

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1378
(Representatives Magrum, Karls, K. Koppelman, Laning, J. Nelson, Rohr, Satrom)
(Senators Dever, Dotzenrod, Heckaman, Hogan, Krebsbach)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions.

As used in this chapter:

1. "Intentional misconduct" means conduct by a supporter with actual knowledge at the time of the conduct that the conduct is unnecessarily harmful to the health or well-being of a named individual.
2. "Named individual" is the individual identified in a supported decisionmaking agreement who is to receive decisionmaking assistance.
3. "Supported decisionmaking" means assistance from a person of a named individual's choosing:
 - a. To identify, collect, and organize documents that apply to a decision the named individual is considering;
 - b. To identify, collect, and organize information that may be helpful to the named individual when making a decision;
 - c. To help the named individual understand documents;
 - d. To identify choices available for a responsible decision;
 - e. To identify advantages and disadvantages of available choices;
 - f. To communicate any decision by the named individual to others at the request of 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.
- 3. A named individual may have more than one supported decisionmaking agreement in effect at the same time. If any two of a named individual's supported decisionmaking agreements are incompatible, the more recent agreement prevails.
- 4. Two supported decisionmaking agreements are not incompatible solely due to enabling the named individual to get decisionmaking assistance from more than one supporter at the same time for the same decision.
- 5. A supported decisionmaking agreement does not prevent the named individual from:
 - a. Getting decisionmaking assistance from someone who is not a supporter in a supported decisionmaking agreement;
 - b. Making decisions independently without consulting a supporter; or
 - c. Getting access to and copies of documents and records about the named individual.
- 6. The existence or contents of a supported decisionmaking agreement may not be used as evidence of incapacity or incompetence.
- 7. A supported decisionmaking agreement does not give a supporter the ability to act as a surrogate decisionmaker. A supported decisionmaking agreement does not give a supporter the authority to sign documents on behalf of the named individual.

Termination.

1. A supported decisionmaking agreement may be terminated by the named individual by giving notice to the supporter orally, in writing, through an assistive technology device, or by any other act showing a specific intent to terminate the agreement.
2. A supported decisionmaking agreement may be terminated by a supporter by providing written notice of the supporter's resignation to the named individual. If a supported decisionmaking agreement includes more than one supporter, any supporter can terminate the agreement only as to that supporter.
3. A supported decisionmaking agreement is terminated as to a specific supporter when:
 - a. A court has convicted the supporter of a crime involving abuse, neglect, or exploitation;
 - b. A restraining order has been issued by a court to protect the named individual 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, and 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.
3. An entity, custodian, or organization that discloses personal information about a named individual to a supporter who has written authorization to access, collect, or obtain, or to assist a named individual to access, collect, or obtain that information, is immune from any action alleging the entity, custodian, or organization improperly or unlawfully disclosed information to the supporter unless:
 - a. The entity, custodian, or organization had actual knowledge or notice the named individual had revoked the authorization;
 - b. The entity, custodian, or organization had actual knowledge or notice the supported decisionmaking agreement is invalid; or
 - c. The entity, custodian, or organization knowingly or recklessly disclosed information beyond the scope of the authorization.
4. A third person is not protected from charges of professional misconduct and is not immune from liability for:
 - a. Acting inconsistently with the known expressed wishes of a named individual; or
 - b. Failing to provide documents, records, or other information to either a named individual or a supporter who has written authorization for lawful access to or copies of the information.
5. A supported decisionmaking agreement does not relieve a person of legal obligations to provide services to an individual with a disability.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1378.

House Vote: Yeas 86 Nays 6 Absent 2

Senate Vote: Yeas 42 Nays 0 Absent 5

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State