

By: Zedler, Naishtat

H.B. No. 3624

A BILL TO BE ENTITLED

AN ACT

relating to authorizing supported decision-making agreements for certain adults with disabilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle I, Title 3, Estates Code, is amended by adding Chapter 1357 to read as follows:

CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1357.001. SHORT TITLE. This chapter may be cited as the Supported Decision-Making Agreement Act.

Sec. 1357.002. DEFINITIONS. In this chapter:

(1) "Adult" means an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.

(2) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.

(3) "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.

1 (4) "Supported decision-making agreement" is an
2 agreement between an adult with a disability and a supporter
3 entered into under this chapter.

4 (5) "Supporter" means an adult who has entered into a
5 supposed decision-making agreement with an adult with a disability.

6 Sec. 1357.003. PURPOSE. The purpose of this chapter is to
7 recognize a less restrictive alternative to guardianship for adults
8 with disabilities who need assistance with decisions regarding
9 daily living but who are not considered incapacitated persons for
10 purposes of establishing a guardianship under this title.

11 SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

12 Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING
13 AGREEMENT. An adult with a disability may voluntarily, without
14 undue influence or coercion, enter into a supported decision-making
15 agreement with a supporter under which the adult with a disability
16 authorizes the supporter to do any or all of the following:

17 (1) provide supported decision-making, including
18 assistance in understanding the options, responsibilities, and
19 consequences of the adult's life decisions, without making those
20 decisions on behalf of the adult with a disability;

21 (2) subject to Section 1357.054, assist the adult in
22 accessing, collecting, and obtaining information that is relevant
23 to a given life decision, including medical, psychological,
24 financial, educational, or treatment records, from any person;

25 (3) assist the adult with a disability in
26 understanding the information described by Subdivision (2); and

27 (4) assist the adult in communicating the adult's

1 decisions to appropriate persons.

2 Sec. 1357.052. AUTHORITY OF SUPPORTER. A supporter may
3 exercise the authority granted to the supporter in the supported
4 decision-making agreement.

5 Sec. 1357.053. TERM OF AGREEMENT. (a) Except as provided
6 by Subsection (b), the supported decision-making agreement extends
7 until terminated by either party or by the terms of the agreement.

8 (b) If the Department of Family and Protective Services
9 finds after opportunity for appeal that the adult with a disability
10 has been abused, neglected, or exploited by the supporter or if the
11 supporter is found criminally liable for that conduct, the
12 supported decision-making agreement is terminated.

13 Sec. 1357.054. ACCESS TO PERSONAL INFORMATION. (a) A
14 supporter is only authorized to assist the adult with a disability
15 in accessing, collecting, or obtaining information that is relevant
16 to a decision authorized under the supported decision-making
17 agreement.

18 (b) If a supporter assists an adult with a disability in
19 accessing, collecting, or obtaining personal information,
20 including protected health information under the Health Insurance
21 Portability and Accountability Act (Pub. L. No. 104-191) or
22 educational records under the Family Educational Rights and Privacy
23 Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure
24 the information is kept privileged and confidential, as applicable,
25 and is not subject to unauthorized access, use, or disclosure.

26 (c) The existence of a supported decision-making agreement
27 does not preclude an adult with a disability from seeking personal

1 information without the assistance of a supporter.

2 Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED
3 DECISION-MAKING AGREEMENT. (a) A supported decision-making
4 agreement must be signed voluntarily, without coercion or undue
5 influence, by the adult with a disability and the supporter in the
6 presence of two or more subscribing witnesses or a notary public.

7 (b) If signed before two witnesses, the attesting witnesses
8 must be at least 14 years of age.

9 Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING
10 AGREEMENT. (a) Subject to Subsection (b), a supported
11 decision-making agreement is only valid if it is in substantially
12 the following form:

13 SUPPORTED DECISION-MAKING AGREEMENT

14 Appointment of Supporter

15 I, (insert your name), make this agreement of my own free
16 will.

17 I agree and designate that: _____

18 Name: _____

19 Address: _____

20 Phone Number: _____

21 E-mail Address: _____

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

24 Y/N obtaining food, clothing, and shelter

25 Y/N taking care of my physical health

26 Y/N managing my financial affairs.

27 My supporter is not allowed to make decisions for me. To help

1 me with my decisions, my supporter may:

2 1. Help me access, collect, or obtain information that is
3 relevant to a decision, including medical, psychological,
4 financial, educational, or treatment records;

5 2. Help me understand my options so I can make an informed
6 decision; or

7 3. Help me communicate my decision to appropriate persons.

8 Y/N A release allowing my supporter to see protected
9 health information under the Health Insurance Portability and
10 Accountability Act (Pub. L. No. 104-191) is attached.

11 Y/N A release allowing my supporter to see educational
12 records under the Family Educational Rights and Privacy Act of 1974
13 (20 U.S.C. Section 1232g) is attached.

14 Effective Date of Supported Decision-Making Agreement

15 This supported decision-making agreement is effective
16 immediately and will continue until (insert date) or until the
17 agreement is terminated by my supporter or me.

18 Signed this _____ day of _____, 20____

19 Consent of Supporter

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

22 _____

23 (signature of supporter) (printed name of supporter)

24 Signature

25 _____

26 (my signature) (my printed name)

1 _____
2 (witness 1 signature) (printed name of witness 1)

3 _____
4 (witness 2 signature) (printed name of witness 2)

5 State of _____

6 County of _____

7 This document was acknowledged before me
8 on _____ (date)

9 by _____ and _____
10 (name of adult with a disability) (name of supporter)

11 _____
12 (signature of notarial officer)

13 (Seal, if any, of notary) _____
14 (printed name)

15 My commission expires: _____

16 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

17 IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE
18 OF THE EXISTENCE OF THIS AGREEMENT HAS REASON TO BELIEVE THAT THE
19 ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY
20 THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT,
21 OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
22 BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT
23 WWW.TXABUSEHOTLINE.ORG.

24 (b) A supported decision-making agreement may be in any form
25 not inconsistent with Subsection (a) and the other requirements of
26 this chapter.

1 SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

2 Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF
3 LIABILITY. (a) A person who receives the original or a copy of a
4 supported decision-making agreement shall rely on the agreement.

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

9 Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLIGENCE, OR
10 EXPLOITATION. If a person who receives a copy of a supported
11 decision-making agreement or is aware of the existence of a
12 supported decision-making agreement has reason to believe that the
13 adult with a disability is being abused, neglected, or exploited by
14 the supporter, the person shall report the alleged abuse, neglect,
15 or exploitation to the Department of Family and Protective
16 Services.

17 SECTION 2. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2015.