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HOUSE BILL 120

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Conrad James

AN ACT

RELATING TO FAMILIES; CREATING A PROCEEDING FOR ADULT CHILDREN TO PETITION FOR VISITATION WITH A PARENT FOR WHOM A GUARDIAN HAS NOT BEEN APPOINTED; REQUIRING GUARDIANS TO NOTIFY FAMILY MEMBERS OF THE HOSPITALIZATION OR DEATH OF A PROTECTED PERSON AND OF FUNERAL ARRANGEMENTS FOR AND FINAL RESTING PLACE OF A PROTECTED PERSON; SPECIFYING DUTIES OF A GUARDIAN REGARDING VISITATION OF A PROTECTED PERSON; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Adult Child Visitation Privileges Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Adult Child Visitation Privileges Act:

A. "adult child" means an adult who has attained

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1 the age of eighteen and who is the biological or adopted child
2 of a parent;

3 B. "petitioner" means an adult child who petitions
4 for visitation with the adult child's parent; and

5 C. "visitation" means an in-person meeting or a
6 telephonic, mail or electronic communication.

7 SECTION 3. [NEW MATERIAL] PETITION TO COMPEL
8 VISITATION.--

9 A. An adult child of a parent for whom a guardian
10 has not been appointed may petition the district court in the
11 county where the adult child's parent resides, or can be found,
12 for an order to compel visitation with the petitioner's parent.

13 B. The petition shall state, to the extent known to
14 the petitioner:

15 (1) the parent's current address or location;

16 (2) the condition of the parent's mental and
17 physical health;

18 (3) the nature of the visitation sought;

19 (4) efforts made by the petitioner to obtain
20 visitation with the parent;

21 (5) whether the parent has a condition that
22 affects the parent's ability to make and communicate a decision
23 as to visitation; and

24 (6) the names and addresses of the parent's:

25 (a) spouse;

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- 1 (b) adult children;
- 2 (c) adult grandchildren;
- 3 (d) parents;
- 4 (e) siblings; and
- 5 (f) guardian, if any.

6 C. Service of the petition shall be made by:

7 (1) delivering a copy of the petition to the
8 parent wherever the parent may be found or by leaving the
9 petition with a person over fifteen years old residing at the
10 usual place of abode of the parent; and

11 (2) mailing a copy of the petition via
12 registered or certified mail to the persons identified, at the
13 addresses set forth, in the petition pursuant to Paragraph (6)
14 of Subsection B of this section.

15 SECTION 4. [NEW MATERIAL] INVESTIGATION.--

16 A. Upon receipt of a petition for an order to
17 compel visitation, the court shall appoint an independent
18 investigator to conduct an investigation and make written
19 findings in a report to the court to assist the court in
20 determining whether the petitioner's parent has sufficient
21 capacity to make and communicate a decision as to visitation
22 and desires visitation.

23 B. In conducting the investigation, the independent
24 investigator shall interview, or show good cause for not
25 interviewing, the following persons:

- 1 (1) each petitioner;
2 (2) the parent who is the subject of the
3 petition;
4 (3) the parent's spouse;
5 (4) the parent's adult children;
6 (5) the parent's adult grandchildren;
7 (6) the parent's parents;
8 (7) the parent's siblings;
9 (8) the parent's guardian, if any; and
10 (9) the parent's close friends, if known.

11 C. The independent investigator may conduct
12 interviews telephonically or by video conference and shall not
13 be paid or reimbursed for out-of-state travel to conduct
14 interviews. The investigation shall be completed and the
15 written report tendered to the court within twenty-one days
16 following the investigator's appointment.

17 D. The investigator's report shall be filed with
18 the court, and the court shall mail a copy to the petitioner,
19 the petitioner's parent and all other persons served with the
20 petition pursuant to Paragraph (6) of Subsection B of Section 3
21 of the Adult Child Visitation Privileges Act and their counsel.

22 E. The investigator's report shall be confidential
23 and not disclosed, except as provided in Subsection D of this
24 section.

25 F. If an investigation report involving the same

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1 parties has been filed in the twelve months preceding the
2 filing of the instant petition, the court may determine, on
3 good cause shown, that another investigation is not necessary
4 or that a more limited investigation is sufficient.

5 SECTION 5. [NEW MATERIAL] HEARING.--A hearing on the
6 petition shall be set no sooner than fourteen calendar days
7 following the filing of the investigator's report. Notice of
8 the hearing shall be mailed to the persons served with the
9 petition pursuant to Paragraph (6) of Subsection B of Section 3
10 of the Adult Child Visitation Privileges Act.

11 SECTION 6. [NEW MATERIAL] DISPOSITION.--

12 A. In ruling on the petition, the court shall
13 determine whether the petitioner's parent has sufficient
14 capacity to make and communicate a decision as to visitation.
15 A determination by the court regarding the parent's capacity
16 shall not be admissible as evidence in any other proceeding.

