

2020 Regular Session

HOUSE BILL NO. 361

BY REPRESENTATIVES DAVIS, NELSON, AND CHARLES OWEN AND SENATORS
CLOUD, FOIL, AND MCMATH

1 AN ACT

2 To enact Code of Civil Procedure Article 4541(A)(11) and Chapter 24-A of Title 13 of the
3 Louisiana Revised Statutes of 1950, to be comprised of R.S. 13:4261.101 through
4 4261.302, relative to supportive decisionmaking agreements for certain adults; to
5 provide for the Supported Decisionmaking Agreement Act; to provide for the scope
6 of supported decisionmaking agreements; to provide for certain definitions, terms,
7 procedures, conditions, requirements, and effects; to provide for access to personal
8 information; to provide for the authority of certain persons; to provide for the term
9 of a supported decisionmaking agreement; to provide for revocation; and to provide
10 for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Civil Procedure Article 4541(A)(11) is hereby enacted to read
13 as follows:

14 Art. 4541. Petition for interdiction

15 A. Any person may petition for the interdiction of a natural person of the age
16 of majority or an emancipated minor. The petitioner shall verify the petition and, to
17 the extent known, shall set forth the following with particularity:

18 * * *

19 (11) A description with particularity of the petitioner's efforts to use less
20 restrictive means before seeking interdiction, including all of the following:

21 (a) The less restrictive means for meeting the defendant's needs that were
22 considered or implemented.

1 §4261.103. Purpose

2 The purpose of this Chapter is to recognize a less restrictive decisionmaking
3 process and empowers supported decisionmaking as an option over interdiction for
4 adults with disabilities who need assistance with decisions regarding daily living.

5 PART II. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

6 §4261.201. Scope of supported decisionmaking agreement

7 An adult may voluntarily, without undue influence or coercion, enter into a
8 supported decisionmaking agreement with a supporter under which the adult
9 authorizes the supporter to do any of the following:

10 (1) Provide supported decisionmaking, including assistance in understanding
11 the options, responsibilities, and consequences of the adult's life decisions, without
12 making those decisions on behalf of the adult.

13 (2) Assist the adult in accessing, collecting, and obtaining information that
14 is relevant to a given life decision, including medical, psychological, financial,
15 educational, or treatment records.

16 (3) Assist the adult in understanding the information described by Paragraph
17 (2) of this Subsection.

18 (4) Assist the adult in communicating the adult's decisions to the appropriate
19 parties.

20 §4261.202. Authority of supporter

21 A supporter may exercise the authority granted to the supporter in the
22 supported decisionmaking agreement.

23 §4261.203. Requirements of supporter

24 A supporter shall do all of the following:

25 (1) Support the will and preference of the adult and not the supporter's
26 opinion of the adult's best interests.

27 (2) Act honestly, diligently, and in good faith.

28 (3) Act within the scope set forth in the adult's supported decisionmaking
29 agreement.

30 (4) Avoid conflicts of interest.

1 (5) Notify the adult in writing of the supporter's intent to resign as a
2 supporter.

3 §4261.204. Prohibitions

4 A supporter is prohibited from doing all of the following:

5 (1) Exerting undue influence upon the adult.

6 (2) Obtaining, without the consent of the adult, information relating to the
7 adult acquired for a purpose other than assisting the adult in making a specific
8 decision authorized by the supported decisionmaking agreement.

9 (3) Acting outside the scope of authority provided in the supported
10 decisionmaking agreement.

11 (4) Obtaining, without the consent of the adult, nonpublic personal
12 information relating to the adult as defined in 15 U.S.C. 6809(4)(A).

13 §4261.205. Requirements of a supported decisionmaking agreement

14 A. A supported decisionmaking agreement shall contain all of the following
15 information:

16 (1) The name, address, and phone number of at least one supporter.

17 (2) A description of the decisionmaking assistance that a supporter shall
18 provide to the adult and, if multiple supporters, how they shall work together.

19 B. A supported decisionmaking agreement may do any of the following:

20 (1) Appoint more than one supporter.

21 (2) Appoint an alternate to act in the place of a supporter under
22 circumstances specified in the agreement.

