

HOUSE BILL 1483

N2, D4

(8lr0337)

ENROLLED BILL

— *Health and Government Operations/Judicial Proceedings* —

Introduced by **Delegates Saab, Adams, Afzali, Ali, Anderson, Anderton, Angel, Arentz, Atterbeary, Aumann, Barkley, B. Barnes, D. Barnes, Barron, Barve, Beidle, Beitzel, Branch, Bromwell, Brooks, Buckel, Carey, Carozza, Carr, Cassilly, Chang, Ciliberti, Clark, Clippinger, Cluster, Conaway, Corderman, Cullison, Davis, Ebersole, Folden, Fraser-Hidalgo, Frick, Frush, Ghrist, Gibson, Gilchrist, Glass, Glenn, Grammer, Gutierrez, Hayes, Haynes, Hettleman, Hill, Hixson, Holmes, Hornberger, C. Howard, S. Howard, Impallaria, Jackson, Jacobs, Jameson, Kelly, Kipke, Kittleman, Korman, Kramer, Krebs, Krimm, Lam, Lierman, Lisanti, Long, Luedtke, Malone, Mautz, McComas, McConkey, McCray, McDonough, McKay, McMillan, Metzgar, Miele, A. Miller, W. Miller, Moon, Morales, Morgan, Morhaim, Mosby, Otto, Pena-Melnyk, Platt, Proctor, Reilly, Rey, Robinson, Rose, Sample-Hughes, Sanchez, Shoemaker, Simonaire, Szeliga, Tarlau, Turner, Valderrama, Valentino-Smith, Vallario, Vogt, M. Washington, West, Wilson, Wivell, K. Young, ~~and P. Young~~ P. Young, and Rosenberg**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Duties of a Guardian of the Person – ~~Petition for~~ Visitation**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 FOR the purpose of authorizing a court to include in an order appointing a guardian of the
 2 person of a disabled person the duty to foster and preserve certain family
 3 relationships under certain circumstances; ~~establishing the intent of the General~~
 4 ~~Assembly to enforce recognize the right of every adult in the State to visit with and~~
 5 ~~receive certain communication from whomever the adult chooses, with a certain~~
 6 ~~exception; establishing a rebuttable presumption in an action under this Act;~~
 7 ~~authorizing a certain person to petition a certain court for reasonable visitation with~~
 8 ~~a certain alleged incapacitated or protected person; prohibiting a certain petition~~
 9 ~~under certain circumstances; requiring the petition to be verified and to state certain~~
 10 ~~facts and include a certain statement; providing for service of process for the petition;~~
 11 ~~providing for a certain shift of a certain burden of proof under certain circumstances;~~
 12 ~~providing for the rebuttal of a certain presumption under this Act; requiring the~~
 13 ~~court to issue a ruling in a certain manner; authorizing the court to impose certain~~
 14 ~~restrictions on a certain visitation; authorizing the court to assess certain costs and~~
 15 ~~sanctions against certain parties; establishing a certain immunity from civil liability~~
 16 ~~under certain circumstances; requiring an authorized decision maker to provide~~
 17 ~~certain notifications within a certain period of time under certain circumstances;~~
 18 ~~defining certain terms; and generally relating to visitation and communications~~
 19 ~~between certain family members or other interested persons parties and generally~~
 20 ~~relating to the duties of a guardian of the person of a disabled person.~~

21 BY repealing and reenacting, without amendments,
 22 Article – Estates and Trusts
 23 Section 13–708(a)
 24 Annotated Code of Maryland
 25 (2017 Replacement Volume)

26 BY repealing and reenacting, with amendments,
 27 Article – Estates and Trusts
 28 Section 13–708(b)
 29 Annotated Code of Maryland
 30 (2017 Replacement Volume)

31 ~~BY adding to~~
 32 ~~Article – Family Law~~
 33 ~~Section 15–101 to be under the new title “Title 15. Visitation”~~
 34 ~~Annotated Code of Maryland~~
 35 ~~(2012 Replacement Volume and 2017 Supplement)~~

36 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 37 That the Laws of Maryland read as follows:

38 **Article – Estates and Trusts**

39 13–708.

1 (a) (1) The court may grant to a guardian of a person only those powers
2 necessary to provide for the demonstrated need of the disabled person.

3 (2) (i) The court may appoint a guardian of the person of a disabled
4 person for the limited purpose of making one or more decisions related to the health care
5 of that person.

