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2 93rd General Assembly
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4

As Engrossed: H1/21/21

A Bill

HOUSE BILL 1005

5 By: Representative J. Mayberry
6 By: Senator A. Clark
7

For An Act To Be Entitled

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

Subtitle

14 TO ESTABLISH THE SUPPORTED DECISION-
15 MAKING AGREEMENT ACT.

16
17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 28, Chapter 65, is amended to add an
21 additional subchapter to read as follows:
22

Subchapter 8 – Supported Decision-making Agreement Act

28-65-801. Short title.

26 This subchapter shall be known and may be cited as the “Supported
27 Decision-making Agreement Act”.
28

28-65-802. Definitions.

As used in this subchapter:

31 (1) “Adult” means an individual:

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

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

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



1 (3) “Supported decision-making” means a process of
2 supporting and accommodating an adult with a disability to enable him or her
3 to make life decisions without impeding the self-determination of the adult
4 with a disability, including without limitation decisions related to:

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

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

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

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

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

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

16
17 28-65-803. Purpose.

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

23
24 28-65-804. Scope of supported decision-making agreement.

25 An adult with a disability, without undue influence or coercion, may
26 voluntarily enter into a supported decision-making agreement with one (1) or
27 more supporters under which the adult with a disability authorizes a
28 supporter to do one (1) or more of the following:

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

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

1 (3) Assist the adult with a disability in understanding the
2 information described in subdivision (2) of this section; and

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

5
6 28-65-805. Authority of supporter – Nature of relationship.

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

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

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

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

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

18 (d) The following individuals shall not serve as a supporter:

19 (1) An employer or employee of the adult with a disability;

20 (2) An individual against whom the adult with a disability has
21 or has had a restraining order; or

22 (3) An individual providing direct paid support services to the
23 adult with a disability.

24
25 28-65-806. Designation of alternate supporter in certain
26 circumstances.

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

36

1 28-65-807. Term of agreement.

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

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

6 (1) The Adult Protective Services Unit of the Department of
7 Human Services finds that the adult with a disability has been abused,
8 neglected, or exploited by the supporter;

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

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

13 (B) The termination of a supported decision-making
14 agreement under subdivision (b)(3)(A) of this section does not prohibit an
15 adult with a disability from executing another supported decision-making
16 agreement if the guardianship is terminated; or

17 (4) An order is entered that legally prohibits the supporter
18 from contact with the adult with a disability.

19 (c) A supporter who is a party to the supported decision-making
20 agreement shall not interfere, impede, or prevent the Adult Protective
21 Services Unit of the Department of Human Services from carrying out an
22 investigation of abuse, neglect, or exploitation of the adult who is a party
23 to the agreement.

24
25 28-65-808. Access to personal information.

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

30 (b) If a supporter assists an adult with a disability in accessing,
31 collecting, or obtaining the adult with a disability's personal information,
32 including protected health information under the Health Insurance Portability
33 and Accountability Act of 1996, Pub. L. No. 104-191, or educational records
34 under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §
35 1232g, as it existed on January 1, 2021, the supporter shall ensure the
36 information is kept privileged and confidential, as applicable, and protected

1 from unauthorized access, use, or disclosure.

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

5
6 28-65-809. Authorizing and witnessing of supported decision-making
7 agreement.

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

12 (b) If the supported decision-making agreement is signed before two
13 (2) or more attesting witnesses, the attesting witnesses are required to be
14 at least eighteen (18) years of age.

15
16 28-65-810. Reliance on supported decision-making agreement –
17 Limitation of liability.

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

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

24
25 28-65-811. Reporting of suspected abuse, neglect, or exploitation.

26 If a person who receives a copy of a supported decision-making
27 agreement or is otherwise aware of the existence of a supported decision-
28 making agreement has cause to believe that the adult with a disability is
29 being abused, neglected, or exploited by the supporter, the person shall
30 report the alleged abuse, neglect, or exploitation to the Adult Protective
31 Services Unit of the Department of Human Services.

32
33 28-65-812. Form of supported decision-making agreement.

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

"SUPPORTED DECISION-MAKING AGREEMENT

IMPORTANT INFORMATION FOR SUPPORTER: DUTIES

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

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

APPOINTMENT OF SUPPORTER

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

I agree and designate that:

Name:

Address:

Phone number:

Email address:

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

- () Obtaining food, clothing, and shelter;
- () Taking care of my physical health; and
- () Managing my financial affairs.

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

- (1) Access, collect, or obtain information that is relevant to a life decision, including without limitation information from my medical, psychological, financial, educational, or treatment records;
- (2) Understand my options so that I can make an informed life decision; or
- (3) Communicate my life decision to an appropriate person.

() A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of

1 1996, Pub. L. No. 104-191, is attached.

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

5
6 EFFECTIVE DATE OF SUPPORTED DECISION-MAKING AGREEMENT

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

10
11 Signed this _____ day of _____, 20__

12
13 CONSENT OF SUPPORTER

14 I, (name of supporter), consent to act as a supporter under this
15 agreement.

16
17 (Signature of supporter)

18
19 (Printed name of supporter)

20 SIGNATURES

21
22
23 _____
24 (Signature of adult with a disability)

25
26 _____
27 (Printed name of adult with a disability)

28
29 _____
30 (Signature of Witness 1)

31
32 _____
33 (Printed name of Witness 1)

34
35 _____
36 (Signature of Witness 2)

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(Printed name of Witness 2)

State of

County of

This document was acknowledged before me on _____ (Date)

by _____.

(Name of Principal)

(Seal, if any)

Signature of Notary

My commission expires: _____

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.

/s/J. Mayberry