

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **ENGROSSED**

## **House Bill 4378**

(BY DELEGATES SHOTT, LANE, MCCUSKEY, SOBONYA,  
HANSHAW, MILLER, ARVON, BORDER AND KESSINGER)

[Introduced February 3, 2016;  
referred to the Committee on the Judiciary.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new  
 2 sections, designated §44A-3-17 and §44A-3-18, all relating to access to and receipt of  
 3 certain information regarding a protected person by certain relatives of the protected  
 4 person; defining “relative”; providing a relative may apply for access to a “protected  
 5 person”; setting forth time standards in which to conduct a hearing after an application is  
 6 filed; providing for an emergency hearing under particular circumstances; providing for  
 7 service of an application upon a guardian and setting time standards for service thereof;  
 8 providing for the entry of an order by the court following application and a hearing  
 9 conducted thereon; providing standards for a court to observe and implement in issuing a  
 10 ruling on an application; providing the court may issue attorney’s fees to a prevailing party;  
 11 setting forth particular duties for a guardian; and, providing criteria upon which a court may  
 12 relieve a guardian of further responsibility.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto two  
 2 new sections, designated §44A-3-17 and §44A-3-18, all to read as follows:

## **CHAPTER 44A. GUARDIANSHIP AND CONSERVATOR ACT.**

### **ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.**

#### **§44A-3-17. Application by certain relatives for access to persons in guardianship; hearing and court order.**

1 (a) For purposes of this section, unless the context otherwise requires, “relative” means a  
 2 spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-  
 3 brother or half-sister. The term includes said relationships that are created as a result of adoption.  
 4 In addition, “relative” includes any person who has a family-type relationship with a protected  
 5 person.

6 (b) A relative of a protected person may file an application with the court requesting access  
7 to the protected person, including the opportunity to establish visitation or communication with the  
8 protected person.

9 (c) Except as provided by subsection (d) of this section, the court shall schedule a hearing  
10 on the application not later than the sixtieth day after the date an application is filed under  
11 subsection (b) of this section. The court may grant a continuance of a hearing under this section  
12 for good cause.

13 (d) If an application under subsection (b) of this section states that the protected person's  
14 health is in recent significant decline or that the protected person's death may be imminent, the  
15 court shall conduct an emergency hearing as soon as practicable, but not later than the tenth day  
16 after the date the application is filed under subsection (b) of this section.

17 (e) The guardian of a protected person with respect to whom an application is filed under  
18 subsection (b) of this section shall be personally served with a copy of the application and cited  
19 to appear at a hearing under:

20 (1) Subsection (c) of this section at least twenty-one days before the date of the hearing;  
21 and

22 (2) Subsection (d) of this section as soon as practicable.

23 (f) The court shall issue an order after notice and a hearing under this section. An order  
24 issued under this section may:

25 (1) Prohibit the guardian from preventing the applicant access to the protected person if  
26 the applicant shows by a preponderance of the evidence that:

27 (A) The guardian's past act or acts prevented access to the protected person; and

28 (B) The protected person desires contact with the applicant; and

29 (2) Specify the frequency, time, place, location, and any other terms of access.

30 (g) In deciding whether to issue or modify an order issued under this section, the court:

31 (1) Shall consider:

32 (A) Whether any protective orders have been issued against the applicant to protect the  
33 protected person;

34 (B) Whether a court or other state agency has found that the applicant abused, neglected,  
35 or exploited the protected person; and

36 (C) The best interest of the protected person; and

37 (2) May consider whether:

38 (A) Visitation by the applicant should be limited to situations in which a third person,  
39 specified by the court, is present; or

40 (B) Visitation should be suspended or denied.

41 (h) The court may, in its discretion, award the prevailing party in any action brought under  
42 this section court costs and attorney’s fees, if any. Court costs or attorney’s fees awarded under  
43 this subsection may not be paid from the protected person’s estate.

44 (i) The provisions of this section apply to a guardianship created before, on, or after the  
45 effective date of this section.

**§44A-3-18. Guardian’s Duty To Inform Certain Relatives About Protected Person’s Health**

**And Residence.**

1 (a) This section applies with respect to relatives who have been granted access to a  
2 protected person under section (17) of this article.

3 (b) Except as provided by subsection (e) of this section, the guardian of an adult protected  
4 person shall as soon as practicable inform such relatives if:

5 (1) The protected person dies;

6 (2) The protected person is admitted to a medical facility for acute care for a period of  
7 three days or more;

8 (3) The protected person’s residence has changed; or

9 (4) The protected person is staying at a location other than their usual residence for a  
10 period that exceeds two calendar weeks.

11 (c) In the case of the protected person's death, the guardian shall inform such relatives of  
12 any funeral arrangements and the location of the protected person's final resting place.

13 (d) A relative entitled to notice about a protected person under this section may waive the  
14 notice by providing a written request to that effect to the guardian. A guardian shall file any such  
15 written request received by the guardian under this subsection with the court.

NOTE: The purpose of this bill is to provide access to and receipt of certain information regarding protected persons by certain relatives of the protected person. The bill also: (1) defines "relative"; (2) provides a relative may apply to gain access to a "protected person"; (3) sets forth time standards in which to conduct a hearing after an application is filed; (4) provides for an emergency hearing under particular circumstances; (5) provides service of an application must be made upon a guardian while setting time standards for service thereof; (6) provides for the entry of an order by the court following the filing of an application while also providing a hearing is conducted thereon; (7) provides standards for a court to observe and implement in issuing a ruling on an application; (8) provides the court may issue attorney's fees to a prevailing party; and (8) sets forth particular duties for a guardian to provide notice under certain circumstances.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.