17 B. The court shall grant reasonable visitation if:

18 (1) the petitioner's parent has sufficient
19 capacity to make and communicate a decision regarding
20 visitation and expresses a desire for visitation; or

21 (2) the petitioner's parent lacks capacity to
22 make and communicate a decision regarding visitation, but the
23 court finds that visitation would be in the best interest of
24 the parent, based upon the following:

25 (a) the relationship between the

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1 petitioner and the parent;

2 (b) statements made by the parent
3 expressing a desire for visitation;

4 (c) any other evidence probative of the
5 parent's desire for visitation from the petitioner; and

6 (d) the investigator's report.

7 C. The court may deny the petition for an order to
8 compel visitation if the petitioner's parent has sufficient
9 capacity to make and communicate a decision regarding
10 visitation and does not desire visitation.

11 D. The court may appoint counsel to represent the
12 petitioner's parent.

13 E. The court shall require the petitioner to pay
14 the reasonable fees and expenses of the independent
15 investigator and of counsel appointed to represent the
16 petitioner's parent.

17 F. Upon motion of the petitioner, the court may
18 enter an order enjoining the change of a parent's residence to
19 a location outside the jurisdiction of the court for the
20 duration of the proceedings, unless such change of residence is
21 for the purpose of receiving health care treatment or services
22 that are medically necessary for the parent or for such other
23 good cause shown.

24 **SECTION 7.** A new section of Chapter 45, Article 5 NMSA
25 1978 is enacted to read:

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1 "[NEW MATERIAL] SPECIFIC DUTIES OF GUARDIAN--NOTICE TO
2 FAMILY MEMBERS--ACCESS TO VISITATION.--

3 A. A guardian shall, as soon as reasonably
4 possible, notify the following persons in the event of death or
5 hospitalization or hospice care of a protected person under the
6 guardian's care, custody or control:

- 7 (1) the protected person's spouse;
- 8 (2) the protected person's adult children;
- 9 (3) the protected person's adult
10 grandchildren;
- 11 (4) the protected person's parents; and
- 12 (5) the protected person's siblings.

13 B. In the case of the death of the protected
14 person, the guardian shall, as soon as reasonably possible,
15 inform the persons listed in Paragraphs (1) through (5) of
16 Subsection A of this section of funeral arrangements for the
17 protected person and of the location of the final resting place
18 or intended final resting place of the protected person. If
19 the protected person has, prior to a finding of incapacity and
20 the appointment of a guardian, made specific decisions or
21 directives to exclude any person from the protected person's
22 funeral proceedings, a guardian shall not be required to inform
23 such person of funeral arrangements or the final resting place
24 or intended final resting place of the protected person.

25 C. If the protected person has sufficient capacity

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1 to make and communicate a decision as to visitation with the
2 persons listed in Paragraphs (1) through (5) of Subsection A of
3 this section, a guardian shall:

4 (1) allow reasonable visitation, if it is
5 requested or agreed to by the protected person; or

6 (2) decline visitation, if it is requested or
7 agreed to by the protected person.

8 D. If the protected person has, prior to a finding
9 of incapacity and the appointment of a guardian, made specific
10 decisions or directives regarding visitation by any person, a
11 guardian shall permit or deny visitation following such
12 decisions or directives of the protected person made while the
13 protected person had capacity.

14 E. A guardian shall comply with an order entered by
15 a district court regarding visitation of a protected person in
16 a proceeding pursuant to the Adult Child Visitation Privileges
17 Act.

18 F. For purposes of this subsection, "visitation"
19 means an in-person meeting or a telephonic, mail or electronic
20 communication."

21 **SECTION 8.** Section 45-5-313 NMSA 1978 (being Laws 1975,
22 Chapter 257, Section 5-313, as amended) is amended to read:

23 "45-5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT
24 [~~VENUE~~].--

25 A. The court where the protected person resides has

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1 concurrent jurisdiction with the court that appointed the
2 guardian, or in which acceptance of a testamentary appointment
3 was filed, over resignation, removal, accounting, petitions for
4 visitation by interested persons and other proceedings relating
5 to the guardianship.

6 B. Subject to the transfer provisions of the
7 Uniform Adult Guardianship and Protective Proceedings
8 Jurisdiction Act, if the court located where the protected
9 person resides is not the court in which acceptance of
10 appointment is filed, the court in which proceedings subsequent
11 to appointment are commenced shall in all appropriate cases
12 notify the other court, in this or another state, and after
13 consultation with that court determine whether to retain
14 jurisdiction or transfer the proceedings to the other court,
15 whichever may be in the best interests of the protected person.
16 A copy of any order accepting a resignation or removing a
17 guardian shall be sent to the court in which acceptance of
18 appointment is filed."

19 SECTION 9. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect immediately.