

By: Representative Currie

To: Judiciary A

HOUSE BILL NO. 260

1 AN ACT TO AMEND CHAPTER 463, LAWS OF 2019, WHICH IS THE
 2 MISSISSIPPI GUARDIANSHIP AND CONSERVATORSHIP ACT, TO PROVIDE THAT
 3 THOSE STATUTES RELATING TO GUARDIANS AND CONSERVATORS WHICH WERE
 4 IN EFFECT ON DECEMBER 31, 2019, BUT REPEALED ON JANUARY 1, 2020,
 5 BY THAT ACT WILL CONTINUE IN FULL FORCE AND EFFECT FOR THOSE COURT
 6 ACTIONS THAT WERE COMMENCED AND PENDING BEFORE THE ACT WENT INTO
 7 EFFECT ON JANUARY 1, 2020, AND WHICH HAVE NOT HAD A FINAL
 8 DISPOSITION AS OF THE EFFECTIVE DATE OF THIS ACT; AND FOR RELATED
 9 PURPOSES.

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

11 **SECTION 1.** Chapter 463, Laws of 2019, is amended as follows:

12 Section 1. The following is the Mississippi Guardianship and
 13 Conservatorship Act and shall be codified in Title 93, Mississippi
 14 Code of 1972, to replace those statutes in Title 93, Chapter 13,
 15 Mississippi Code of 1972, which are repealed in Sections 11
 16 through 19 of this act:

17 **ARTICLE 1**

18 **GENERAL PROVISIONS**

19 **Section 101. Short title.** This act may be cited as the
 20 Mississippi Guardianship and Conservatorship Act.

21 **Section 102. Definitions.** In this act:



22 (a) "Adult" means an individual at least twenty-one
23 (21) years of age or an emancipated individual under twenty-one
24 (21) years of age.

25 (b) "Claim" includes a claim against an individual or
26 conservatorship estate, whether arising in contract, tort, or
27 otherwise.

28 (c) "Conservator" means a person appointed by a court
29 to make decisions with respect to the property or financial
30 affairs of a ward. The term includes a co-conservator.

31 (d) "Conservatorship estate" means the property subject
32 to conservatorship under this act.

33 (e) "Full conservatorship" means a conservatorship that
34 grants the conservator all powers available under this act.

35 (f) "Full guardianship" means a guardianship that
36 grants the guardian all powers available under this act.

37 (g) "Guardian" means a person appointed by the court to
38 make decisions with respect to the personal affairs of the ward.
39 The term includes a co-guardian but does not include a guardian ad
40 litem.

41 (h) "Guardian ad litem" means a qualified person
42 appointed by the court to inform the court about the ward, to
43 protect the best interests of the ward, and to make
44 recommendations to the court in the best interests of the ward.

45 (i) "Less restrictive alternative" means an approach to
46 meeting an individual's needs which restricts fewer rights of the



47 individual than would the appointment of a guardian or conservator
48 in the discretion of the court.

49 (j) "Letters of guardianship or conservatorship" means
50 a record issued by a court certifying a guardian's or
51 conservator's authority to act.

52 (k) "Limited conservatorship" means a conservatorship
53 that grants the conservator less than all powers available under
54 this act, grants powers over only certain property, or otherwise
55 restricts the powers of the conservator.

56 (l) "Limited guardianship" means a guardianship that
57 grants the guardian less than all powers available under this act
58 or otherwise restricts the powers of the guardian.

59 (m) "Minor" means an unemancipated individual under
60 twenty-one (21) years of age.

61 (n) "Parent" does not include an individual whose
62 parental rights have been terminated.

63 (o) "Person" means an individual, estate, business or
64 nonprofit entity, public corporation, government or governmental
65 subdivision, agency, or instrumentality, or other legal entity.

66 (p) "Property" includes tangible and intangible
67 property.

68 (q) "Record," used as a noun, means information that is
69 inscribed on a tangible medium or that is stored in an electronic
70 or other medium and is retrievable in perceivable form.



