

HOUSE BILL NO. 1378

Introduced by

Representatives Magrum, Karls, K. Koppelman, Laning, J. Nelson, Rohr, Satrom

Senators Dever, Dotzenrod, Heckaman, Hogan, Krebsbach

1 A BILL for an Act to create and enact a new chapter to title 30.1 of the North Dakota Century
2 Code, relating to supported decisionmaking, a process for making well-informed, voluntary
3 decisions by methods less restrictive than guardianship or conservatorship.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 30.1 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Definitions.**

8 As used in this chapter:

- 9 1. "Intentional misconduct" means conduct by a supporter with actual knowledge at the
10 time of the conduct that the conduct is unnecessarily harmful to the health or
11 well-being of a named individual.
- 12 2. "Named individual" is the individual identified in a supported decisionmaking
13 agreement who is to receive decisionmaking assistance.
- 14 3. "Supported decisionmaking" means assistance from a person of a named individual's
15 choosing:
- 16 a. To identify, collect, and organize documents that apply to a decision the named
17 individual is considering;
- 18 b. To identify, collect, and organize information that may be helpful to the named
19 individual when making a decision;
- 20 c. To help the named individual understand documents;
- 21 d. To identify choices available for a responsible decision;
- 22 e. To identify advantages and disadvantages of available choices;
- 23 f. To communicate any decision by the named individual to others at the request of
24 the named individual; or

g. To explain the decisionmaking process allowed under this subsection to the court in any proceeding to create or modify a guardianship or conservatorship for the named individual.

4. "Supported decisionmaking agreement" means a written, signed, dated, and witnessed understanding between a named individual and a trusted adult who agrees to provide assistance for decisionmaking to maximize the named individual's ability to make informed, voluntary choices, including choices within:

a. Health care.

b. Residence.

c. Finances.

d. Education.

e. Legal affairs.

f. Vocation.

5. "Supporter" is a person that has signed a supported decisionmaking agreement, agreeing to provide assistance to the named individual.

Confidential information.

1. The named individual may sign separate authorizations when appropriate to allow others to disclose confidential documents, records, and information to a supporter identified in the authorization. An authorization may allow an individual to provide copies of the documents, records, and information to the supporter.

2. A supporter may obtain information about the named individual only by having written authorization that complies with the applicable federal or state law.

Supporter - Liability.

A supporter is not liable to the named individual and has not engaged in professional misconduct for acts performed as a supporter in good faith unless the supporter has been recklessly or grossly negligent or has intentionally committed misconduct.

Formalities - Effects.

1. It is presumed the named individual has capacity to enter a supported decisionmaking agreement. This presumption may be rebutted only by clear and convincing evidence.

2. A named individual's use of uncommon methods of communication does not affect the named individual's capacity to enter a supported decisionmaking agreement.

- 1 3. A named individual may have more than one supported decisionmaking agreement in
2 effect at the same time. If any two of a named individual's supported decisionmaking
3 agreements are incompatible, the more recent agreement prevails.
- 4 4. Two supported decisionmaking agreements are not incompatible solely due to
5 enabling the named individual to get decisionmaking assistance from more than one
6 supporter at the same time for the same decision.
- 7 5. A supported decisionmaking agreement does not prevent the named individual from:
 - 8 a. Getting decisionmaking assistance from someone who is not a supporter in a
9 supported decisionmaking agreement;
 - 10 b. Making decisions independently without consulting a supporter; or
 - 11 c. Getting access to and copies of documents and records about the named
12 individual.
- 13 6. The existence or contents of a supported decisionmaking agreement may not be used
14 as evidence of incapacity or incompetence.
- 15 7. A supported decisionmaking agreement does not give a supporter the ability to act as
16 a surrogate decisionmaker. A supported decisionmaking agreement does not give a
17 supporter the authority to sign documents on behalf of the named individual.

18 **Termination.**

- 19 1. A supported decisionmaking agreement may be terminated by the named individual by
20 giving notice to the supporter orally, in writing, through an assistive technology device,
21 or by any other act showing a specific intent to terminate the agreement.
- 22 2. A supported decisionmaking agreement may be terminated by a supporter by
23 providing written notice of the supporter's resignation to the named individual. If a
24 supported decisionmaking agreement includes more than one supporter, any
25 supporter can terminate the agreement only as to that supporter.
- 26 3. A supported decisionmaking agreement is terminated as to a specific supporter when:
 - 27 a. A court has convicted the supporter of a crime involving abuse, neglect, or
28 exploitation;
 - 29 b. A restraining order has been issued by a court to protect the named individual
30 from the supporter; or

c. A court has determined the supporter lacks capacity to make or communicate responsible decisions concerning residential or educational matters, medical treatment, legal affairs, or vocational, financial, or other matters affecting the health or safety of the named individual.

