

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

House Bill 4378

BY DELEGATES SHOTT, LANE, MCCUSKEY, SOBONYA,

HANSHAW, MILLER, ARVON, BORDER AND KESSINGER

[Passed March 12, 2016; in effect ninety days from
passage.]

1 AN ACT 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; authorizing relatives of a protected person to petition the circuit court for access
5 and information about a protected person; defining “relative”; providing a relative may
6 petition the court for an order granting access to a protected person; setting forth time
7 standards in which to conduct a hearing after a petition is filed; providing for an emergency
8 hearing under particular circumstances; providing for service of a petition upon a guardian
9 and setting time standards for service thereof; providing for the entry of an order by the
10 court following notice and hearing conducted thereon; providing standards for a court to
11 observe and implement in issuing a ruling on a petition; providing the court may award
12 attorney’s fees and costs be paid to a prevailing party; setting forth particular duties for a
13 guardian to provide relatives notice about a protected person’s condition and
14 circumstances; authorizing court to retain jurisdiction; regarding dissemination of
15 information about a protected person to relatives; and providing a guardian method
16 whereby may be relieved of responsibility for providing information regarding a protected
17 person to a relative.

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:

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

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

1 (a) As used in this section, unless the context otherwise requires, "relative" means a
2 spouse, parent, grandparent, stepparent, child, grandchild, sibling or half sibling. The term
3 includes said relationships that are created as a result of adoption. Additionally, as used in this

4 section and section eighteen of this article, "relative" includes any person who has a family-type
5 relationship with a protected person and any person with whom the protected person resided
6 immediately prior to the time guardianship was sought.

7 (b) A relative may file a petition in circuit court seeking access to and information about a
8 protected person which may include the opportunity to have visitation and contact with the
9 protected person. The petition may be filed in the circuit court of the county in which the protected
10 person resides or if the protected person has been admitted to a health care facility in a county
11 other than that in which he or she resides in the circuit court of the county in which the health care
12 facility is located.

13 (c) The court shall schedule a hearing on the petition within sixty days of the petition being
14 filed: *Provided*, That if the petition alleges that the protected person's health is in significant
15 decline or he or she is at imminent risk of death, an emergency hearing shall be scheduled as
16 soon as practicable. The court may continue a hearing for good cause shown.

17 (d) Service of process upon the guardian shall be by personal service, consistent with the
18 West Virginia Rules of Civil Procedure. Service of the petition shall be effected at least ten days
19 prior to the scheduled hearing date: *Provided*, That where an emergency hearing is sought
20 pursuant to subsection (c) of this section, service of process upon the guardian shall be as far in
21 advance of the scheduled hearing date as possible.

22 (e) Upon notice and hearing the court may:

23 (1) Deny the petition;

24 (2) Order the guardian to allow the petitioner access to the protected person upon finding,
25 by a preponderance of the evidence, that the guardian is preventing access by the petitioner to
26 the protected person, that the protected person is desirous of contact with the petitioner.

27 (f) In determining whether to order that the petitioner shall have access to the protected
28 person, the court shall consider the best interests of the protected person.

29 (g) The court may, in its discretion, award the prevailing party in an action brought under
30 this section court costs and reasonable attorney's fees. Court costs and attorney's fees awarded
31 under this subsection may not be paid from the protected person's estate.

32 (h) If the court grants the petition it may, in its discretion, retain jurisdiction over the matter
33 and modify its order consistent with the best interests of the protected person.

34 (i) The provisions of this section apply to all guardianship of protected persons regardless
35 of the date guardianship was established.

§44A-3-18. Guardian's duty to inform certain relatives about protected person's health and residence.

1 (a) The provisions of this section apply to relatives who have been granted access to a
2 protected person under section seventeen of this article.

3 (b) Except as provided by subsection (d) of this section, the guardian of a protected person
4 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 a period of three days or more;

7 (3) The protected person's residence has changed; or

8 (4) The protected person is staying at a location other than his or her usual place of
9 residence for a period that exceeds two calendar weeks.

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

12 (d) A relative entitled to receive information regarding a protected person under this
13 section may waive the notice required thereof by this section by providing a written waiver to the
14 guardian. A guardian shall file any such written waiver with the court.