

By: Representatives Ishee, Fredericks,  
Guice, Janus, Patterson, Simpson, Zuber,  
Bentz, Dedeaux, Upshaw, Peranich

To: Local and Private  
Legislation

HOUSE BILL NO. 613

1 AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF HARRISON  
2 COUNTY TO ESTABLISH AN OFFICE OF PUBLIC GUARDIAN FOR THE PURPOSES  
3 OF PROVIDING GUARDIANSHIP AND CONSERVATORSHIP SERVICES FOR  
4 INCAPACITATED AND VULNERABLE PERSONS, SERVING AS GUARDIAN AD LITEM  
5 IN CHANCERY COURT CASES WHENEVER THE APPOINTMENT OF A GUARDIAN AD  
6 LITEM IS REQUIRED BY LAW OR IS OTHERWISE NEEDED, AND INITIATING  
7 DRUG AND ALCOHOL COMMITMENTS ON BEHALF OF INDIGENT FAMILIES; TO  
8 PROVIDE THAT THE PUBLIC GUARDIAN SHALL BE SELECTED BY THE BOARD OF  
9 SUPERVISORS BASED UPON RECOMMENDATION FROM THE SENIOR CHANCELLOR  
10 OF THE EIGHTH CHANCERY COURT DISTRICT; AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** (1) The Legislature recognizes that:

13 (a) In many instances, private guardianship fails or is  
14 inadequate whenever there is no willing, responsible family  
15 member, friend, bank, corporation or other person available to  
16 serve as guardian for an incapacitated person and whenever such  
17 person does not have adequate resources to compensate a private  
18 guardian;

19 (b) Whenever private attorneys are appointed by the  
20 court to serve as conservators, guardians or guardians ad litem,  
21 these attorneys are subject to the distractions of private  
22 practice, resulting in little consistency in the quality of  
23 representation they provide; and

24 (c) Initiating involuntary alcohol and drug commitments  
25 without the services of an attorney is difficult and that persons  
26 without financial resources to hire an attorney must go without  
27 assistance.

28 (2) By the passage of this act, the Legislature intends to  
29 authorize the Board of Supervisors of Harrison County to establish  
30 an office of public guardian for the purposes of (a) providing  
31 guardianship and conservatorship services for the incapacitated

32 and vulnerable persons of the county; (b) serving as guardian ad  
33 litem in chancery court cases whenever the appointment of a  
34 guardian ad litem is required by law or is otherwise needed; and  
35 (c) initiating drug and alcohol commitments on behalf of indigent  
36 families of the county.

37       **SECTION 2.** (1) The Board of Supervisors of Harrison County,  
38 upon recommendation of the senior chancellor for the Eighth  
39 Chancery Court District, may appoint a person to serve as public  
40 guardian for the county. The person appointed to serve as public  
41 guardian must be an attorney in good standing with the Mississippi  
42 Bar who has been licensed to practice in this state for not less  
43 than five (5) years. The public guardian may not accept  
44 additional employment or hold additional offices that would  
45 constitute a conflict of interest with his services as public  
46 guardian. The term of office of the public guardian shall be four  
47 (4) years. A person may be reappointed by the board of  
48 supervisors and may serve successive terms as public guardian upon  
49 review and recommendation by the senior chancellor for the Eighth  
50 Chancery Court District. The public guardian, subject to the  
51 availability of funds made available by the Board of Supervisors  
52 of Harrison County, may employ and maintain such staff as may be  
53 necessary to carry out the functions of the office.

54       (2) Upon taking office, the public guardian shall take the  
55 oath of office and shall give bond to the Harrison County Board of  
56 Supervisors, with sufficient sureties, to be payable conditioned  
57 and approved as provided by law, in a penalty equal to three  
58 percent (3%) of the sum of all the state and county taxes shown by  
59 the assessment rolls and the levies to have been collected in the  
60 county for the year immediately preceding the beginning of his  
61 term of office; however, the bond shall not exceed One Hundred  
62 Thousand Dollars (\$100,000.00). The bond premiums shall be paid  
63 from any available funds of the county.