71 (r) "Respondent" means an individual for whom
72 appointment of a guardian or conservator is sought.

73 (s) "Sign" means, with present intent to authenticate
74 or adopt a record:

75 (i) To execute or adopt a tangible symbol; or

76 (ii) To attach to or logically associate with the
77 record an electronic symbol, sound, or process.

78 (t) "State" means a state of the United States, the
79 District of Columbia, Puerto Rico, the United States Virgin
80 Islands, or any territory or insular possession subject to the
81 jurisdiction of the United States. The term includes a federally
82 recognized Indian tribe.

83 (u) "Ward" means an adult or minor for whom a guardian
84 or conservator has been appointed under this act.

85 **Section 103. Supplemental principles of law and equity**
86 **applicable.** Unless displaced by a particular provision of this
87 act, the principles of law and equity supplement its provisions.

88 **Section 104. Subject-matter jurisdiction.** (1) Except to
89 the extent jurisdiction is precluded by the Uniform Child Custody
90 Jurisdiction and Enforcement Act (Title 93, Chapter 27,
91 Mississippi Code of 1972), the chancery court has jurisdiction
92 over a guardianship or conservatorship for a respondent domiciled
93 or present in this state or having property in this state.



94 (2) After notice is given in a proceeding for a guardianship
95 or conservatorship and until termination of the proceeding, the
96 court in which the petition is filed has:

97 (a) Exclusive jurisdiction to determine the need for
98 the guardianship or conservatorship;

99 (b) Exclusive jurisdiction to determine how property of
100 the respondent must be managed, expended, or distributed to or for
101 the use of the respondent, an individual who is dependent in fact
102 on the respondent, or other claimant;

103 (c) Nonexclusive jurisdiction to determine the validity
104 of a claim against the respondent or property of the respondent or
105 a question of title concerning the property; and

106 (d) If a guardian or conservator is appointed,
107 exclusive jurisdiction over issues related to administration of
108 the guardianship or conservatorship.

109 (3) A court that appoints a guardian or conservator has
110 exclusive and continuing jurisdiction over the proceeding until
111 the court terminates the proceeding.

112 **Section 105. Transfer of proceeding.** (1) This section does
113 not apply to a guardianship or conservatorship for an adult that
114 is subject to the transfer provisions of the Uniform Adult
115 Guardianship and Protective Proceedings Jurisdiction Act (Title
116 93, Chapter 14, Mississippi Code of 1972).

117 (2) After appointment of a guardian or conservator, the
118 court that made the appointment may transfer the proceeding to a



119 court in another county in this state or another state if transfer
120 is in the best interest of the ward, a final settlement of the
121 conservatorship accounts is made, and the guardian or conservator
122 qualifies as such in the county or state to which the proceeding
123 is being removed.

124 (3) If a proceeding for a guardianship or conservatorship is
125 pending in another state or a foreign country and a petition for
126 guardianship or conservatorship for the same respondent is filed
127 in a court in this state, the court must notify the court in the
128 other state or foreign country and, after consultation with that
129 court, assume or decline jurisdiction, whichever is in the best
130 interest of the respondent.

131 (4) A guardian or conservator appointed in another state or
132 country may petition the court for appointment as a guardian or
133 conservator in this state for the same individual if jurisdiction
134 in this state is or will be established. The appointment may be
135 made on proof as outlined in Section 124.

136 (5) Notice of hearing on a petition under subsection (4),
137 together with a copy of the petition, must be given to the
138 respondent, if the respondent is at least fourteen (14) years of
139 age at the time of the hearing, and to the persons that would be
140 entitled to notice if the procedures for appointment of a guardian
141 or conservator under this act were applicable. The court shall
142 make the appointment unless it determines the appointment would
143 not be in the best interest of the respondent.