6 (ii) The court may appoint a guardian of the person of a disabled
7 person for a limited period of time if it appears probable that the disability will cease within
8 1 year of the appointment of the guardian.

9 (b) Subject to subsection (a) of this section, the rights, duties, and powers which
10 the court may order include, but are not limited to:

11 (1) The same rights, powers, and duties that a parent has with respect to
12 an unemancipated minor child, except that the guardian is not liable solely by reason of the
13 guardianship to third persons for any act of the disabled person;

14 (2) The right to custody of the disabled person and to establish his place of
15 abode within and without the State, provided there is court authorization for any change
16 in the classification of abode, except that no one may be committed to a mental facility
17 without an involuntary commitment proceeding as provided by law;

18 (3) The duty to provide for care, comfort, and maintenance, including
19 social, recreational, and friendship requirements, and, if appropriate, for training and
20 education of the disabled person;

21 **(4) IF IT IS IN THE BEST INTEREST OF THE DISABLED PERSON, THE**
22 **DUTY TO FOSTER AND PRESERVE FAMILY RELATIONSHIPS INCLUDING, AS**
23 **APPROPRIATE, ASSISTING TO ARRANGE VISITATION AND COMMUNICATION BY**
24 **TELEPHONE CALLS, PERSONAL MAIL, AND ELECTRONIC COMMUNICATIONS;**

25 **[(4)] (5)** The duty to take reasonable care of the clothing, furniture,
26 vehicles, and other personal effects of the disabled person, and, if other property requires
27 protection, the power to commence protective proceedings;

28 **[(5)] (6)** If a guardian of the estate of the disabled person has not been
29 appointed, the right to commence proceedings to compel performance by any person of his
30 duty to support the disabled person, and to apply the estate to the support, care, and
31 education of the disabled person, except that the guardian of the person may not obtain
32 funds from the estate for room and board that the guardian, his spouse, parent, or child
33 provide without a court order approving the charge, and the duty to exercise care to
34 conserve any excess estate for the needs of the disabled person;

35 **[(6)] (7)** If a guardian of the estate has been appointed, the duty to control
36 the custody and care of the disabled person, to receive reasonable sums for room and board

1 provided to the disabled person, and to account to the guardian of the estate for funds
 2 expended, and the right to ask the guardian of the estate to expend the estate in payment
 3 of third persons for care and maintenance of the disabled person;

4 ~~[(7)]~~ **(8)** The duty to file an annual or biannual report with the court
 5 indicating the present place of residence and health status of the ward, the guardian's plan
 6 for preserving and maintaining the future well-being of the ward, and the need for
 7 continuance or cessation of the guardianship or for any alteration in the powers of the
 8 guardian. The court shall renew the appointment of the guardian if it is satisfied that the
 9 grounds for the original appointment stated in § 13-705(b) of this subtitle continue to exist.
 10 If the court believes such grounds may not exist, it shall hold a hearing, similar to that
 11 provided for in § 13-705 of this subtitle, at which the guardian shall be required to prove
 12 that such grounds exist. If the court does not make these findings, it shall order the
 13 discontinuance of the guardianship of the person. If the guardian declines to participate in
 14 the hearing, the court may appoint another guardian to replace him pursuant to the
 15 priorities in § 13-707(a) of this subtitle; and

16 ~~[(8)]~~ **(9)** The power to give necessary consent or approval for:

17 (i) Medical or other professional care, counsel, treatment, or service,
 18 including admission to a hospital or nursing home or transfer from one medical facility to
 19 another;

20 (ii) Withholding medical or other professional care, counsel,
 21 treatment, or service; and

22 (iii) Withdrawing medical or other professional care, counsel,
 23 treatment, or service.

24 ~~Article – Family Law~~

25 ~~TITLE 15. VISITATION.~~

26 ~~15-101.~~

27 ~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
 28 ~~INDICATED.~~

29 ~~(2) “ALLEGED INCAPACITATED OR PROTECTED PERSON” MEANS THE~~
 30 ~~PERSON THE PETITIONER SEEKS TO VISIT.~~

31 ~~(3) “INTERESTED PERSON” MEANS A PERSON WHO HAS A~~
 32 ~~SIGNIFICANT, ONGOING RELATIONSHIP WITH THE ALLEGED INCAPACITATED OR~~
 33 ~~PROTECTED PERSON THAT IS BASED ON OR A PRODUCT OF STRONG AFFECTION.~~

