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HOUSE BILL NO. 2063

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 6.2-103.1 and 64.2-2003 of the Code of Virginia, relating to appointment of guardian ad litem; requested information, records, or reports from an individual or entity.

Patron—Glass

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-103.1 and 64.2-2003 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-103.1. Financial institutions to furnish certain information as part of adult protective services investigation.

Notwithstanding any other provision of law, any financial institution subject to the provisions of this title shall cooperate in any investigation of alleged adult abuse, neglect, or exploitation conducted by a local department of social services pursuant to Chapter 16 (§ 63.2-1600 et seq.) of Title 63.2 and shall make any financial records or information relevant to such investigation available to the local department *and to any guardian ad litem appointed by the court to represent an adult who is the subject of such adult protective services investigation* upon request to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and 12 U.S.C. § 3403.

In the absence of gross negligence or willful misconduct, any financial institution subject to the provisions of this title shall be immune from civil or criminal liability for providing such financial records or information in accordance with this section.

§ 64.2-2003. Appointment of guardian ad litem.

A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to § 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) notifying the court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem recommends counsel; (v) investigating the petition and evidence, requesting additional evaluation if necessary, considering whether a less restrictive alternative to guardianship or conservatorship is available, including the use of an advance directive, supported decision-making agreement, or durable power of attorney, and filing a report pursuant to subsection C; and (vi) personally appearing at all court proceedings and conferences. If the respondent is between 17 and a half and 21 years of age and has an Individualized Education Plan (IEP) and transition plan, the guardian ad litem shall review such IEP and transition plan and include the results of his review in the report required by clause (v).

C. In the report required by clause (v) of subsection B, the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or conservator is needed based on evaluations and reviews conducted pursuant to subsection B; (iii) the extent of the duties and powers of the guardian or conservator; (iv) the propriety and suitability of the person selected as guardian or conservator after consideration of the person's geographic location, familial or other relationship with the respondent, ability to carry out the powers and duties of the office, commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the conservator's bond, if any; and (vi) consideration of proper residential placement of the respondent. The report shall also contain an explanation by the guardian ad litem as to any (a) decision not to recommend the appointment of counsel for the respondent, (b) determination that a less restrictive alternative to guardianship or conservatorship is not advisable, and (c) determination that appointment of a limited guardian or conservator is not appropriate.

D. ~~A~~ *Any individual or entity with information, records, or reports relevant to a guardianship or conservatorship proceeding, including any* health care provider ~~and~~, local school division, *local department of social services, criminal justice agency as that term is defined in § 9.1-101, financial institution as that term is defined in § 6.2-100, investment advisor as that term is defined in § 13.1-501,*

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or other financial services provider shall disclose or make available to the guardian ad litem, ~~upon~~ *within five days of the guardian ad litem's* request, any information, records, and reports concerning the respondent that the guardian ad litem determines necessary to perform his duties under this section *to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and 12 U.S.C. § 3403. The request from the guardian ad litem shall include the court order (i) appointing such guardian ad litem to represent the respondent and (ii) authorizing the release of the information, records, or reports containing the respondent's personal information to such guardian ad litem. Disclosure of any such information, records, or reports via electronic means shall satisfy the requirements of this subsection. The individual or entity that provides such information, records, or reports to the guardian ad litem shall do so at no charge but may attach a statement of expenses or invoice to the information, records, or reports provided. Such statement or invoice shall be filed with the guardian ad litem's report so it may be considered by the court in the court's determination of the award of costs in a proceeding. Any individual or entity who does not timely provide such information, records, or reports to the guardian ad litem in a request made pursuant to this subsection shall be liable for reasonable fees, including attorney fees, incurred by the guardian ad litem in his obtaining of such information, records, or reports.*

In the absence of gross negligence or willful misconduct, any financial institution subject to the provisions of Title 6.2 shall be immune from civil or criminal liability for providing such financial records or information in accordance with this section.