144 (6) Not later than fourteen (14) days after appointment
145 under subsection (5), the guardian or conservator must give a copy
146 of the order of appointment to the ward, if the ward is at least
147 fourteen (14) years of age, and to all persons given notice of the
148 hearing on the petition.

149 **Section 106. Venue.** (1) Venue for a guardianship
150 proceeding for a minor is in:

151 (a) The county in which the minor resides or is present
152 at the time the proceeding commences; or

153 (b) The county in which another proceeding concerning
154 the custody or parental rights of the minor is pending.

155 (2) Venue for a guardianship proceeding for an adult is in:

156 (a) The county in which the respondent resides;

157 (b) If the respondent has been admitted to an
158 institution by court order, the county in which the court is
159 located; or

160 (c) If the proceeding is for appointment of an
161 emergency guardian for an adult, the county in which the
162 respondent is present.

163 (3) Venue for a conservatorship proceeding is in:

164 (a) The county in which the respondent resides, whether
165 or not a guardian has been appointed in another county or other
166 jurisdiction; or

167 (b) If the respondent does not reside in this state, in
168 any county in which property of the respondent is located.



169 (4) If proceedings under this act are brought in more than
170 one (1) county, the court of the county in which the first
171 proceeding is brought has the exclusive right to proceed unless
172 the court determines venue is properly in another court or that
173 the interest of justice otherwise requires transfer of the
174 proceeding.

175 **Section 107. Practice in court.** (1) Except as otherwise
176 provided in this act, the Mississippi Rules of Evidence and
177 Mississippi Rules of Civil Procedure, including rules concerning
178 appellate review, govern a proceeding under this act.

179 (2) If proceedings for a guardianship or conservatorship for
180 the same individual are commenced or pending in the same court,
181 the proceedings may be consolidated.

182 **Section 108. Letters of guardianship or conservatorship.**

183 (1) The clerk must issue letters of guardianship to a guardian
184 who takes the proper oath, posts bond if required, and submits a
185 certificate of attorney and certificate of fiduciary, unless
186 waived by the court.

187 (2) The clerk must issue letters of conservatorship to a
188 conservator who takes the proper oath, posts bond if required, and
189 submits a certificate of attorney and certificate of fiduciary,
190 unless waived by the court or unless the conservator complies with
191 another asset-protection arrangement required by the court.

192 (3) The court in its initial order of appointment or at any
193 subsequent time may limit the powers conferred on a guardian or



194 conservator. The court shall direct the clerk to issue new
195 letters of guardianship or conservatorship that reflect the
196 limitation. The court shall direct the clerk to give notice of
197 the limitation by service of a copy of the court's order on the
198 guardian or conservator, the ward, and any other person the court
199 determines.

200 (4) Limitations on the powers of a guardian or conservator
201 or on the property subject to conservatorship must be stated in
202 the letters of guardianship or conservatorship.

203 **Section 109. Effect of acceptance of appointment.** By
204 accepting appointment, a guardian or conservator submits to the
205 personal jurisdiction of the court in this state in any proceeding
206 relating to the guardianship or conservatorship.

207 **Section 110. Co-guardian; co-conservator.** When the court
208 deems appropriate, the co-guardian or co-conservator must comply
209 with Section 108.

210 **Section 111. Judicial appointment of successor guardian or**
211 **successor conservator.** (1) The court at any time may appoint a
212 successor guardian or successor conservator to serve immediately
213 as ordered by the court.

214 (2) A person entitled under Section 202 or 302 to petition
215 the court to appoint a guardian may petition the court to appoint
216 a successor guardian. A person entitled under Section 402 to
217 petition the court to appoint a conservator may petition the court
218 to appoint a successor conservator.



219 (3) A successor guardian or successor conservator appointed
220 to serve may act as guardian or conservator upon compliance with
221 Section 108.

222 **Section 112. Effect of death, removal, or resignation of**
223 **guardian or conservator.** (1) The appointment of a guardian or
224 conservator terminates on the death or removal of the guardian or
225 conservator, or when the court approves a resignation of the
226 guardian or conservator under subsection (2).

