

1 SB167
2 172944-1
3 By Senators Figures and Waggoner
4 RFD: Education and Youth Affairs
5 First Read: 09-FEB-16

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8 SYNOPSIS: Existing law does not specifically authorize
9 an adult child to petition for visitation with a
10 parent or dependent adult.

11 Existing law provides that the conservator
12 or guardian, or both, of a dependent adult who is
13 the subject of a conservatorship, also known as a
14 conservatee, is responsible for the care, custody,
15 control, and education of the conservatee, unless
16 the court expressly limits those powers.

17 This bill would specify that a spouse's,
18 conservator's, or guardian's control of a
19 conservatee does not extend to the right to refuse
20 visitors, telephone calls, and other correspondence
21 from an adult child or relative of a first degree
22 who is not the conservator or a guardian, unless
23 these rights are expressly limited by court order.

24 This bill would establish a procedure by
25 which an adult child or relative of the first
26 degree may petition for visitation with a
27 conservatee from whom he or she has been isolated,

1 and would authorize a court to grant reasonable
2 visitation with that conservatee.

3 This bill would also require the spouse,
4 conservator, or guardian to inform the adult
5 children, relatives of a first degree, or both,
6 whenever a conservatee dies or is admitted to a
7 medical facility for acute or chronic care, or
8 both, for a period of three days or more.

9
10 A BILL
11 TO BE ENTITLED
12 AN ACT

13
14 To specify a procedure by which an adult child or
15 relative of a first degree who has been isolated from a
16 conservatee may petition for court ordered reasonable
17 visitation rights with the conservatee.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. For the purposes of this act, the
20 following terms have the following meanings:

21 (1) ADULT CHILD. A person who is 18 years or age or
22 older who is the child of the parent, biologically or through
23 adoption, who resides in this state, and who is not the
24 conservator of the parent.

25 (2) CONSERVATEE. A person who is an elderly mother
26 or father and is a dependent adult.

1 (3) RELATIVE OF A FIRST DEGREE. A person sharing 50
2 percent or more of the same genes, such as a sibling, child,
3 or parent, or a person who shares this same relationship
4 through adoption.

5 (4) VISITATION. Any in-person meeting or any
6 telephonic mail or electronic communication between a
7 conservatee and his or her adult child.

8 (5) VISITATION ORDER. An order issued by the circuit
9 court after notice and hearing regarding the visitation with a
10 parent by his or her adult child specifying the approval or
11 disapproval of any visitation and the specifics of that
12 visitation including, but not limited to, the time, place, and
13 manner of the visitation.

14 Section 2. (a) An adult child or a relative of a
15 first degree may file a petition to compel visitation with a
16 conservatee from whom he or she has been isolated.

17 (b) Except as provided by subsection (c), the court
18 shall schedule a hearing on a petition not later than 60 days
19 after the petition is filed under subsection (a).

20 (c) If the petition filed under subsection (a)
21 states that the conservatee's health is in significant decline
22 or that the conservatee's death may be imminent, the court
23 shall conduct an emergency hearing as soon as practicable, but
24 not later than 10 days after the date the petition is filed
25 under subsection (a).

1 (d) In ruling on the petition, the court shall
2 determine if the conservatee has sufficient capacity to make a
3 knowing and intelligent visitation decision.

4 (e) If the court determines the conservatee has
5 sufficient capacity to make a knowing and intelligent
6 visitation decision, the court shall grant visitation if the
7 conservatee expresses a desire for visitation.

8 (f) If the conservatee lacks sufficient capacity to
9 make a knowing and intelligent visitation decision, the court
10 shall determine if the conservatee would want visitation. In
11 determining whether or not the conservatee would want
12 visitation, the court shall consider all of the following:

13 (1) The history of the relationship between the
14 conservatee and the petitioner.

15 (2) Any statements made by the conservatee
16 expressing his or her desire to have visitation with the
17 petitioner.

18 (3) Any power of attorney or estate planning
19 document that expresses an opinion on visitation with the
20 petitioner.

21 (4) A report of an investigation conducted by the
22 Department of Human Resources regarding the proposed
23 visitation.

24 (5) A report of investigation conducted by the
25 guardian ad litem.

1 (6) A report of investigation of any person legally
2 authorized to seek a protective order on behalf of the
3 conservatee.

4 (7) A physician's statement and medical records
5 regarding the conservatee's mental and physical capacity.

6 (g) If the court determines that the conservatee
7 would want visitation, the court shall grant reasonable
8 visitation, provided the court determines that visitation is
9 in the best interests of the conservatee.

10 (h) If the court determines that the conservatee has
11 sufficient capacity to make a knowing and intelligent
12 visitation decision and the conservatee expresses that he or
13 she does not desire visitation, then the court shall not grant
14 visitation.

15 (i) A determination by the court regarding capacity
16 under this section may not be used as evidence of capacity in
17 any other proceeding.

18 (j) The petition may be filed in the circuit court
19 of either of the following counties:

20 (1) The county in which the conservatee resides.

21 (2) The county in which the conservatee is
22 temporarily living.

23 Section 3. The petition shall state all of the
24 following information:

25 (1) The condition of the conservatee's physical and
26 mental health, to the extent known by the petitioner.