64           **SECTION 3.** (1) (a) The public guardian may be appointed to  
65 serve as conservator of a person, or his or her estate, who has  
66 been adjudicated incapacitated under Section 93-13-251,  
67 Mississippi Code of 1972, if:

68                   (i) There is no family member, friend, bank,  
69 corporation or other person willing and qualified to serve as  
70 conservator.

71                   (ii) The assets of the ward do not exceed the  
72 assets level for Medicaid eligibility, and the ward's income, from  
73 all sources, is less than Four Thousand Dollars (\$4,000.00) per  
74 year. Income from public welfare programs, supplemental security  
75 income, disability pensions or other social security pension shall  
76 be excluded in such computations. However, a ward whose total  
77 income, counting excludable income, exceeds Thirty Thousand  
78 Dollars (\$30,000.00) a year may not be served; and

79                   (iii) The public guardian finds that assets or  
80 income of the ward exceeds the amount set forth in subparagraph  
81 (a)(ii) of this subsection, the guardian shall submit a  
82 resignation and petition for the appointment of a successor  
83 conservator. The public guardian shall not be dismissed until  
84 such time as a private conservator is appointed. If a qualified  
85 successor is not available, the public guardian may remain as  
86 conservator if the guardian makes reasonable efforts to obtain a  
87 successor.

88                   (b) The public guardian, when appointed conservator of  
89 an incapacitated person, shall seek a family member, friend, bank,  
90 corporation or other person who is qualified and willing to serve  
91 as conservator. Upon determining that there is someone qualified  
92 and willing to serve as a conservator, either the public guardian  
93 or the qualified person shall petition the court for appointment  
94 of a successor conservator.

95           (c) When a person is appointed successor conservator,  
96 he or she immediately succeeds to all rights, duties,  
97 responsibilities and powers of the preceding public guardian.

98           (d) While serving as conservator for a person or estate  
99 pursuant to this act, the public guardian shall be vested with the  
100 same duties, powers and responsibilities as a guardian of a minor,  
101 and all laws relative to the guardianship of a minor shall be  
102 applicable to a conservator, including the provisions of Chapter  
103 13, Title 93, Mississippi Code of 1972.

104           (e) No fees shall be recovered from the assets or  
105 income of the ward for conservatorship services provided by the  
106 public guardian. However, in cases where the assets or income of  
107 the ward exceeds the amount set forth in subparagraph (1)(a)(ii)  
108 of this section, and a qualified successor conservator is not  
109 available, a reasonable fee may be collected for the services of  
110 the public guardian, which fee shall be deposited into the Public  
111 Guardian Fund. All fees collected under this section shall be  
112 approved in advance by order of the Harrison County Chancery  
113 Court.

114           (2) (a) The public guardian may be appointed to serve as  
115 guardian ad litem in chancery court cases where the appointment of  
116 a guardian ad litem is required by law or where otherwise needed  
117 in chancery court matters. In such cases, the public guardian  
118 shall have the same powers, duties and responsibilities as that of  
119 private guardians ad litem.

120           (b) No fees shall be collected for guardian ad litem  
121 services provided by the public guardian.

122           However, upon a finding by the court that one (1) or both  
123 parties has sufficient assets to pay for the services of the  
124 public guardian, a reasonable fee may be collected, and same shall  
125 be deposited in the Public Guardian Fund. All fees collected  
126 pursuant to this section shall be approved in advance by order of  
127 the Harrison County Chancery Court.

128           (3) The public guardian may initiate alcohol and drug  
129 commitment proceedings on behalf of indigent families.

130           (4) The public guardian may be appointed in any chancery  
131 court matter wherein the court determines such services are  
132 needed.

133           (5) In any proceeding for appointment of a public guardian,  
134 or in any proceeding involving the estate of a ward for whom a  
135 public guardian has been appointed guardian, the court costs or  
136 filing fees may be waived at the request of the public guardian.

137           (6) No later than January 31 of each year, the public  
138 guardian shall file an annual report with the Clerk of the  
139 Harrison County Chancery Court, indicating, with respect to the  
140 period covered by the report, the number of cases handled, the  
141 date on which each case was assigned, the date of termination of  
142 each case which has been closed during the period, the disposition  
143 of each terminated case, and the total amount of fees collected  
144 during the period.

145           **SECTION 4.** This act shall take effect and be in force from  
146 and after July 1, 2004.