227 (2) A guardian or conservator must petition the court to
228 resign. The petition may include a request that the court appoint
229 a successor. Resignation of a guardian or conservator is
230 effective on the date the resignation is approved by the court.

231 (3) Death, removal, or resignation of a guardian or
232 conservator does not affect liability for a previous act or the
233 obligation to account for:

234 (a) An action taken on behalf of the ward; or

235 (b) The ward's funds or other property.

236 **Section 113. Notice of hearing generally.** (1) Except as
237 otherwise provided in Section 203, 303(3) or 403(3), if notice of
238 a hearing under this act is required, the movant must give notice
239 of the date, time, and place of the hearing to the person to be
240 notified unless otherwise ordered by the court for good cause
241 shown. Except as otherwise provided in this act, notice must be
242 given in compliance with Rule 81 of the Mississippi Rules of Civil
243 Procedure.



244 (2) Proof of notice of a hearing under this act must be made
245 before or at the hearing and filed in the proceeding.

246 (3) Notice of a hearing under this act must be in at least
247 sixteen-point font, in plain language, and, to the extent
248 feasible, in a language in which the person to be notified is
249 proficient.

250 (4) Any person interested in the ward's welfare may file a
251 motion to intervene as provided by Rule 24 of the Mississippi
252 Rules of Civil Procedure.

253 **Section 114. Waiver of notice.** Except as otherwise provided
254 in this act, a person may waive notice under this act in a record
255 signed by the person or person's attorney and filed in the
256 proceeding. However, a respondent or ward may not waive notice
257 under this act.

258 **Section 115. Guardian ad litem.** The court at any time may
259 appoint a guardian ad litem for an individual. If no conflict of
260 interest exists, a guardian ad litem may be appointed to represent
261 multiple individuals or interests. The guardian ad litem may not
262 be the same individual as the attorney representing the
263 respondent. The court shall state the duties of the guardian ad
264 litem and the reasons for the appointment.

265 **Section 116. Request for notice.** (1) A person may file
266 with the court a request for notice under this act if the person
267 is:



268 (a) Not otherwise entitled to notice under Section 203,
269 303(3) or 403(3); and

270 (b) Interested in the welfare of a respondent or ward.

271 (2) A request under subsection (1) must include a statement
272 showing the interest of the person making the request and the
273 address of the person or an attorney for the person to whom notice
274 is to be given.

275 (3) If the court approves a request under subsection (1),
276 the court must give notice of the approval to the guardian or
277 conservator, if one has been appointed, or to the respondent if no
278 guardian or conservator has been appointed.

279 **Section 117. Disclosure of bankruptcy or criminal history.**

280 Before accepting appointment as a guardian or conservator, a
281 person must disclose to the court whether the person:

282 (a) Is or has been a debtor in a bankruptcy,
283 insolvency, or receivership proceeding; or

284 (b) Has been convicted of:

285 (i) A felony;

286 (ii) A crime involving dishonesty, neglect,
287 violence, or use of physical force; or

288 (iii) Other crime relevant to the functions the
289 person would assume as guardian or conservator.

290 **Section 118. Compensation and expenses; in general.** (1) An
291 attorney for a respondent in a proceeding under this act may be



292 awarded reasonable compensation for services and reasonable
293 expenses in the discretion of the court.

294 (2) An attorney or other person whose services resulted in
295 an order beneficial to a ward may be awarded reasonable
296 compensation for services and reasonable expenses in the
297 discretion of the court.

298 (3) The court must approve compensation and expenses payable
299 under this section before payment. Approval is not required
300 before a service is provided or an expense is incurred.

301 (4) If the court dismisses a petition under this act and
302 determines the petition was filed in bad faith, the court may
303 assess any costs the court deems appropriate.

