

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: H1/21/21 H3/3/21*

2 93rd General Assembly

# A Bill

3 Regular Session, 2021

HOUSE BILL 1005

4

5 By: Representatives J. Mayberry, *Ennett*

6 By: Senator A. Clark

7

8

## For An Act To Be Entitled

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

11

12

13

## Subtitle

14

TO ESTABLISH THE SUPPORTED DECISION-  
15 MAKING AGREEMENT ACT.

16

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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

23 Subchapter 8 – Supported Decision-making Agreement Act

24

25 28-65-801. Short title.

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

28

29 28-65-802. Definitions.

30 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

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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.

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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                   (a) An adult with a disability may enter into a supported decision-  
26 making agreement if the adult with a disability:

27                   (1) Enters into the supported decision-making agreement  
28 voluntarily and without coercion or undue influence; and

29                   (2) Understands the nature and effect of the supported decision-  
30 making agreement.

31                   (b) A supported decision-making agreement between an adult with a  
32 disability and one (1) or more supporters authorizes a supporter to do one  
33 (1) or more of the following:

34                   (1) Provide supported decision-making, including without  
35 limitation assistance in understanding the options, responsibilities, and  
36 consequences of the life decisions of the adult with a disability, without

1 making the life decision on behalf of the adult with a disability;

2 (2) Assist the adult with a disability in accessing, collecting,  
3 and obtaining information that is relevant to a life decision, including  
4 without limitation information from the adult with a disability's medical,  
5 psychological, financial, educational, and treatment records;

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

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

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11 28-65-805. Authority of supporter – Nature of relationship.

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

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

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

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

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

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

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

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

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

29  
30 28-65-806. Designation of alternate supporter in certain  
31 circumstances.

32 In order to prevent a conflict of interest, if an adult with a  
33 disability determines that the supporter with whom the adult with a  
34 disability has entered into a supported decision-making agreement is the most  
35 appropriate person to provide supports and services to the adult with a  
36 disability for which the supporter will be compensated, the adult with a

1 disability may amend the supported decision-making agreement to designate an  
2 alternate person to act as the supporter of the adult with a disability for  
3 the limited purpose of participating in person-centered planning related to  
4 the provision of those supports and services.

5  
6 28-65-807. Term of agreement.

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

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

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

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

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

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

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

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

29  
30 28-65-808. Access to personal information.

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

35 (b) If a supporter assists an adult with a disability in accessing,  
36 collecting, or obtaining the adult with a disability's personal information,

1 including protected health information under the Health Insurance Portability  
2 and Accountability Act of 1996, Pub. L. No. 104-191, or educational records  
3 under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §  
4 1232g, as it existed on January 1, 2021, the supporter shall ensure the  
5 information is kept privileged and confidential, as applicable, and protected  
6 from unauthorized access, use, or disclosure.

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

10  
11 28-65-809. Authorizing and witnessing of supported decision-making  
12 agreement.

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

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

20  
21 28-65-810. Reliance on supported decision-making agreement –  
22 Limitation of liability.

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

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

29  
30 28-65-811. Reporting of suspected abuse, neglect, or exploitation.

31 If a person who receives a copy of a supported decision-making  
32 agreement or is otherwise aware of the existence of a supported decision-  
33 making agreement has cause to believe that the adult with a disability is  
34 being abused, neglected, or exploited by the supporter, the person may report  
35 the alleged abuse, neglect, or exploitation to the Adult Protective Services  
36 Unit of the Department of Human Services.

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

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

"SUPPORTED DECISION-MAKING AGREEMENT  
THIS IS NOT A GUARDIANSHIP OR A POWER OF ATTORNEY"  
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:

- (1) Help me 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) Help me understand my options so that I can make an informed

1 life decision; or

2 (3) Help me communicate my life decision to an appropriate  
3 person.

4 ( ) A release allowing my supporter to see protected health  
5 information under the Health Insurance Portability and Accountability Act of  
6 1996, Pub. L. No. 104-191, is attached.

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

10  
11 EFFECTIVE DATE OF SUPPORTED DECISION-MAKING AGREEMENT

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

15  
16 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

17  
18 CONSENT OF SUPPORTER

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

21  
22 (Signature of supporter)

23  
24 (Printed name of supporter)

25 SIGNATURES

26  
27  
28 \_\_\_\_\_  
29 (Signature of adult with a disability)

30  
31 \_\_\_\_\_  
32 (Printed name of adult with a disability)

33  
34 \_\_\_\_\_  
35 (Signature of Witness 1)

1 \_\_\_\_\_

2 (Printed name of Witness 1)

3 \_\_\_\_\_

4 \_\_\_\_\_

5 (Signature of Witness 2)

6 \_\_\_\_\_

7 \_\_\_\_\_

8 (Printed name of Witness 2)

9 \_\_\_\_\_

10 State of

11 County of

12 \_\_\_\_\_

13 This document was acknowledged before me on \_\_\_\_\_ (Date)

14 by \_\_\_\_\_.

15 (Name of Principal)

16 \_\_\_\_\_

17 \_\_\_\_\_ (Seal, if any)

18 Signature of Notary

19 \_\_\_\_\_

20 My commission expires: \_\_\_\_\_

21 \_\_\_\_\_

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

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

31 \_\_\_\_\_  
32 /s/J. Mayberry

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