4. A supported decisionmaking agreement may be terminated by any additional method specified in the supported decisionmaking agreement.

Confidential documents, records, information.

A supporter may not allow unauthorized access to, use of, or disclosure of any confidential documents, records, and other information about the named individual, unless the named individual has otherwise directed.

Witnesses.

1. A notary public or two qualified witnesses must verify in writing the signatures to a supported decisionmaking agreement.

2. To be a qualified witness, the witness must:

a. Not be a party to the agreement;

b. Be at least eighteen years of age;

c. Be competent;

d. Not be an employee or agent of a supporter in the agreement; and

e. Not be a creditor of the named individual.

Reliance on agreement - Limitation of liability.

1. Any third person who receives a copy of a supported decisionmaking agreement shall rely on the agreement, unless:

a. The third person has cause to believe the named individual is being abused, neglected, or exploited by the supporter;

b. The third person has actual knowledge or notice the supported decisionmaking agreement is invalid; or

c. The third person has actual knowledge or notice the supported decisionmaking agreement has been terminated.

2. A third 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 decisionmaking agreement.

- 1 3. An entity, custodian, or organization that discloses personal information about a
2 named individual to a supporter who has written authorization to access, collect, or
3 obtain, or to assist a named individual to access, collect, or obtain that information, is
4 immune from any action alleging the entity, custodian, or organization improperly or
5 unlawfully disclosed information to the supporter unless:
- 6 a. The entity, custodian, or organization had actual knowledge or notice the named
7 individual had revoked the authorization;
- 8 b. The entity, custodian, or organization had actual knowledge or notice the
9 supported decisionmaking agreement is invalid; or
- 10 c. The entity, custodian, or organization knowingly or recklessly disclosed
11 information beyond the scope of the authorization.
- 12 4. A third person is not protected from charges of professional misconduct and is not
13 immune from liability for:
- 14 a. Acting inconsistently with the known expressed wishes of a named individual; or
15 b. Failing to provide documents, records, or other information to either a named
16 individual or a supporter who has written authorization for lawful access to or
17 copies of the information.
- 18 5. A supported decisionmaking agreement does not relieve a person of legal obligations
19 to provide services to an individual with a disability.

20 **Sample supported decisionmaking agreement form.**

21 The following form is not mandatory, but any supported decisionmaking agreement must be
22 substantially equivalent and is governed by this chapter:

23 Supported Decisionmaking Agreement

24 I, _____, understand this document shows that a "supporter," _____,
25 and I have an agreement. We have agreed my supporter will help me to make some decisions
26 that otherwise may be more difficult or confusing for me.

27 My supporter does not have authority to make my decisions. My supporter will help me, as I
28 request, by:

- 29 1. Getting records, documents, and other information so I can consider them to
30 understand the issues better.

- 1 2. Organizing my records, documents, and other information so I can understand the
2 issues more easily.
- 3 3. Identifying choices available to me and how each choice might lead to advantages and
4 disadvantages.
- 5 4. Showing ways to compare the advantages and disadvantages of each available
6 choice with the advantages and disadvantages of other available choices.
- 7 5. Telling other people what my decision is if I ask the supporter to tell them. I realize I
8 have to be at least eighteen years old to make an effective supported decisionmaking
9 agreement. I also realize this supported decisionmaking agreement is effective only if I
10 understand its meaning and what the agreement does.

11 I understand I can have more than one supported decisionmaking agreement with different
12 supporters at the same time. This agreement takes effect as soon as the agreement is signed
13 by me, my supporter, and the required witnesses or notaries public.

- 14 1. This is a supported decisionmaking agreement of the following "named
15 individual":

16 Name: _____ Date of Birth: _____

17 Address: _____

18 Phone: (work) _____ (home) _____ (cell) _____

19 Email: _____

- 20 2. I appoint the following persons as a supporter for me for decisionmaking:

21 Name: _____ (Must be age 18 or older)

22 Address: _____

23 Phone: (work) _____ (home) _____ (cell) _____

24 Email: _____

25 Relationship to the named individual: _____

- 26 3. Areas I want my supporter for decisionmaking to help me:

27 (check those that apply and add your "initials" when completed)

28 _____ Health care

29 Managing my physical health and my mental health including:

30 Whether and which health care professionals to consult;

31 When to seek health care;

Whether and which health care professionals to use for
treatment purposes;

Whether and which legally available over-the-counter or
prescribed medications to take.