23 (3) Authorize a supporter to share information with any other supporter or
24 others named in the agreement.

25 C. A supported decisionmaking agreement shall be in the form of an
26 authentic act, dated, and signed by the adult or by the adult's guardian if the adult
27 lacks capacity under Civil Code Article 1918.

28 D. A supported decisionmaking agreement shall contain a separate
29 declaration signed by each supporter named in the agreement indicating the

1 supporter's relationship to the adult, willingness to act as a supporter, and
2 acknowledgment of the duties of a supporter.

3 §4261.206. Revocation

4 A. An adult may revoke a supported decisionmaking agreement at any time.

5 A revocation shall be in the form of an authentic act, dated, and signed by the adult
6 or the adult's guardian if the adult lacks capacity under Civil Code Article 1918, and
7 a copy of the revocation shall be provided to each supporter.

8 B. A supporter may revoke a supported decisionmaking agreement at any
9 time. A revocation shall be in the form of an authentic act, dated, and signed by the
10 supporter, and a copy of the revocation shall be provided to the adult subject of the
11 supported decisionmaking agreement, the adult's guardian, if applicable, and any
12 other supporters.

13 §4261.207. Term of agreement

14 A. A supported decisionmaking agreement terminates under any of the
15 following circumstances:

16 (1) The adult subject of the supported decisionmaking agreement dies.

17 (2) The adult subject of the supported decisionmaking agreement revokes the
18 agreement under R.S. 13:4261.206.

19 (3) The named supporter revokes his participation in writing without naming
20 successor supporters.

21 (4) A court of competent jurisdiction determines that the adult does not have
22 capacity to execute or consent to a supported decisionmaking agreement.

23 (5) A court of competent jurisdiction determines that a supporter has used
24 the supported decisionmaking agreement to commit financial exploitation, abuse, or
25 neglect of the adult.

26 (6) A court of competent jurisdiction appoints a temporary or permanent
27 guardian for the person or property of the adult, unless the court's order of
28 appointment does all of the following:

29 (a) Expressly modifies but continues the supported decisionmaking
30 agreement.

1 **(b) Limits the powers and duties of the guardian.**

2 **(7) The adult signs a valid durable power of attorney, except to the extent**
 3 **that the power of attorney expressly continues, in whole or in part, the supported**
 4 **decisionmaking agreement.**

5 **B. The court may enter an order under Paragraph (A)(4), (5), or (6) of this**
 6 **Section only after notice is given to the adult and all supporters named in the**
 7 **agreement and a hearing is conducted.**

8 **§4261.208. Access to personal information**

9 **A. A supporter is authorized to assist the adult only in accessing, collecting,**
 10 **or obtaining information that is relevant to a decision authorized under the supported**
 11 **decisionmaking agreement.**

12 **B. If a supporter assists an adult in accessing, collecting, or obtaining**
 13 **personal information, including protected health information under the Health**
 14 **Insurance Portability and Accountability Act of 1996 (P.L. 104-191) or educational**
 15 **records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.**
 16 **1232g), the supporter shall ensure the information is kept privileged and confidential,**
 17 **as applicable, and is not subject to unauthorized access, use, or disclosure.**

18 **C. The existence of a supported decisionmaking agreement does not preclude**
 19 **an adult from seeking personal information without the assistance of a supporter.**

20 **PART III. MISCELLANEOUS PROVISIONS**

21 **§4261.301. Reliance**

22 **A supported decisionmaking agreement that complies with Part II of this**
 23 **Chapter is presumed valid. A party may rely on the presumption of validity unless**
 24 **the party has actual knowledge that the supported decisionmaking agreement was not**
 25 **validly executed.**

26 **§4261.302. Reporting of suspected abuse, neglect, or exploitation**

27 **If a person who receives a copy of a supported decisionmaking agreement or**
 28 **is aware of the existence of a supported decisionmaking agreement and has cause to**
 29 **believe that the adult is being abused, neglected, or exploited by a supporter, the**

1 person shall report the alleged abuse, neglect, or exploitation to any adult protection
2 agency or any local or state law enforcement agency.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____