

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

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

As Engrossed: H1/21/21 H3/3/21  
**A Bill**

HOUSE BILL 1005

By: Representatives J. Mayberry, *Ennett*  
By: Senator A. Clark

### For An Act To Be Entitled

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

### Subtitle

TO ESTABLISH THE SUPPORTED DECISION-  
MAKING AGREEMENT ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

#### Subchapter 8 – Supported Decision-making Agreement Act

28-65-801. Short title.

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

28-65-802. Definitions.

As used in this subchapter:

(1) “Adult” means an individual:

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

(B) Under eighteen (18) years of age who has been

emancipated;

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



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

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

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

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

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

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

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

28-65-803. Purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Is one of trust and confidence; and

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

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

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

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

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

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

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

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

28-65-807. Term of agreement.

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

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

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

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

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

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

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

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

28-65-808. Access to personal information.

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

(b) If a supporter assists an adult with a disability in accessing, collecting, or obtaining the adult with a disability's 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. § 1232g, as it existed on January 1, 2021, the supporter shall ensure the information is kept privileged and confidential, as applicable, and protected from unauthorized access, use, or disclosure.

(c) 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.

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

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

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

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

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

(b) 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.

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

If a person who receives a copy of a supported decision-making agreement or is otherwise 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, the person may report the alleged abuse, neglect, or exploitation to the Adult Protective Services Unit of the Department of Human Services.

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

life decision; or

(3) Help me 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 1996, Pub. L. No. 104-191, is attached.

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

EFFECTIVE DATE OF SUPPORTED DECISION-MAKING AGREEMENT

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

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

CONSENT OF SUPPORTER

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

(Signature of supporter)

(Printed name of supporter)

SIGNATURES

\_\_\_\_\_  
(Signature of adult with a disability)

\_\_\_\_\_  
(Printed name of adult with a disability)

\_\_\_\_\_  
(Signature of Witness 1)

\_\_\_\_\_  
(Printed name of Witness 1)

\_\_\_\_\_  
(Signature of Witness 2)

\_\_\_\_\_  
(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 MAY 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*