

1 SB374
2 176149-1
3 By Senators Figures, Waggoner, Allen, Beasley, Ross,
4 Smitherman, Singleton, Brewbaker, Dunn, Coleman-Madison,
5 Sanders, Stutts, Smith, Williams, Marsh and Ward
6 RFD: Judiciary
7 First Read: 23-MAR-16

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8 SYNOPSIS: Existing law does not specifically authorize
9 a relative to petition for visitation with a family
10 member who is the subject of a guardianship and
11 from whom the relative has been isolated.

12 Existing law provides that the guardian of
13 an incapacitated adult is responsible for the care,
14 custody, control, and education of his or her ward
15 unless the court expressly limits those powers.

16 This bill would establish a procedure by
17 which a relative may petition the probate court for
18 visitation with a ward from whom he or she has been
19 isolated, and would authorize a court to grant
20 reasonable visitation with that ward.

21 This bill would also require the guardian to
22 inform the relative whenever a ward dies or is
23 admitted to a medical facility for acute or chronic
24 care, or both, for a period of three days or more.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To amend Section 26-2A-108 of the Code of Alabama
4 1975 and Division 2A, commencing with Section 26-2A-112, is
5 added to Article 2, Chapter 2A of Title 26 of the Code of
6 Alabama 1975; to establish a procedure by which a relative who
7 has been isolated from a family member who is the subject of a
8 guardianship may petition for reasonable visitation rights.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 26-2A-108 of the Code of Alabama
11 1975, is amended to read as follows:

12 "§26-2A-108.

13 "(a) Except as limited pursuant to Section
14 26-2A-105(c), a guardian of an incapacitated person is
15 responsible for health, support, education, or maintenance of
16 the ward, but is not liable to third persons by reason of that
17 responsibility for acts of the ward. In particular and without
18 qualifying the foregoing, a guardian has the same duties,
19 powers, and responsibilities as a guardian for a minor as
20 described in Section 26-2A-78(b), (c), and (d).

21 "(b) Except as provided in Division 2A, in addition
22 to the duties, powers, and responsibilities of a guardian
23 described in subsection (a), a guardian of an incapacitated
24 person has the power to limit or enforce the ward's right to
25 visitation or communication with anyone, including the right
26 to receive visitors, telephone calls, and personal mail."

1 Section 2. Division 2A, commencing with Section
2 26-2A-112, is added to Article 2, Chapter 2A of Title 26 of
3 the Code of Alabama 1975, as follows:

4 Division 2A. Visitation with Incapacitated Persons.
5 §26-2A-112.

6 For the purposes of this division, the following
7 terms have the following meanings:

8 (1) RELATIVE. A sibling, child, parent, grandparent,
9 or grandchild of a ward or a person who shares this same
10 relationship through adoption or a spouse of the ward.

11 (2) VISITATION. Any in-person meeting or any
12 telephonic mail or electronic communication between a ward and
13 his or her relative.

14 (3) VISITATION ORDER. An order issued by the court
15 after notice and hearing regarding the visitation with a ward
16 by his or her relative specifying the approval or disapproval
17 of any visitation and the specifics of that visitation
18 including, but not limited to, the time, place, and manner of
19 the visitation.

20 (4) WARD. An adult who is a ward as defined in
21 Section 26-2A-20.

22 §26-2A-113.

23 (a) A relative may file a petition with the court to
24 compel visitation with a ward from whom he or she has been
25 isolated.

26 (b) The petition shall be filed in the court having
27 jurisdiction over the guardianship of the ward.

1 (c) On motion of either the petitioner or the
2 guardian or the court, the petition shall be transferred to
3 the circuit court for the sole purpose of a determination of
4 any relief under this division.

5 (d) The petition shall state all of the following
6 information:

7 (1) The condition of the wards's physical and mental
8 health, to the extent known by the petitioner.

9 (2) The efforts to obtain visitation with the ward.

10 (3) The proposed visitation that is sought.

11 (4) The deficit or deficits, if any, in the ward's
12 mental functions that are impaired and an identification of a
13 link between the deficit or deficits and the ward's inability
14 to respond knowingly and intelligently to queries about the
15 requested visitation.

16 (5) The names and addresses, so far as they are
17 known to the petitioner, of the spouse and relatives of the
18 first degree of the ward.