34 ~~(3) “HEALTH CARE FACILITY” MEANS:~~

1 ~~(I) AN ASSISTED LIVING PROGRAM;~~

2 ~~(II) A HOSPICE;~~

3 ~~(III) A HOSPITAL; OR~~

4 ~~(IV) A NURSING HOME.~~

5 (4) (I) ~~“INTERESTED PARTY” MEANS A PERSON WHO IS:~~

6 ~~1. APPOINTED AS A GUARDIAN OF THE PERSON UNDER §~~
7 ~~13 705 OF THE ESTATES AND TRUSTS ARTICLE;~~

8 ~~2. APPOINTED AS A GUARDIAN OF THE PROPERTY~~
9 ~~UNDER § 13 201 OF THE ESTATES AND TRUSTS ARTICLE;~~

10 ~~3. AN AGENT UNDER AN ADVANCE DIRECTIVE THAT IS~~
11 ~~VALID UNDER TITLE 5, SUBTITLE 6 OF THE HEALTH – GENERAL ARTICLE;~~

12 ~~4. A SURROGATE DECISION MAKER UNDER § 5 605 OF~~
13 ~~THE HEALTH – GENERAL ARTICLE; OR~~

14 ~~5. AN ATTORNEY IN FACT UNDER A DURABLE POWER OF~~
15 ~~ATTORNEY THAT IS VALID UNDER TITLE 17 OF THE ESTATES AND TRUSTS ARTICLE;~~

16 ~~(II) “INTERESTED PARTY” DOES NOT INCLUDE A PERSON~~
17 ~~DESCRIBED UNDER § 13 707(A)(10) OF THE ESTATES AND TRUSTS ARTICLE.~~

18 (5) ~~“PETITIONER” MEANS A PERSON WHO FILES A PETITION~~
19 ~~INDIVIDUALLY OR JOINTLY WITH ANOTHER PERSON UNDER SUBSECTION (D) OF~~
20 ~~THIS SECTION SEEKING VISITATION WITH AN ALLEGED INCAPACITATED OR~~
21 ~~PROTECTED PERSON.~~

22 (4) (6) ~~“VISIT” OR “VISITATION” MEANS ANY IN PERSON MEETING,~~
23 ~~OR ANY TELEPHONIC, MAIL, OR ELECTRONIC COMMUNICATION, BETWEEN THE~~
24 ~~PETITIONER AND THE ALLEGED INCAPACITATED OR PROTECTED PERSON.~~

25 (B) ~~IT IS THE INTENT OF THE GENERAL ASSEMBLY TO ENFORCE RECOGNIZE~~
26 ~~THE RIGHT OF EVERY ADULT IN THIS STATE TO VISIT WITH AND RECEIVE MAIL,~~
27 ~~TELEPHONE, AND ELECTRONIC COMMUNICATION FROM HAVE VISITATION WITH~~
28 ~~WHOMEVER THE ADULT CHOOSES, UNLESS A COURT HAS SPECIFICALLY ORDERED~~
29 ~~OTHERWISE OR THE ADULT IS INCAPACITATED AND THE VISITATION IS NOT IN THE~~
30 ~~ADULT’S BEST INTEREST.~~

~~(C) THERE IS A REBUTTABLE PRESUMPTION IN AN ACTION UNDER THIS SECTION THAT IT IS IN THE BEST INTEREST OF AN ALLEGED INCAPACITATED OR PROTECTED PERSON TO HAVE VISITATION FROM:~~

~~(1) THE SPOUSE OF THE PERSON, IF THE SPOUSE AND THE PERSON ARE NOT LEGALLY SEPARATED;~~

~~(2) THE ADULT CHILDREN OF THE PERSON;~~

~~(3) THE ADULT GRANDCHILDREN OF THE PERSON;~~

~~(4) THE PARENTS OF THE PERSON;~~

~~(5) THE ADULT SIBLINGS OF THE PERSON; AND~~

~~(6) OTHER INTERESTED PERSONS PARTIES.~~

~~(D) (1) A PERSON LISTED IN SUBSECTION (C) OF THIS SECTION MAY PETITION THE COURT, IN THE JURISDICTION IN WHICH THE ALLEGED INCAPACITATED OR PROTECTED PERSON RESIDES OR IN THE COURT THAT APPOINTED A GUARDIAN OF THE PERSON FOR THAT PERSON, FOR REASONABLE VISITATION BY THAT PETITIONER WITH THE ALLEGED INCAPACITATED OR PROTECTED PERSON.~~

