

2020 Regular Session

HOUSE BILL NO. 361

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

CIVIL/LAW: Provides relative to supported decisionmaking agreements as a less restrictive means to interdiction

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 4261.303, 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; to provide for
10 liability as between the parties and third parties; and to provide 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 * * *

1 (5) "Supporter means an individual who has attained the age of eighteen
2 years of age and entered into a supported decisionmaking agreement with an adult.

3 §4261.103. Purpose

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

7 PART II. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

8 §4261.201. Scope of supported decisionmaking agreement

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

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

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

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

20 (4) Assist the adult in communicating the adult's decisions to the appropriate
21 parties.

22 §4261.202. Authority of supporter

23 A supporter may exercise the authority granted to the supporter in the
24 supported decisionmaking agreement.

25 §4261.203. Requirements of supporter

26 A supporter shall do all of the following:

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

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

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

3 (4) Avoid conflicts of interest.

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

6 §4261.204. Prohibitions

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

8 (1) Exerting undue influence upon the adult.

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

12 (3) Acting outside the scope of authority provided in the supported
13 decisionmaking agreement.

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

16 §4261.205. Requirements of a supported decisionmaking agreement

17 A. A supported decisionmaking agreement shall contain all of the following
18 information:

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

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

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

23 (1) Appoint more than one supporter.

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

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

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

4 D. A supported decisionmaking agreement shall contain a separate
5 declaration signed by each supporter named in the agreement indicating the
6 supporter's relationship to the adult, willingness to act as a supporter, and
7 acknowledgment of the duties of a supporter.

8 §4261.206. Revocation

9 A. An adult may revoke a supported decisionmaking agreement at any time.
10 A revocation shall be in the form of an authentic act, dated, and signed by the adult
11 or the adult's guardian if the adult lacks capacity under Civil Code Article 1918, and
12 a copy of the revocation shall be provided to each supporter.

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

18 §4261.207. Term of agreement

19 A. A supported decisionmaking agreement terminates under any of the
20 following circumstances:

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

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

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

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

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

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

7 (a) Expressly modifies but continues the supported decisionmaking
8 agreement.

9 (b) Limits the powers and duties of the guardian.

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

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

16 §4261.208. Access to personal information

17 A. A supporter is authorized to assist the adult only in accessing, collecting,
18 or obtaining information that is relevant to a decision authorized under the supported
19 decisionmaking agreement.

20 B. If a supporter assists an adult in accessing, collecting, or obtaining
21 personal information, including protected health information under the Health
22 Insurance Portability and Accountability Act of 1996 (P.L. 104-191) or educational
23 records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.
24 1232g), the supporter shall ensure the information is kept privileged and confidential,
25 as applicable, and is not subject to unauthorized access, use, or disclosure.

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

1 PART III. MISCELLANEOUS PROVISIONS2 §4261.301. Reliance

3 A supported decisionmaking agreement that complies with Part II of this
4 Chapter is presumed valid. A party may rely on the presumption of validity unless
5 the party has actual knowledge that the supported decisionmaking agreement was not
6 validly executed.

7 §4261.302. Liability

8 A. Except as provided in Subsection C of this Section, a person who in good
9 faith, relies on an authorization in a supported decisionmaking agreement or who, in
10 good faith, declines to honor an authorization in a supported decisionmaking
11 agreement is not subject to civil or criminal liability or to discipline for
12 unprofessional conduct.

13 B. Except as provided in Subsection C of this Section, a supporter who
14 performs supported decisionmaking in good faith as specified in a supported
15 decisionmaking agreement is immune from civil or criminal liability resulting from
16 the adult's decision.

17 C. This Section does not apply to a person whose act or omission amounts
18 to fraud, misrepresentation, recklessness, or willful or wanton misconduct.

19 §4261.303. Reporting of suspected abuse, neglect, or exploitation

20 If a person who receives a copy of a supported decisionmaking agreement or
21 is aware of the existence of a supported decisionmaking agreement and has cause to
22 believe that the adult is being abused, neglected, or exploited by a supporter, the
23 person shall report the alleged abuse, neglect, or exploitation to any adult protection
24 agency or any local or state law enforcement agency.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 361 Reengrossed

2020 Regular Session

Davis

Abstract: Enacts the Supportive Decisionmaking Agreements Act and establishes the procedures and requirements for persons subject to this Act.

Present law provides for the procedures and requirements for a petition for interdiction.

Proposed law enacts an additional requirement of certification of consideration of less restrictive means prior to seeking interdiction.

Proposed law provides definitions for "adult", "guardian", "supported decisionmaking", "supported decisionmaking agreement", and "supporter".

Proposed law provides for a supportive decisionmaking agreement between an adult and a supporter, whereby the supporter advises the adult on issues outlined within the agreement without impeding the self-determination of the adult.

Proposed law provides that supportive decisionmaking agreements are recognized as less restrictive means in regards to the management of adults.

Proposed law provides that the authority of the supporter is granted by the supported decisionmaking agreement.

Proposed law provides for the various requirements and prohibitions of actions taken by the supporter.

Proposed law provides for the requirements, revocation, and term of a supported decisionmaking agreement.

Proposed law authorizes a supporter to assist with obtaining personal information that is relevant to decisions authorized under the agreement.

Proposed law provides that supporters who act in good faith and third parties who rely in good faith on the supported decisionmaking agreement are not subject to civil or criminal liability or to discipline for unprofessional conduct.

(Adds C.C.P. Art. 4541(A)(11) and R.S. 13:4261.101-4261.303)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Remove the definitions of "disability" and "presumption of capacity," amend the definitions of "adult" and "supporter," and add a definition for "guardian."
2. Replace the phrase "adults with disability" with the term "adults".
3. Provide for reporting of abuse, neglect, and exploitation to any adult protection agency or any local or state law enforcement agency.
4. Make technical changes.