

18102780D

1 **HOUSE BILL NO. 477**

2 Offered January 10, 2018

3 Prefiled January 7, 2018

4 A BILL to amend and reenact § 64.2-2019 of the Code of Virginia and to amend the Code of Virginia
5 by adding a section numbered 64.2-2012.1, relating to guardianship; communication between
6 incapacitated persons and others.

7 Patrons—Reid and Levine

8 Referred to Committee for Courts of Justice

9 **Be it enacted by the General Assembly of Virginia:**10 **1. That § 64.2-2019 of the Code of Virginia is amended and reenacted and that the Code of
11 Virginia is amended by adding a section numbered 64.2-2012.1 as follows:**12 **§ 64.2-2012.1. Petitions regarding communication between incapacitated persons and others.**13 A. Upon petition by a guardian, and for good cause shown, the court may restrict an incapacitated
14 person's right to communicate with, visit, or interact with other persons with whom the incapacitated
15 person has expressed a desire to communicate, visit, or interact or with whom the incapacitated person
16 has an established relationship.17 B. If the court finds that such a restriction is warranted, the court shall limit itself to the least
18 restrictive means possible. In making its decision, the court shall consider (i) reasonable time, manner,
19 or place restrictions on communication between the incapacitated person and the person with whom the
20 incapacitated person has expressed a desire to communicate, visit, or interact or with whom the
21 incapacitated person has an established relationship; (ii) supervised communication, visitation, or
22 interaction between the incapacitated person and the person with whom the incapacitated person has
23 expressed a desire to communicate, visit, or interact or with whom the incapacitated person has an
24 established relationship; (iii) a denial of communication, visitation, or interaction between the
25 incapacitated person and the person with whom the incapacitated person has expressed a desire to
26 communicate, visit, or interact or with whom the incapacitated person has an established relationship;
27 or (iv) other appropriate relief.28 C. Upon notification by the incapacitated person or any other person that the guardian is in
29 violation of an order issued pursuant to this section, the court may issue summons or order to show
30 cause why the guardian is in violation of such an order.31 D. If the court finds that a guardian brought a petition under this section in bad faith or not for the
32 benefit of the incapacitated person, the court may require the guardian to pay or reimburse all or some
33 of the incapacitated person's reasonable costs and fees. Such a finding may also be grounds for
34 termination of the guardianship appointment.35 **§ 64.2-2019. Duties and powers of guardian.**36 A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was
37 appointed guardian and may be held personally liable for a breach of any fiduciary duty to the
38 incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the
39 guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of
40 the incapacitated person.41 B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance
42 directive or durable power of attorney previously executed by the incapacitated person. A guardian may
43 seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as
44 provided by the Uniform Power of Attorney Act (§ 64.2-1600 et seq.). Notwithstanding the provisions of
45 the Health Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of
46 § 64.2-2012, a guardian may seek court authorization to modify the designation of an agent under an
47 advance directive, but the modification shall not in any way affect the incapacitated person's directives
48 concerning the provision or refusal of specific medical treatments or procedures.49 C. A guardian shall maintain sufficient contact with the incapacitated person to know of his
50 capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as
51 often as necessary.52 D. A guardian shall be required to seek prior court authorization to change the incapacitated person's
53 residence to another state, to terminate or consent to a termination of the person's parental rights, or to
54 initiate a change in the person's marital status.55 E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in
56 decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A

INTRODUCED

HB477

59 guardian, in making decisions, shall consider the expressed desires and personal values of the
60 incapacitated person to the extent known and shall otherwise act in the incapacitated person's best
61 interest and exercise reasonable care, diligence, and prudence. *A Absent a court order, a guardian shall*
62 ~~not unreasonably~~ restrict an incapacitated person's ability to communicate with, visit, or interact with
63 other persons with whom the incapacitated person has *expressed a desire to communicate, visit, or*
64 *interact or with whom the incapacitated person has* an established relationship. *Pursuant to §*
65 *64.2-2012.1, a guardian may petition the court for permission to restrict an incapacitated person's right*
66 *to communicate with, visit, or interact with any such person.*

67 F. A guardian shall have authority to make arrangements for the funeral and disposition of remains,
68 including cremation, interment, entombment, memorialization, inurnment, or scattering of the cremains,
69 or some combination thereof, if the guardian is not aware of any person that has been otherwise
70 designated to make such arrangements as set forth in § 54.1-2825. A guardian shall have authority to
71 make arrangements for the funeral and disposition of remains after the death of an incapacitated person
72 if, after the guardian has made a good faith effort to locate the next of kin of the incapacitated person to
73 determine if the next of kin wishes to make such arrangements, the next of kin does not wish to make
74 the arrangements or the next of kin cannot be located. Good faith effort shall include contacting the next
75 of kin identified in the petition for appointment of a guardian. The funeral service licensee, funeral
76 service establishment, registered crematory, cemetery, cemetery operator, or guardian shall be immune
77 from civil liability for any act, decision, or omission resulting from acceptance of any dead body for
78 burial, cremation, or other disposition when the provisions of this section are met, unless such acts,
79 decisions, or omissions resulted from bad faith or malicious intent.