~~(2) A PETITION MAY NOT BE MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE AUTHORIZED DECISION MAKER OF THE ALLEGED INCAPACITATED OR PROTECTED PERSON IS A PUBLIC GUARDIAN.~~

~~(E) A PETITION DESCRIBED IN SUBSECTION (D) OF THIS SECTION SHALL:~~

~~(1) BE VERIFIED AND STATE FACTS SHOWING:~~

~~(1) (I) THAT THE PETITIONER IS A PERSON LISTED IN SUBSECTION (C) OF THIS SECTION;~~

~~(2) (II) THAT VISITATION BY THE PETITIONER WITH THE ALLEGED INCAPACITATED OR PROTECTED PERSON HAS BEEN UNREASONABLY INTERFERED WITH OR DENIED; AND~~

~~(3) (III) THE IDENTITY OF THE PERSON OR PERSONS WHO HAVE UNREASONABLY INTERFERED WITH OR DENIED VISITATION; AND~~

~~(2) INCLUDE A STATEMENT BY THE PETITIONER THAT THE PETITIONER AGREES TO ABIDE BY ANY ORDER OF THE COURT ISSUED AS A CONDITION OF EVALUATING THE PETITION AND THE PETITIONER, INCLUDING A BACKGROUND CHECK, JUDGMENT SEARCH, OR MENTAL HEALTH SCREENING OR EVALUATION.~~

~~(F) THE PETITIONER SHALL PERSONALLY SERVE A COPY OF THE PETITION ON:~~

~~(1) THE ALLEGED INCAPACITATED OR PROTECTED PERSON;~~

~~(2) THE ATTORNEY FOR THE ALLEGED INCAPACITATED OR PROTECTED PERSON;~~

~~(3) THE GUARDIAN OF THE PERSON OF THE ALLEGED INCAPACITATED OR PROTECTED PERSON, IF ANY;~~

~~(4) THE AUTHORIZED DECISION MAKER FOR THE ALLEGED INCAPACITATED OR PROTECTED PERSON;~~

~~(5) THE ATTENDING PHYSICIAN, NURSE PRACTITIONER, OR PHYSICIAN ASSISTANT FOR THE ALLEGED INCAPACITATED OR PROTECTED PERSON;~~

~~(6) THE PRINCIPAL ADMINISTRATOR, OR THE ADMINISTRATOR'S DESIGNEE, AND THE MEDICAL DIRECTOR OF A HEALTH CARE FACILITY PROVIDING SERVICES TO THE ALLEGED INCAPACITATED OR PROTECTED PERSON, IF ANY; AND~~

~~(7) ANY PERSON ALLEGED TO HAVE INTERFERED WITH OR DENIED VISITATION.~~

~~(G) (1) AT THE ANY HEARING ON THE PETITION, IF EVIDENCE IS PRESENTED THAT THE ALLEGED INCAPACITATED OR PROTECTED PERSON OBJECTS TO THE PETITION OR HAS IN THE PAST EXPRESSED AN OBJECTION TO VISITATION BY THE PETITIONER, THE BURDEN OF PROOF DESCRIBED IN SUBSECTION (C) OF THIS SECTION SHALL SHIFT TO THE PETITIONER TO PROVE, BY CLEAR AND CONVINCING EVIDENCE, THAT THE ALLEGATION OF AN ALLEGED INCAPACITATED OR PROTECTED PERSON'S CURRENT OR PRIOR OBJECTION WAS PROCURED BY UNDUE INFLUENCE NOT BASED ON RELIABLE EVIDENCE.~~

~~(2) THE PRESUMPTION DESCRIBED IN SUBSECTION (C) OF THIS SECTION MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE THAT THE VISITATION WOULD NOT BE IN THE BEST INTERESTS OF THE ALLEGED INCAPACITATED OR PROTECTED PERSON BECAUSE:~~

~~(I) THE PETITIONER HAS COMMITTED PHYSICAL OR FINANCIAL ELDER ABUSE; OR OR NEGLECT OR HAS BEEN THE SUBJECT OF A PROTECTIVE ORDER ISSUED BY A COURT THAT RESTRICTED OR PROHIBITED CONDUCT BY THE PETITIONER;~~

