**South Carolina General Assembly**

124th Session, 2021-2022

**H. 4185**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Thayer

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Introduced in the House on April 8, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Guardian/Conservator - Protected Person

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/8/2021 House Introduced and read first time ([House Journal‑page 28](file:///h:\hj\20210408.docx))

4/8/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 28](file:///h:\hj\20210408.docx))

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=4185&session=124&summary=B) at the website

**VERSIONS OF THIS BILL**

[4/8/2021](file:///p:\pprever\2021-22\4185_20210408.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING PART 1A TO ARTICLE 5, CHAPTER 5, TITLE 62 SO AS TO LIMIT THE ABILITY OF A GUARDIAN OR CONSERVATOR TO ISOLATE A PROTECTED PERSON, AND TO PROVIDE MANDATORY NOTIFICATION PROCEDURES IN THE EVENT OF CERTAIN CONTINGENCIES INVOLVING A PROTECTED PERSON.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 5, Chapter 5, Title 62 of the 1976 Code is amended by adding:

“Part 1A

Communication and Visitation with Protected Persons

Section 62‑5‑110. (A) Notwithstanding another provision of law, unless specifically authorized by court order, a guardian or conservator may not restrict a protected person’s right of communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail.

(B) If a protected 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 protected person may be presumed based on the protected person’s prior relationship history with the person.

(C) For good cause shown, a guardian or conservator may petition the court to have restrictions placed on a person’s ability to communicate, visit, or interact with a protected person pursuant to subsection (D). For purposes of this part, the term ‘good cause’ includes:

(1) whether previous protective orders have been issued to safeguard the protected person from the person seeking access to the protected person;

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

(3) documented wishes of the protected person to reject communication, visitation, or interaction with specific persons; or

(4) other factors deemed relevant by the court.

(D)(1) A court may order restrictions placed on communications, visitations, or interactions a person may have with a protected person upon a showing of good cause by the guardian or conservator.

(2) In determining whether to issue an order pursuant to item (1), the following factors must be considered by the court:

(a) whether previous protective orders have been issued to safeguard the protected person from the person seeking access to the protected person;

(b) whether the person has been charged with abuse, neglect, or financial exploitation of the protected person;

(c) whether the protected person expresses a desire to communicate, visit, or interact with the person seeking access to the protected person;

(d) if the protected person is unable to communicate, whether a properly executed living will, durable power of attorney, or advance directive contains a preference by the protected person regarding the person’s communication, visitation, or interaction with the protected person; and

(e) other factors deemed relevant by the court.

(3) Prior to issuing an order pursuant to this subsection, the court shall consider the following restrictions in the order listed:

(a) placing reasonable time, manner, or place restrictions on communication, visitation, or interaction between the protected person and another person based on the history between the protected person and person or the protected person’s wishes, or both;

(b) requiring communication, visitation, or interaction between the protected person and another person be supervised; or

(c) denying communication, visitation, or interaction between the protected person and another person; provided, that, unless the court finds that the person poses a threat to the protected person, supervised communication, visitation, or interaction as provided in this subsection shall be ordered prior to the denial of communication, visitation, or interaction.

(E)(1) If an interested person, including the protected person, reasonably believes that subsection (A), (B), or an order issued pursuant to subsection (D)(1) has been violated, then that person may petition the court to:

(a) require the guardian or conservator to grant a person access to the protected person;

(b) restrict, or further restrict a person’s access to the protected person;

(c) modify the guardian’s or conservator’s duties; or

(d) remove and replace the guardian or conservator pursuant to this article.

(2) Notwithstanding actions available to the court pursuant to this subsection, a guardian or conservator who is found to be knowingly isolating a protected person and who has violated subsection (A), (B), or an order issued pursuant to subsection (D) shall be subject to removal and replacement pursuant to this article.

(F)(1) Except as provided in item (2), the court shall schedule a hearing on a motion filed pursuant to subsection (C) or (E) no later than sixty days after the date the motion is filed. The court may, in its discretion, order mediation to be conducted between the parties and the protected person prior to the hearing. If mediation results in agreement of the parties and the protected person with regard to communication, visitation, or interaction with the protected person, the agreement must be approved and memorialized in an order by the court.

(2)(a) If the motion states that the protected person’s health is in significant decline or that the protected person’s death may be imminent, the court shall conduct an emergency hearing as soon as practicable, but no later than ten days after the motion is filed.

(b) When a scheduling order is issued for a motion filed pursuant to this item, the court also shall order that supervised communication, visitation, or interaction with the protected person be granted during the period prior to the hearing.

(3) Notice of the hearing, a copy of the motion, and a copy of an order issued pursuant to item (2), if applicable, must be personally served upon the protected person and any person against whom the motion is filed, and nothing in this section shall affect the protected person’s right to appear and be heard in the proceedings.

(G)(1) The court may award the prevailing party court costs and reasonable attorney’s fees for an action brought pursuant to this section; provided, however, that an award of court costs or attorney’s fees may not be paid out of the protected person’s estate.

(2) The court, upon motion or upon its own initiative, shall impose upon a guardian or conservator who is found to be knowingly isolating a protected person and who has violated subsection (A), (B), or an order issued pursuant to subsection (D) an appropriate sanction, including an order to pay court costs and reasonable attorney’s fees of the other party or parties; provided, however, that a sanction may not be paid out of the protected person’s estate.

Section 62‑5‑120. (A) As soon as is reasonably possible after acquiring knowledge of one or more of the circumstances, including contact information described in items (1) through (5), a guardian or a conservator shall notify a protected person’s closest relatives or other person or persons designated by the protected person to be notified in the event that the protected person:

(1) changes place of residence;

(2) is staying at a location other than the protected person’s residence for more than seven consecutive days;

(3) is admitted to or discharged from a nursing home or assisted‑care living facility;

(4) is admitted to a medical facility for emergency care in response to a life‑threatening injury, medical condition, or for acute care; or

(5) dies. In the case of the protected person’s death, the guardian or conservator shall make a good faith effort to contact the protected person’s relatives or designated persons either in person or by telephone.

(B) A guardian or a conservator is not required to provide notice in accordance with subsection (A) if:

(1) a person who is entitled to notice under subsection (A) informs the guardian or conservator in writing that the person does not wish to be notified; or

(2) the protected person or a court order has expressly prohibited the guardian or conservator from providing notice to the person.

(C) A guardian or conservator may not provide a protected person’s contact information to a person who is the subject of an order of protection or a restraining order issued on behalf of the protected person.”

SECTION 2. This act takes effect upon approval by the Governor.

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