

SENATE BILL 430

N2

6lr1116
CF HB 512

By: **Senators Bates and Salling**

Introduced and read first time: February 1, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Guardianship of a Disabled Person – Communication and Notification Rights**

3 FOR the purpose of prohibiting a guardian of the person of a disabled person from
4 prohibiting or restricting communication between the disabled person and a member
5 of the disabled person's family, except as authorized by a certain court order;
6 authorizing a guardian to petition a certain court for an order authorizing the
7 guardian to prohibit or restrict communication between a disabled person and a
8 certain member of the disabled person's family; authorizing an individual other than
9 a member of a disabled person's family to file a petition for an order to compel
10 visitation with the disabled person under certain circumstances; specifying the
11 contents of certain petitions; requiring copies of certain petitions to be served on
12 certain individuals; requiring the court to hold a hearing on a certain petition;
13 authorizing a disabled person to express certain preferences regarding
14 communication with a certain member of the disabled person's family to the court in
15 a certain manner; authorizing the court to issue a certain order only if the court
16 makes a certain determination by a certain standard of evidence; specifying the
17 factors the court may consider in making a certain determination; providing that a
18 certain order may authorize a guardian to take certain actions the court considers
19 necessary to protect the physical and emotional health of a disabled person;
20 requiring the court to require a guardian and a certain member of the disabled
21 person's family to negotiate in good faith on the development of a certain visitation
22 schedule, under certain circumstances; authorizing a certain member of the disabled
23 person's family to bring an action to compel a guardian to allow communication
24 between a disabled person and the member of the disabled person's family or to
25 terminate the guardian's appointment, under certain circumstances; requiring the
26 court, in ruling on a certain petition, to consider certain evidence and to issue a
27 certain order only under certain circumstances; requiring the court to order a certain
28 guardian to pay certain court costs and attorney's fees, under certain circumstances;
29 providing that this Act may not be construed to prohibit a guardian from placing
30 certain reasonable restrictions on the hours when a disabled person may receive
31 telephone calls or visitors; requiring a guardian to notify certain individuals within

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 a certain time period after certain events; specifying how certain notifications should
2 be completed; defining certain terms; and generally relating to guardianships of
3 disabled persons.

4 BY adding to

5 Article – Estates and Trusts

6 Section 13–708.1 through 13–708.3

7 Annotated Code of Maryland

8 (2011 Replacement Volume and 2015 Supplement)

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

11 **Article – Estates and Trusts**

12 **13–708.1.**

13 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
14 INDICATED.

15 (2) “COMMUNICATION” MEANS ANY ORAL OR WRITTEN
16 COMMUNICATION, INCLUDING IN-PERSON VISITATION, TELEPHONE CALLS, AND
17 PERSONAL MAIL.

18 (3) “MEMBER OF THE DISABLED PERSON’S FAMILY” MEANS A
19 DISABLED PERSON’S SPOUSE, CHILD, PARENT, STEPPARENT, GRANDPARENT,
20 SIBLING, UNCLE, OR AUNT, WHETHER OF THE WHOLE OR HALF BLOOD OR BY
21 ADOPTION.

22 (B) A GUARDIAN OF THE PERSON OF A DISABLED PERSON MAY NOT
23 PROHIBIT OR RESTRICT COMMUNICATION BETWEEN THE DISABLED PERSON AND A
24 MEMBER OF THE DISABLED PERSON’S FAMILY EXCEPT AS AUTHORIZED BY AN
25 ORDER ISSUED UNDER SUBSECTION (E) OF THIS SECTION.

26 (C) (1) A GUARDIAN OF THE PERSON OF A DISABLED PERSON MAY
27 PETITION THE COURT FOR AN ORDER AUTHORIZING THE GUARDIAN TO PROHIBIT
28 OR RESTRICT COMMUNICATION BETWEEN THE DISABLED PERSON AND A SPECIFIC
29 MEMBER OF THE DISABLED PERSON’S FAMILY.

30 (2) THE PETITION SHALL STATE THE GROUNDS FOR PROHIBITING OR
31 RESTRICTING COMMUNICATION BETWEEN THE DISABLED PERSON AND THE
32 MEMBER OF THE DISABLED PERSON’S FAMILY.

33 (3) A COPY OF THE PETITION SHALL BE SERVED ON:

1 **(I) THE DISABLED PERSON; AND**

2 **(II) THE MEMBER OF THE DISABLED PERSON'S FAMILY WHO IS**
3 **THE SUBJECT OF THE PETITION.**

4 **(D) (1) THE COURT SHALL HOLD A HEARING ON A PETITION FILED UNDER**
5 **SUBSECTION (C) OF THIS SECTION.**

6 **(2) THE DISABLED PERSON SHALL HAVE THE OPPORTUNITY TO:**

7 **(I) ATTEND THE HEARING AND ADDRESS THE COURT**
8 **REGARDING THE DISABLED PERSON'S PREFERENCES CONCERNING**
9 **COMMUNICATION WITH THE MEMBER OF THE DISABLED PERSON'S FAMILY WHO IS**
10 **THE SUBJECT OF THE PETITION; OR**