19 (e) The court shall provide notice not less than 14
20 days before the hearing in the manner specified in Section
21 26-2A-103, Code of Alabama 1975, unless the hearing is an
22 emergency hearing pursuant to subsection (g), in which case,
23 notice shall be given as soon as practicable.

24 (f) A determination by the court regarding capacity
25 under this section may not be used as evidence of capacity in
26 any other proceeding.

1 (g) If the petition filed under subsection (a)
2 states that the ward's health is in significant decline or
3 that the ward's death may be imminent, the court shall conduct
4 an emergency hearing as soon as practicable, but not later
5 than 10 days after the date the petition is filed under
6 subsection (a).

7 §26-2A-114.

8 Before ruling on the petition, the court may order
9 the Department of Human Resources or the court representative
10 to do any or all of the following:

11 (1) Conduct interviews with the following:

12 a. The ward

13 b. All petitioners.

14 c. The relatives of the ward.

15 d. To the extent practical, neighbors and, if known,
16 close friends of the ward.

17 (2) Inform the ward of the contents of the petition.

18 (3) Determine whether the ward has the capacity to
19 consent to the requested visitation.

20 (4) Determine whether the ward desires the proposed
21 visitation.

22 (5) Report to the court in writing, at least seven
23 days before the hearing, concerning subdivisions (1) to (4),
24 inclusive.

25 (6) Mail, at least seven days before the hearing, a
26 copy of the report referred to in subdivision (5) to all of
27 the following:

1 a. The petitioner or his or her attorney, if any.

2 b. The guardian ad litem appointed to represent the
3 ward for purposes of the petition for visitation.

4 c. The guardian.

5 d. Any other person as the court orders.

6 (7) The report required by this section is
7 confidential and shall be made available only to the parties,
8 persons described in subdivision (6), persons given notice of
9 the petition who have requested this report or who have
10 appeared in the proceedings, their attorneys, and the court.

11 (8) If the court investigator has performed an
12 investigation within the preceding 12 months and furnished a
13 report thereon to the court, the court may order, upon good
14 cause shown, that another investigation is not necessary or
15 that a more limited investigation may be performed.

16 §26-2A-115.

17 (a) In ruling on the petition, the court shall
18 conduct a hearing to determine whether the ward has sufficient
19 capacity to make a knowing and intelligent visitation decision
20 based on evidence presented.

21 (b) If court determines that the ward has sufficient
22 capacity to make a knowing and intelligent visitation decision
23 and the ward expresses a desire for visitation with the
24 petitioner, the court shall order visitation.

25 (c) If the court determines that the ward has
26 sufficient capacity to make a knowing and intelligent

1 visitation decision, but does not desire visitation with the
2 petitioner, the court shall not order visitation.

3 (d) If the court determines that the ward does not
4 have capacity to make a knowing and intelligent visitation
5 decision, the court shall determine whether to order
6 visitation based on the best interest of the ward as
7 determined by the evidence presented to the court.

8 (e) The court shall order the petitioner to pay the
9 court costs and reasonable fees and expenses of any attorney
10 or court representative appointed under this act.

11 §26-2A-116.

12 (a) Except as provided under subsection (b),
13 provided the relative has supplied the guardian with his or
14 her current contact information, the guardian shall as soon as
15 practicable inform relatives of any of the following:

16 (1) The ward dies.

17 (2) The ward is admitted to a medical facility for
18 acute or chronic care for a period of three days or more.

19 (3) The ward's residence has changed.

20 (4) The ward is staying at a location other than the
21 ward's residence for a period that exceeds one calendar week.

22 (5) In the case of the ward's death, the guardian
23 shall inform relatives of any funeral arrangements and the
24 location of the ward's final resting place.

25 (b) The court shall relieve a guardian of the duty
26 to provide notice to a relative under this division, if the
27 court finds that:

1 (1) The relative entitled to notice about the ward
2 has submitted a written request to the guardian electing not
3 to receive notice about a ward's health and residence.

4 (2) A protective order was issued against the
5 relative to protect the ward.

6 (3) The court ordered that the petitioner not be
7 given this information.

8 §26-2A-117.

9 The court has continuing jurisdiction to revoke or
10 modify an order made pursuant to this division upon a petition
11 filed, noticed, and heard in the same manner as the original
12 petition was filed.

13 Section 3. This act shall become effective January
14 1, 2017.