommodating an adult with a disability to enable him or her
 2 to make life decisions without impeding the self-determination of the adult
 3 with a disability, including without limitation decisions related to:

4 (A) Where the adult with a disability wants to live;

5 (B) The services, supports, and medical care the
 6 adult with a disability wants to receive;

7 (C) With whom the adult with a disability wants to
 8 live; and

9 (D) Where the adult with a disability wants to work;

10 (4) “Supported decision-making agreement” means an
 11 agreement between an adult with a disability and a supporter entered into
 12 under this subchapter; and

13 (5) “Supporter” means an adult who has entered into a
 14 supported decision-making agreement with an adult with a disability.

15
 16 28-65-803. Purpose.

17 The purpose of this subchapter is to recognize a less restrictive
 18 alternative to guardianship for an adult with a disability who needs
 19 assistance with decisions regarding daily living but who is not considered an
 20 incapacitated person for purposes of establishing a guardianship under this
 21 chapter.

22
 23 28-65-804. Scope of supported decision-making agreement.

24 An adult with a disability, without undue influence or coercion, may
 25 voluntarily enter into a supported decision-making agreement with a supporter
 26 under which the adult with a disability authorizes the supporter to do one

27 (1) or more of the following:

28 (1) Provide supported decision-making, including without
 29 limitation assistance in understanding the options, responsibilities, and
 30 consequences of the life decisions of the adult with a disability, without
 31 making the life decision on behalf of the adult with a disability;

32 (2) Assist the adult with a disability in accessing, collecting,
 33 and obtaining information that is relevant to a life decision, including
 34 without limitation information from the adult with a disability’s medical,
 35 psychological, financial, educational, and treatment records;

36 (3) Assist the adult with a disability in understanding the

1 information described in subdivision (2) of this section; and

2 (4) Assist the adult with a disability in communicating the life
 3 decision of the adult with a disability to the appropriate person.

4
 5 28-65-805. Authority of supporter – Nature of relationship.

6 (a) A supporter may exercise the authority granted to the supporter in
 7 the supported decision-making agreement.

8 (b) The supporter owes to the adult with a disability the fiduciary
 9 duties listed in the form provided under § 28-65-812, regardless of whether
 10 that form is used for the supported decision-making agreement.

11 (c) The relationship between an adult with a disability and the
 12 supporter with whom the adult with a disability has entered into a supported
 13 decision-making agreement:

14 (1) Is one of trust and confidence; and

15 (2) Does not undermine the decision-making authority of the
 16 adult with a disability.

17
 18 28-65-806. Designation of alternate supporter in certain
 19 circumstances.

20 In order to prevent a conflict of interest, if an adult with a
 21 disability determines that the supporter with whom the adult with a
 22 disability has entered into a supported decision-making agreement is the most
 23 appropriate person to provide supports and services to the adult with a
 24 disability for which the supporter will be compensated, the adult with a
 25 disability may amend the supported decision-making agreement to designate an
 26 alternate person to act as the supporter of the adult with a disability for
 27 the limited purpose of participating in person-centered planning related to
 28 the provision of those supports and services.

29
 30 28-65-807. Term of agreement.

31 (a) Except as provided by subsection (b) of this section, the
 32 supported decision-making agreement extends until terminated by either party
 33 or by the terms of the agreement.

34 (b) The supported decision-making agreement is terminated if:

35 (1) The Adult Protective Services Unit of the Department of
 36 Human Services finds that the adult with a disability has been abused,

1 neglected, or exploited by the supporter;

2 (2) The supporter is found criminally liable for conduct
3 described in subdivision (b)(1) of this section; or

4 (3)(A) A temporary or permanent guardian of the person or
5 guardian of the estate is appointed for the adult with a disability.

6 (B) The termination of a supported decision-making
7 agreement under subdivision (b)(3)(A) of this section does not prohibit an
8 adult with a disability from executing another supported decision-making
9 agreement if the guardianship is terminated.

10
11 28-65-808. Access to personal information.

12 (a) A supporter is only authorized to assist the adult with a
13 disability in accessing, collecting, or obtaining information that is
14 relevant to a life decision covered under the supported decision-making
15 agreement.

16 (b) If a supporter assists an adult with a disability in accessing,
17 collecting, or obtaining the adult with a disability's personal information,
18 including protected health information under the Health Insurance Portability
19 and Accountability Act of 1996, Pub. L. No. 104-191, or educational records
20 under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §
21 1232g, as it existed on January 1, 2021, the supporter shall ensure the
22 information is kept privileged and confidential, as applicable, and protected
23 from unauthorized access, use, or disclosure.