11 **(II) SUBMIT TO THE COURT A NOTARIZED STATEMENT**
12 **REGARDING THE DISABLED PERSON'S PREFERENCES CONCERNING**
13 **COMMUNICATION WITH THE MEMBER OF THE DISABLED PERSON'S FAMILY WHO IS**
14 **THE SUBJECT OF THE PETITION.**

15 **(E) (1) THE COURT MAY ISSUE AN ORDER AUTHORIZING A GUARDIAN OF**
16 **THE PERSON OF A DISABLED PERSON TO PROHIBIT OR RESTRICT COMMUNICATION**
17 **BETWEEN THE DISABLED PERSON AND A SPECIFIC MEMBER OF THE DISABLED**
18 **PERSON'S FAMILY ONLY IF THE COURT DETERMINES, BY A PREPONDERANCE OF THE**
19 **EVIDENCE, THAT THE COMMUNICATION POSES A DIRECT THREAT TO THE DISABLED**
20 **PERSON'S PHYSICAL OR EMOTIONAL SAFETY.**

21 **(2) IN DETERMINING WHETHER COMMUNICATION BETWEEN THE**
22 **DISABLED PERSON AND A SPECIFIC MEMBER OF THE DISABLED PERSON'S FAMILY**
23 **POSES A DIRECT THREAT TO THE DISABLED PERSON'S PHYSICAL OR EMOTIONAL**
24 **SAFETY, THE COURT SHALL CONSIDER:**

25 **(I) THE DISABLED PERSON'S PREFERENCES;**

26 **(II) ANY ONGOING ESTRANGEMENT BETWEEN THE DISABLED**
27 **PERSON AND THE MEMBER OF THE DISABLED PERSON'S FAMILY;**

28 **(III) ANY HISTORY OF VIOLENCE, ABUSE, EXPLOITATION, OR**
29 **NEGLECT INVOLVING THE DISABLED PERSON AND THE MEMBER OF THE DISABLED**
30 **PERSON'S FAMILY, INCLUDING EVIDENCE THAT:**

1 1. **BEFORE THE APPOINTMENT OF THE GUARDIAN, THE**
2 **DISABLED PERSON SOUGHT A PEACE ORDER OR A PROTECTIVE ORDER AGAINST THE**
3 **MEMBER OF THE DISABLED PERSON’S FAMILY; OR**

4 2. **THE MEMBER OF THE DISABLED PERSON’S FAMILY**
5 **WAS CONVICTED OF COMMITTING A CRIME AGAINST THE DISABLED PERSON; AND**

6 (IV) **ANY OTHER FACTORS THE COURT CONSIDERS RELEVANT.**

7 (3) (I) **AN ORDER ISSUED UNDER THIS SUBSECTION MAY**
8 **AUTHORIZE A GUARDIAN OF THE PERSON OF A DISABLED PERSON TO TAKE ANY**
9 **ACTION THE COURT CONSIDERS NECESSARY TO PROTECT THE PHYSICAL AND**
10 **EMOTIONAL HEALTH OF THE DISABLED PERSON, INCLUDING:**

11 1. **PREVENTING THE DISABLED PERSON FROM**
12 **RECEIVING VISITS, TELEPHONE CALLS, OR PERSONAL MAIL FROM THE MEMBER OF**
13 **THE DISABLED PERSON’S FAMILY WHO IS THE SUBJECT OF THE ORDER;**

14 2. **RESTRICTING THE LENGTH AND FREQUENCY OF**
15 **VISITS OR TELEPHONE CALLS FROM THE MEMBER OF THE DISABLED PERSON’S**
16 **FAMILY WHO IS THE SUBJECT OF THE ORDER; OR**

17 3. **REQUIRING COMMUNICATION BETWEEN THE**
18 **DISABLED PERSON AND THE MEMBER OF THE DISABLED PERSON’S FAMILY WHO IS**
19 **THE SUBJECT OF THE ORDER TO BE SUPERVISED BY THE GUARDIAN OR BY THE**
20 **GUARDIAN’S DESIGNEE.**

21 (II) **IF AN ORDER AUTHORIZES SUPERVISED VISITATION, THE**
22 **COURT SHALL REQUIRE THE GUARDIAN AND THE MEMBER OF THE DISABLED**
23 **PERSON’S FAMILY WHO IS THE SUBJECT OF THE ORDER TO NEGOTIATE IN GOOD**
24 **FAITH ON THE DEVELOPMENT OF A VISITATION SCHEDULE, TAKING INTO ACCOUNT**
25 **THE WISHES OF THE DISABLED PERSON.**

26 (F) (1) **IF A GUARDIAN OF THE PERSON OF A DISABLED PERSON**
27 **PROHIBITS OR RESTRICTS COMMUNICATION BETWEEN THE DISABLED PERSON AND**
28 **A MEMBER OF THE DISABLED PERSON’S FAMILY IN VIOLATION OF THIS SECTION,**
29 **THE AFFECTED MEMBER OF THE DISABLED PERSON’S FAMILY MAY BRING AN ACTION**
30 **TO:**