~~(II) VISITATION IS CONTRARY TO THE WISHES OF THE ALLEGED INCAPACITATED OR PROTECTED PERSON;~~

~~(III) THE AUTHORIZED DECISION MAKER IS ACTING BASED ON A RECOMMENDATION OF AN ATTENDING PHYSICIAN OR A PROTECTIVE ORDER ISSUED BY A COURT;~~

~~(IV) THE PETITIONER'S AFFIDAVIT DOES NOT QUALIFY THE PETITIONER AS AN INTERESTED PARTY;~~

~~(V) STATEMENTS, WRITINGS, OR ACTIONS BY THE ALLEGED INCAPACITATED OR PROTECTED PERSON DEMONSTRATE THAT THE ALLEGED INCAPACITATED OR PROTECTED PERSON:~~

~~1. DOES NOT WANT VISITATION WITH THE PETITIONER;~~
~~OR~~

~~2. INTENDED TO VEST COMPLETE AUTHORITY OVER VISITATION WITH THE AUTHORIZED DECISION MAKER; OR~~

~~(H) (VI) THE VISITATION WOULD BE HARMFUL TO THE HEALTH OR MENTAL WELL BEING OF THE ALLEGED INCAPACITATED OR PROTECTED PERSON.~~

~~(H) (1) IN RULING ON A PETITION UNDER THIS SECTION, THE COURT SHALL ISSUE A STATEMENT OF FACTS AND LAW.~~

~~(2) THE COURT MAY IMPOSE REASONABLE RESTRICTIONS ON A VISITATION ORDERED UNDER THIS SECTION, INCLUDING TIME AND FREQUENCY LIMITATIONS AND REQUIRING THAT VISITATIONS BE MONITORED AT THE PETITIONER'S EXPENSE.~~

~~(I) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE COURT MAY ASSESS COSTS OF THE PETITION OR VISITATION, INCLUDING THE COST OF MONITORING VISITS, TO ANY PARTY TO A PROCEEDING THE PETITIONER UNDER THIS SECTION.~~

~~(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE COURT MAY ASSESS SANCTIONS, IN THE AMOUNT OF THE REASONABLE ATTORNEY'S FEES~~

1 ~~INCURRED, AGAINST A PETITIONER WHO FILES A PETITION UNDER THIS SECTION IN~~
2 ~~BAD FAITH OR AGAINST A PARTY THAT IS CLAIMED TO HAVE UNJUSTIFIABLY~~
3 ~~INTERFERES INTERFERED WITH OR DENIES DENIED VISITATION.~~

4 ~~(3) NO COSTS OR SANCTIONS UNDER THIS SECTION MAY BE ASSESSED~~
5 ~~AGAINST THE ALLEGED INCAPACITATED OR PROTECTED PERSON WHO IS THE~~
6 ~~SUBJECT OF THE PETITION.~~

7 ~~(4) AN AUTHORIZED DECISION MAKER, A HEALTH CARE FACILITY, OR~~
8 ~~AN EMPLOYEE OR AGENT OF A HEALTH CARE FACILITY WHO DENIES OR RESTRICTS~~
9 ~~A VISIT OR VISITATION SHALL BE IMMUNE FROM CIVIL LIABILITY IF THE~~
10 ~~RESTRICTION OR DENIAL IS BASED ON:~~

11 ~~(I) A COURT ORDER ISSUED TO DENY OR RESTRICT VISITATION;~~

12 ~~OR~~

13 ~~(H) A GOOD FAITH BELIEF THAT A VISIT OR VISITATION IS NOT~~
14 ~~IN THE BEST INTEREST OF AN ALLEGED INCAPACITATED OR PROTECTED PERSON.~~

15 ~~(J) ON WRITTEN REQUEST BY AN INTERESTED PARTY, AN AUTHORIZED~~
16 ~~DECISION MAKER SHALL, WITHIN 72 HOURS AFTER RECEIPT OF THE REQUEST,~~
17 ~~IDENTIFY IN WRITING OR BY ELECTRONIC COMMUNICATION:~~

18 ~~(1) THE HEALTH CARE FACILITY OR OTHER LOCATION WHERE THE~~
19 ~~ALLEGED INCAPACITATED OR PROTECTED PERSON IS RESIDING;~~

20 ~~(2) ALL CURRENT FUNERAL ARRANGEMENTS; OR~~

21 ~~(3) THE BURIAL LOCATION OR DISPOSITION OF THE BODY OF THE~~
22 ~~DECEASED ALLEGED INCAPACITATED OR PROTECTED PERSON.~~

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2018.