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

27
28 28-65-809. Authorizing and witnessing of supported decision-making
29 agreement.

30 (a) A supported decision-making agreement shall be signed voluntarily,
31 without coercion or undue influence, by the adult with a disability and the
32 supporter in the presence of two (2) or more attesting witnesses or a notary
33 public.

34 (b) If the supported decision-making agreement is signed before two
35 (2) or more attesting witnesses, the attesting witnesses are required to be
36 at least fourteen (14) years of age.

1
 2 28-65-810. Reliance on supported decision-making agreement –
 3 Limitation of liability.

4 (a) A person who receives the original or a copy of a supported
 5 decision-making agreement shall rely on the agreement.

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

10
 11 28-65-811. Reporting of suspected abuse, neglect, or exploitation.

12 If a person who receives a copy of a supported decision-making
 13 agreement or is otherwise aware of the existence of a supported decision-
 14 making agreement has cause to believe that the adult with a disability is
 15 being abused, neglected, or exploited by the supporter, the person shall
 16 report the alleged abuse, neglect, or exploitation to the Adult Protective
 17 Services Unit of the Department of Human Services.

18
 19 28-65-812. Form of supported decision-making agreement.

20 (a) Except as provided in subsection (b) of this section, a supported
 21 decision-making agreement is valid only if it is in substantially the
 22 following form:

23 "SUPPORTED DECISION-MAKING AGREEMENT

24
 25 IMPORTANT INFORMATION FOR SUPPORTER: DUTIES

26
 27 When you agree to provide support to an adult with a disability under
 28 this supported decision-making agreement, you have a duty to:

- 29 (1) Act in good faith;
 30 (2) Act within the authority granted in this agreement;
 31 (3) Act loyally and without self-interest; and
 32 (4) Avoid conflicts of interest.

33
 34 APPOINTMENT OF SUPPORTER

35 I, (name of adult with a disability), make this agreement of my own
 36 free will.

1 I agree and designate that:

2 Name:

3 Address:

4 Phone number:

5 Email address:

6 is my supporter. My supporter may help me with making life decisions
7 relating to the following:

8 () Obtaining food, clothing, and shelter;

9 () Taking care of my physical health; and

10 () Managing my financial affairs.

11

12 My supporter may not make decisions for me. To help me with my
13 decisions, my supporter may help me:

14 (1) Access, collect, or obtain information that is relevant to a
15 life decision, including without limitation information from my medical,
16 psychological, financial, educational, or treatment records;

17 (2) Understand my options so that I can make an informed life
18 decision; or

19 (3) Communicate my life decision to an appropriate person.

20

21 () A release allowing my supporter to see protected health
22 information under the Health Insurance Portability and Accountability Act of
23 1996, Pub. L. No. 104-191, is attached.

24 () A release allowing my supporter to see educational records under
25 the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, as
26 it existed on January 1, 2021, is attached.

27

28 EFFECTIVE DATE OF SUPPORTED DECISION-MAKING AGREEMENT

29 This supported decision-making agreement is effective immediately and
30 will continue until (insert date) or until the agreement is terminated by my
31 supporter, me, or operation of law.

32

33 Signed this _____ day of _____, 20__

34

35 CONSENT OF SUPPORTER

36 I, (name of supporter), consent to act as a supporter under this

1 agreement.

2

3 (Signature of supporter)

4

5 (Printed name of supporter)

6

SIGNATURES

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10 (Signature of adult with a disability)

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13 (Printed name of adult with a disability)

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16 (Signature of Witness 1)

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18

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19 (Printed name of Witness 1)

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21

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22 (Signature of Witness 2)

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24

=====

25 (Printed name of Witness 2)

26

27 State of

28 County of

29

30 This document was acknowledged before me on _____ (Date)

31 by _____.

32 (Name of Principal)

33

34

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(Seal, if any)

35 Signature of Notary

36

1 My commission expires:_____

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WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY
IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS OTHERWISE AWARE
OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A
DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE
PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE ADULT
PROTECTIVE SERVICES UNIT OF THE DEPARTMENT OF HUMAN SERVICES."

(b) A supported decision-making agreement may be in a form not
inconsistent with subsection (a) of this section and the other requirements
of this subchapter.