My supporter may see my private health information under the
Health Insurance Portability and Accountability Act, when I
provide a signed authorization.

Residence

Obtaining food, clothing, and a place to live including:

Where I (the named individual) reside;

With whom I (the named individual) reside.

Finances

Managing my money and property including:

How much money I save and how to save it;

How much money to spend and how I spend it;

Whether to have a representative payee;

How and when to pay legitimate bills.

Education

Getting an education or other training including:

Whether to get additional education;

Where to get additional education;

Objectives of additional education;

Choosing support services, as needed.

Legal Affairs

Getting legal advice including:

Whether to get legal representation;

Whether to get help with suspicious offers.

Vocation

Finding a job including:

The named individual's employment;

Additional training to get employment and to advance in
employment;

Choosing support services for employment, as needed.

4. Areas I do not want my supporter for decisionmaking to help me (if any)

I do not want my supported decisionmaker to help me in making these
kinds of decisions:

This document will not be valid unless it is notarized or signed by two qualified witnesses.

Notary Public or Statement of Witnesses

This document must be (1) notarized or (2) witnessed by two qualified adult witnesses who
verify the signing of a supported decisionmaking agreement. Each witness must:

1. Not be a party to the agreement;
2. Be at least eighteen years of age;
3. Not be an employee or agent of a supporter in the agreement; and
4. Not be a creditor of the named individual.

5. Signature of named individual designating a supporter

My Supporter for Decisionmaking

I am at least eighteen years of age and understand the nature and effect of this agreement.

I have chosen _____ as a supporter for decisionmaking for me.

<u>Print Name</u>	<u>Signature of Named Individual</u>	<u>Date</u>
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Option 1: Notary public - Verification of named individual's signature

State of _____

County of _____

In my presence on _____ (date) _____ (named individual's name) signed this
document, acknowledged the named individual's signature on this document, or
acknowledged the named individual directed the person signing this document to
sign on the named individual's behalf.

1 _____

2 (Signature of Notary Public)

3 My commission expires _____, 20__.

4 [notarial stamp]

5 Option 2: Two witnesses - Verification of named individual's signature

6 The following two qualified adults have witnessed the signing of the supported

7 decisionmaking agreement in their presence by the named individual, the named

8 individual's acknowledgment of the named individual's signature on the document,

9 or the named individual's acknowledgment the named individual directed the person

10 signing this document to sign on the named individual's behalf.

11 Witness one:

12 In my presence on _____ (date) _____ (named individual's name) signed this

13 document, acknowledged the named individual's signature on this document, or

14 acknowledged the named individual directed the person signing this document to

15 sign on the named individual's behalf.

16 _____ (Signature of witness one)

17 _____ (Address)

18 Witness two:

19 In my presence on _____ (date) _____ (named individual's name) signed this

20 document, acknowledged the named individual's signature on this document, or

21 acknowledged the named individual directed the person signing this document to

22 sign on the named individual's behalf.

23 _____ (Signature of witness two)

24 _____ (Address)

25 6. Signature of supporter for decisionmaking

26 My relationship to the named individual is:

27 _____

28 I agree to act as a supporter for the named individual for decisionmaking under this

29 agreement.

30 _____

31 Print Name

Signature of Supporter

Date

1 Option 1: Notary public - Verification of supporter's signature

2 State of _____

3 County of _____

4 In my presence on _____ (date) _____ (supporter's name) signed this
5 document, acknowledged the supporter's signature on this document, or
6 acknowledged the supporter directed the person signing this document to
7 sign on the supporter's behalf.

8 _____

9 (Signature of Notary Public)

10 My commission expires _____, 20__.

11 [notarial stamp]

12 Option 2: Two witnesses - Verification of supporter's signature

13 The following two qualified adults have witnessed the supporter's signing of the
14 supported decisionmaking agreement, the supporter's acknowledgment of the
15 supporter's signature, or the supporter's acknowledgment the supporter directed the
16 person signing this document to sign on the supporter's behalf.

17 Witness one:

18 In my presence on _____ (date) _____ (supporter's name) signed this document,
19 acknowledged the supporter's signature on this document, or acknowledged the
20 supporter directed the person signing this document to sign on the supporter's behalf.

21 _____ (Signature of witness one)

22 _____ (Address)

23 Witness two:

24 In my presence on _____ (date) _____ (supporter's name) signed this document,
25 acknowledged the supporter's signature on this document, or acknowledged the
26 supporter directed the person signing this document to sign on the supporter's behalf.

27 _____ (Signature of witness two)

28 _____ (Address)