31 (I) **COMPEL THE GUARDIAN TO COMPLY WITH THE PROVISIONS**
32 **OF THIS SECTION; OR**

33 (II) **TERMINATE THE GUARDIAN’S APPOINTMENT.**

1 **(2) IF A MEMBER OF THE DISABLED PERSON’S FAMILY PREVAILS IN**
2 **AN ACTION UNDER THIS SUBSECTION, THE COURT SHALL ORDER THE GUARDIAN TO**
3 **REIMBURSE THE MEMBER OF THE DISABLED PERSON’S FAMILY FOR COURT COSTS**
4 **AND REASONABLE ATTORNEY’S FEES.**

5 **(G) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT A GUARDIAN**
6 **FROM PLACING REASONABLE LIMITATIONS ON THE HOURS WHEN A DISABLED**
7 **PERSON MAY RECEIVE TELEPHONE CALLS OR VISITORS.**

8 **13-708.2.**

9 **(A) IN THIS SECTION, “MEMBER OF THE DISABLED PERSON’S FAMILY” HAS**
10 **THE MEANING STATED IN § 13-708.1 OF THIS SUBTITLE.**

11 **(B) IF A GUARDIAN OF THE PERSON OF A DISABLED PERSON RESTRICTS**
12 **VISITATION BETWEEN THE DISABLED PERSON AND AN INDIVIDUAL OTHER THAN A**
13 **MEMBER OF A DISABLED PERSON’S FAMILY, THE AFFECTED INDIVIDUAL MAY FILE A**
14 **PETITION FOR AN ORDER TO COMPEL VISITATION WITH THE DISABLED PERSON.**

15 **(C) THE PETITION SHALL STATE THE GROUNDS FOR COMPELLING**
16 **VISITATION BETWEEN THE INDIVIDUAL AND THE DISABLED PERSON.**

17 **(D) A COPY OF THE PETITION SHALL BE SERVED ON:**

18 **(1) THE GUARDIAN OF THE PERSON OF THE DISABLED PERSON; AND**

19 **(2) THE DISABLED PERSON.**

20 **(E) IN RULING ON A PETITION SUBMITTED UNDER THIS SECTION, THE**
21 **COURT SHALL:**

22 **(1) CONSIDER ANY EVIDENCE CONCERNING THE PAST OR EXISTING**
23 **RELATIONSHIP BETWEEN THE INDIVIDUAL AND THE DISABLED PERSON; AND**

24 **(2) ISSUE AN ORDER COMPELLING VISITATION BETWEEN THE**
25 **INDIVIDUAL AND THE DISABLED PERSON ONLY IF THE COURT DETERMINES THAT**
26 **VISITATION IS IN THE BEST INTEREST OF THE DISABLED PERSON.**

27 **(F) IF AN INDIVIDUAL PREVAILS IN AN ACTION UNDER THIS SECTION, THE**
28 **COURT SHALL ORDER THE GUARDIAN TO REIMBURSE THE INDIVIDUAL FOR COURT**
29 **COSTS AND REASONABLE ATTORNEY’S FEES.**

1 **13-708.3.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) "EMERGENCY CONTACT" MEANS AN INDIVIDUAL DESIGNATED BY
5 A DISABLED PERSON TO BE NOTIFIED UNDER THIS SECTION.

6 (3) "HEALTH CARE FACILITY" MEANS:

7 (I) AN ASSISTED LIVING PROGRAM;

8 (II) A HOSPICE;

9 (III) A HOSPITAL; OR

10 (IV) A NURSING HOME.

11 (4) "MEMBER OF A DISABLED PERSON'S IMMEDIATE FAMILY" MEANS
12 A DISABLED PERSON'S SPOUSE, PARENT, OR ADULT CHILD, WHETHER BY BLOOD OR
13 BY ADOPTION.

14 (B) THE GUARDIAN OF THE PERSON OF A DISABLED PERSON SHALL NOTIFY
15 THE DISABLED PERSON'S EMERGENCY CONTACT AND EACH MEMBER OF THE
16 DISABLED PERSON'S IMMEDIATE FAMILY FOR WHOM THE GUARDIAN HAS CONTACT
17 INFORMATION:

18 (1) NO LATER THAN 24 HOURS AFTER THE DISABLED PERSON IS:

19 (I) ADMITTED TO A HEALTH CARE FACILITY; OR

20 (II) MOVED TO A NEW HEALTH CARE FACILITY OR RESIDENCE;

21 AND

22 (2) AS SOON AS POSSIBLE BUT NO LATER THAN 24 HOURS AFTER THE
23 DISABLED PERSON DIES.

24 (C) NOTIFICATION UNDER THIS SECTION SHALL BE:

25 (1) BY TELEPHONE OR IN PERSON; OR

26 (2) BY FIRST-CLASS MAIL, IF NOTIFICATION BY TELEPHONE OR IN
27 PERSON IS NOT POSSIBLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2016.