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**Drafted & Reviewed
By Legal Counsel**
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AMENDMENT TO BILL No. 31 - _____

Offered by Senator Justin Harrigan, Sr.

Bill No. 31- _____ is amended by adding an appropriately numbered section to read as follows:

“SECTION _____. Title 34 Virgin Islands Code is amended by adding a chapter 17 to read as follows:

“Chapter 17. Protected communication rights of incapacitated persons

§ 661. As used in this chapter, “incapacitated person” means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.

§ 662. (a) Unless specifically authorized by court order, a guardian may not restrict an incapacitated person's right of communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, personal mail or electronic communications.

(b) If an incapacitated person is unable to express consent to communication, visitation, or interaction with a person due to a physical or mental condition, then consent of the incapacitated person may be presumed based on the incapacitated person's prior relationship history with the person.

§ 663. A guardian may, for good cause shown, move the court to have restrictions placed on a person's ability to communicate, visit, or interact with an incapacitated person in accordance with § 664. The factors the court must consider in determining good cause are:

(1) Whether any protective order has been issued to protect the incapacitated person from the person seeking access to the incapacitated person;

(2) Whether abuse, neglect, or financial exploitation of the incapacitated person by the person seeking access to the incapacitated person has occurred or is likely to occur;

(3) Whether there is documented evidence that the incapacitated person wishes to reject communication, visitation, or interaction with specific persons; and

(4) Any other factors considered relevant by the court.

§ 664. (a) A court may order restrictions placed on communications, visitations, or interactions a person may have with an incapacitated person upon a showing of good cause by the guardian.

(b) In determining whether to issue an order in accordance with subsection (a), the court must consider the following factors:

(1) Whether any protective order has been issued to protect the incapacitated person from the person seeking access to the incapacitated person;

(2) Whether the person has been charged with abuse, neglect, or financial exploitation of the incapacitated person;

(3) Whether the incapacitated person expresses a desire to communicate, visit, or interact with the person;

(4) If the incapacitated person is unable to communicate, whether a properly executed living will, durable power of attorney, or advance directive contains a preference by the incapacitated person with regard to the person's communication, visitation, or interaction with the incapacitated person; and

(5) Any other factors the court considers relevant.

(c) Before issuing an order under this section, the court must consider the following restrictions in the order listed:

(1) Placing reasonable time, manner, or place restrictions on communication, visitation, or interaction between the incapacitated person and another person based on the history between the incapacitated person and the person or the incapacitated person's wishes;

(2) Requiring that communication, visitation, or interaction between the incapacitated person and another person be supervised; or

(3) Denying communication, visitation, or interaction between the incapacitated person and another person. Unless the court finds that the person poses a threat to the incapacitated person, supervised communication, visitation, or interaction under subsection (c)(2) must be ordered before the denial of any communication, visitation, or interaction.

§ 665. (a) If any interested person, including the incapacitated person, reasonably believes that § 662 has been violated or an order issued under § 664 has been violated, then such person may move the court to:

(1) require the guardian to grant a person access to the incapacitated person;

(2) restrict, or further restrict, a person's access to the incapacitated person;

(3) modify the guardian's duties; or

(4) discharge and replace the guardian pursuant to 15 V.I.C. § 884.

(b) Notwithstanding actions available to the court under subsection (a), a guardian who is found to be willfully isolating an incapacitated person and who has violated § 662 or has violated an order issued under § 664 is subject to discharge and replacement pursuant to 15 V.I.C. § 884.

§ 666. (a) Except as provided in subsection (b), the court shall schedule a hearing on a motion filed under § 663 or §665 no later than 60 days after the date the motion is filed. The court may, in its discretion, order the parties to attempt mediation before the hearing. If mediation results in agreement of the parties with regard to communication, visitation, or interaction with the incapacitated person, the agreement must be approved and memorialized in an order by the court.

(b) If the motion alleges that the incapacitated person's health is in significant decline or that the incapacitated person's death may be imminent, the court shall conduct an emergency hearing as soon as practicable, but no later than 10 days after the motion is filed.

(c) When a scheduling order is issued upon a motion filed under subsection (b), the court shall also order supervised communication, visitation, or interaction with the incapacitated person during the period before the hearing.

(d) Notice of the hearing, a copy of the motion, and a copy of any order issue under subsection (c), if applicable, must be personally served upon the incapacitated person and any person against whom the motion is filed, and nothing in this chapter affects the incapacitated person's right to appear and be heard in the proceedings.

§ 667. (a) The court may award the prevailing party in any action brought under this chapter court costs and reasonable attorneys' fees. But an award of court costs or attorneys' fees may not be paid out of the incapacitated person's estate.

(b) The court, upon motion or upon its own initiative, shall impose upon a guardian who is found to be willfully isolating an incapacitated person and who has violated § 662 or who has violated an order issued pursuant to § 664, an appropriate sanction, including an order to pay court costs and reasonable attorneys' fees of the other party or parties. However, no sanction may be paid out of the incapacitated person's estate.

§ 668. A guardian shall promptly notify an incapacitated person's closest relatives and any person designated by the incapacitated person to be notified, along with the appropriate contact information and upon the incapacitated person's knowledge of such circumstance and information, if:

- (1) The incapacitated person's residence has changed;
- (2) The incapacitated person is staying at a location other than the incapacitated person's residence;
- (3) The incapacitated person is admitted to a medical facility for:
 - (A) Emergency care in response to a life-threatening injury or medical condition; or
 - (B) Acute care; or
- (4) The incapacitated person dies. However, notification of the incapacitated person's death must be made in person or by telephone.

§ 669. (a) A guardian is not required to provide notice in accordance with § 668 if:

- (1) A person who is entitled to notice under § 668 informs the guardian in writing that the person does not wish to receive such notice; or
- (2) The incapacitated person or a court order has expressly prohibited the guardian from providing notice to the person.

(b) A guardian may not provide contact information in accordance with § 668 if an order of protection or restraining order has been issued against the person on behalf of the incapacitated person."