

By: Representative Gunn

To: Judiciary A

HOUSE BILL NO. 162

1 AN ACT TO AUTHORIZE THE APPOINTMENT OF A GUARDIAN OR
2 CONSERVATOR FOR A SINGLE TRANSACTION; TO AMEND SECTIONS 93-13-38
3 AND 93-13-259, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR
4 RELATED PURPOSES.

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

6 **SECTION 1.** (1) If it is established in a proper proceeding
7 that a basis exists for the appointment of a conservator, guardian
8 or protective order, the court, without appointing a conservator,
9 may authorize, direct, or ratify any transaction necessary or
10 desirable to achieve any security, service, or care arrangement
11 meeting the foreseeable needs of the protected person. Protective
12 arrangements include payment, delivery, deposit, or retention of
13 funds or property; sale, mortgage, lease, or other transfer of
14 property; entry into an annuity contract, a contract for life
15 care, a deposit contract, or a contract for training and
16 education; or addition to or establishment of a suitable trust.

17 (2) If it is established in a proper proceeding that a basis
18 exists for the appointment of a conservator, guardian or
19 protective order, the court, without appointing a conservator, may



20 authorize, direct, or ratify any contract, trust, or other
21 transaction relating to the protected person's property and
22 business affairs if the court determines that the transaction is
23 in the best interest of the protected person.

24 (3) Before approving a protective arrangement or other
25 transaction under this section, the court shall consider the
26 interests of creditors and dependents of the protected person and,
27 in view of the disability, whether the protected person needs the
28 continuing protection of a conservator. The court may appoint a
29 special conservator to assist in the accomplishment of any
30 protective arrangement or other transaction authorized under this
31 section who shall have the authority conferred by the order and
32 serve until discharged by order after report to the court of all
33 matters done pursuant to the order of appointment.

34 **SECTION 2.** Section 93-13-38, Mississippi Code of 1972, is
35 amended as follows:

36 93-13-38. (1) All the provisions of the law on the subject
37 of executors and administrators, relating to settlement or
38 disposition of property limitations, notice to creditors, probate
39 and registration of claims, proceedings to insolvency and
40 distribution of assets of insolvent estates, shall, as far as
41 applicable and not otherwise provided, be observed and enforced in
42 a guardianship of the person and estate. The requirements in a
43 guardianship of the person are modified to the extent that notice
44 to creditors is not required, reports will be made only as often



45 as the court requires, and the guardianship may be closed without
46 the need for any accounting unless otherwise determined by the
47 court. Any assets that are received shall be reported immediately
48 and at that point the guardianship shall be deemed to be a
49 guardianship of the person and estate and all requirements for
50 guardianship of the person and estate shall be followed.

51 (2) It shall be the duty of the guardian of wards as defined
52 by Section 1-3-58, Mississippi Code of 1972, to improve the estate
53 committed to his charge, and to apply so much of the income,
54 profit or body thereof as may be necessary for the comfortable
55 maintenance and support of the ward and of his family, if he have
56 any, after obtaining an order of the court fixing the amount. And
57 such guardian may be authorized by the court or chancellor to
58 purchase on behalf of and in the name of the ward with any funds
59 of such ward's estate sufficient and appropriate property for a
60 home for such ward or his family on five (5) days' notice to a
61 member of said family, or the necessary funds may be borrowed and
62 the property purchased given as security. The guardian is
63 empowered to collect and sue for and recover all debts due his
64 said ward, and shall make payment of his debts out of the personal
65 estate as executors and administrators discharge debts out of the
66 estate of decedents, but the exempt property of the ward shall not
67 be liable for debts, and no debts against such estate shall be
68 payable by such guardian unless first probated and registered, as
69 required of claims against the estate of decedent.



70 (3) The word "family" shall be taken for the purpose of this
71 section to mean husband or wife and children; if there be no
72 husband, wife or children, the father and mother; and if there be
73 no father or mother, then the grandfather and grandmother, sisters
74 and brothers of said ward.

75 (4) (a) On application of the guardian or any interested
76 party, and after notice to all interested persons and to such
77 other persons as the court may direct, and on a showing that the
78 ward will probably remain incompetent during his lifetime, the
79 court may, after hearing and by order, authorize the guardian to
80 apply such principal or income of the ward's estate as is not
81 required for the support of the ward during his lifetime or of his
82 family towards the establishment of an estate plan for the purpose
83 of minimizing income, estate, inheritance, or other taxes payable
84 out of the ward's estate. The court may authorize the guardian to
85 make gifts of the ward's personal property or real estate,
86 outright or in trust, on behalf of the ward, to or for the benefit
87 of (i) organizations to which charitable contributions may be made
88 under the Internal Revenue Code and in which it is shown the ward
89 would reasonably have an interest, (ii) the ward's heirs at law
90 who are identifiable at the time of the order, (iii) devisees
91 under the ward's last validly executed will, if there be such a
92 will, and (iv) a person serving as guardian of the ward provided
93 he is eligible under either category (ii) or (iii) above.



94 (b) The person making application to the court shall
95 outline the proposed estate plan, setting forth all the benefits
96 to be derived therefrom. The application shall also indicate that
97 the planned disposition is consistent with the intentions of the
98 ward insofar as they can be ascertained. If the ward's intentions
99 cannot be ascertained, the ward will be presumed to favor
100 reduction in the incidence of the various forms of taxation and
101 the partial distribution of his estate as herein provided.

102 (c) The court:

103 (i) Shall appoint a guardian ad litem for the
104 ward; and

105 (ii) May appoint a guardian ad litem for any
106 interested party at any stage of the proceedings, if deemed
107 advisable for the protection of the interested party.

108 (d) Subsequent modifications of an approved plan may be
109 made by similar application to the court.

110 (e) Before signing an order to effectuate the
111 provisions of this subsection (4), the chancellor shall review the
112 ward's will, if the will is known or can be produced, to determine
113 that a gift made under this subsection (4) is consistent with the
114 will.

115 (5) A guardian may be appointed for a single transaction as
116 provided in Section 1 of House Bill No. 162, 2015 Regular Session.

117 **SECTION 3.** Section 93-13-259, Mississippi Code of 1972, is
118 amended as follows:



119 93-13-259. Should the court appoint the conservator of the
120 property or person or property and person of the subject party,
121 the said conservator shall have the same duties, powers and
122 responsibilities as a guardian of a minor, and all laws relative
123 to the guardianship of a minor shall be applicable to a
124 conservator. A conservator may be appointed for a single
125 transaction as provided in Section 1 of House Bill No. 162, 2015
126 Regular Session.

127 **SECTION 4.** This act shall take effect and be in force from
128 and after July 1, 2015.