1 (2) The efforts to obtain visitation with the
2 conservatee.

3 (3) The proposed visitation that is sought.

4 (4) The deficit or deficits, if any, in the
5 conservatee's mental functions that are impaired and an
6 identification of a link between the deficit or deficits and
7 the conservatee's inability to respond knowingly and
8 intelligently to queries about the requested visitation.

9 (5) The names and addresses, so far as they are
10 known to the petitioner, of the spouse and relatives of the
11 first degree of the conservatee.

12 Section 4. Upon the filing of the petition, the
13 court shall determine if the conservatee has retained an
14 attorney or if the conservatee plans to retain an attorney.

15 Section 5. (a) Not less than 15 days before the
16 hearing, notice of the time and place of the hearing and a
17 copy of the petition shall be personally served on the
18 conservatee and the conservatee's attorney, if any.

19 (b) Not less than 15 days before the hearing, notice
20 of the time and place of the hearing and a copy of the
21 petition shall be mailed to the following persons:

22 (1) The conservatee's spouse, if any, at the address
23 stated in the petition.

24 (2) The conservatee's relatives named in the
25 petition at each relative's address stated in the petition.

1 Section 6. Before ruling on the petition, the court
2 may order the Department of Human Resources to do any or all
3 of the following:

4 (1) Conduct interviews with the following:

5 a. The conservatee.

6 b. All petitioners.

7 c. The conservatee's spouse, adult child or
8 children, and relatives within the first degree.

9 d. To the extent practical, neighbors and, if known,
10 close friends of the conservatee.

11 (2) Inform the conservatee of the contents of the
12 petition.

13 (3) Determine whether the conservatee has the
14 capacity to consent to the requested visitation.

15 (4) Determine whether the conservatee desires the
16 proposed visitation.

17 (5) Report to the court in writing, at least five
18 days before the final hearing, concerning subdivisions (1) to
19 (4), inclusive.

20 (6) Mail, at least five days before the hearing, a
21 copy of the report referred to in subdivision (5) to all of
22 the following:

23 a. The attorney, if any, for the petitioner.

24 b. The attorney, if any, for the conservatee.

25 c. The spouse and relatives within the first degree
26 of the conservatee, unless the court determines that the
27 mailing will result in harm to the conservatee.

1 d. Any other persons as the court orders.

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

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

12 Section 7. (a) In ruling on the petition, the court
13 shall determine whether the conservatee has sufficient
14 capacity to make a knowing and intelligent visitation
15 decision.

16 (b) The court shall grant reasonable visitation if
17 both of the following conditions exist:

18 (1) The court determines that the conservatee has
19 sufficient capacity to make a knowing and intelligent
20 visitation decision.

21 (2) The conservatee expresses a desire for
22 visitation with the petitioner.

23 (c) If the court determines that the conservatee
24 lacks the capacity to make a knowing and intelligent
25 visitation decision, the court shall determine whether the
26 conservatee would want visitation with the petitioner by
27 taking into consideration all of the following:

1 (1) The history of the relationship between the
2 conservator and the petitioner.

3 (2) Any statements made by the conservatee
4 expressing a desire to have visitation with the petitioner.

5 (3) Any power of attorney or other document that
6 expresses an opinion on visitation with the petitioner.

7 (4) The report of the Department of Human Resources
8 under Section 6.

9 (d) The court shall not grant visitation if both of
10 the following circumstances exist:

11 (1) The court determines the conservatee has
12 sufficient capacity to make a knowing and intelligent
13 visitation decision.

14 (2) The conservatee expresses that the petitioner
15 not be granted visitation.

16 (e) A determination by the court regarding capacity
17 under this act is not admissible as evidence in an other legal
18 proceeding.

19 (f) The court shall order each petitioner to pay the
20 reasonable fees and expenses of any attorney appointed under
21 this act.

22 Section 8. (a) This section applies with respect to
23 an adult child or a relative of a first degree pursuant to
24 Section 1.

25 (b) Except as provided under subsection (d), the
26 conservator shall as soon as practicable inform relatives of
27 any of the following:

1 (1) The conservatee dies.

2 (2) The conservatee is admitted to a medical
3 facility for acute or chronic care for a period of three days
4 or more.

5 (3) The conservatee's residence has changed.

6 (4) The conservatee is staying at a location other
7 than the conservatee's residence for a period that exceeds one
8 calendar week.

9 (c) In the case of the conservatee's death, the
10 conservator shall inform relatives of any funeral arrangements
11 and the location of the conservatee's final resting place.

12 (d) The court shall relieve a conservator of the
13 duty to provide notice to a relative under this section if the
14 court finds that:

15 (1) A relative entitled to notice about the
16 conservatee has submitted a written request to the conservator
17 electing not to receive notice about a conservatee's health
18 and residence.

19 (2) The conservator was unable to locate the
20 relative after making reasonable efforts to discover and
21 locate the relative.

22 (3) A protective order was issued against the
23 relative to protect the conservatee.

24 (4) Notice is not in the best interest of the
25 conservatee.

26 Section 9. The court in which the petition is filed
27 has continuing jurisdiction to revoke or modify an order made

1 pursuant to this act upon a petition filed, noticed, and heard
2 in the same manner as the original petition was filed.

3 Section 10. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.