304 **Section 119. Compensation of guardian or conservator. (1)**

305 Subject to court approval, a guardian may be awarded reasonable
306 compensation for services as guardian and to reimbursement for
307 room, board, clothing, and other appropriate expenses advanced for
308 the benefit of the ward. If a conservator other than the guardian
309 or a person affiliated with the guardian is appointed for the
310 ward, reasonable compensation and reimbursement to the guardian
311 may be approved and paid by the conservator in the discretion of
312 the court.

313 (2) Subject to court approval, a conservator may be awarded
314 reasonable compensation for services and reimbursement for
315 appropriate expenses from the property of the ward in the
316 discretion of the court.



317 (3) In determining reasonable compensation for a guardian or
318 conservator, the court shall consider:

319 (a) The necessity and quality of the services provided;

320 (b) The experience, training, professional standing,
321 and skills of the guardian or conservator;

322 (c) The difficulty of the services performed, including
323 the degree of skill and care required;

324 (d) The conditions and circumstances under which a
325 service was performed, including whether the service was provided
326 outside regular business hours or under dangerous or extraordinary
327 conditions;

328 (e) The effect of the services on the ward;

329 (f) The extent to which the services provided were or
330 were not consistent with the guardian's plan under Section 315 or
331 conservator's plan under Section 419; and

332 (g) The fees customarily paid to a person that performs
333 a like service in the community.

334 (4) A guardian or conservator need not use personal funds of
335 the guardian or conservator for the expenses of the ward.

336 (5) If a ward seeks to modify or terminate the guardianship
337 or conservatorship or remove the guardian or conservator, the
338 court may order compensation to the guardian or conservator for
339 time spent opposing modification, termination, or removal only to
340 the extent the court determines the opposition was reasonably
341 necessary to protect the interest of the ward.



342 **Section 120. Liability of guardian or conservator for act of**
343 **ward.** A guardian or conservator is not personally liable to
344 another person solely because of the guardianship or
345 conservatorship for an act or omission of the ward.

346 **Section 121. Petition after appointment for instruction or**
347 **ratification.** (1) A guardian or conservator may petition the
348 court for instruction concerning fiduciary responsibility or
349 ratification of a particular act related to the guardianship or
350 conservatorship.

351 (2) On notice and hearing on a petition under subsection
352 (1), the court may give an instruction and issue an appropriate
353 order.

354 **Section 122. Third-party acceptance of authority of guardian**
355 **or conservator.** (1) A person may choose to not recognize the
356 authority of a guardian or conservator to act on behalf of a ward
357 if:

358 (a) The person has actual knowledge or a reasonable
359 belief that the letters of guardianship or conservatorship are
360 invalid or the conservator or guardian is exceeding or improperly
361 exercising authority granted by the court; or

362 (b) The person has actual knowledge that the ward is
363 subject to physical or financial abuse, neglect, exploitation, or
364 abandonment by the guardian or conservator or a person acting for
365 or with the guardian or conservator.



366 (2) A person may refuse to recognize the authority of a
367 guardian or conservator to act on behalf of a ward if:

368 (a) The guardian's or conservator's proposed action
369 would be inconsistent with this act; or

370 (b) The person makes, or has actual knowledge that
371 another person has made, a report to a government agency providing
372 protective services to adults or children stating a good-faith
373 belief that the ward is subject to physical or financial abuse,
374 neglect, exploitation, or abandonment by the guardian or
375 conservator or a person acting for or with the guardian or
376 conservator.

377 (3) A person that refuses to accept the authority of a
378 guardian or conservator in accordance with subsection (2) may
379 report the refusal and the reason for refusal to the court. The
380 court on receiving the report shall consider whether removal of
381 the guardian or conservator or other action is appropriate.

382 (4) A guardian or conservator may petition the court to
383 require a third party to accept a decision made by the guardian or
384 conservator on behalf of the ward.

385 **Section 123. Temporary substitute guardian or conservator.**

386 (1) The court may appoint a temporary substitute guardian or
387 conservator for a ward in the discretion of the court.

388 (2) Except as otherwise ordered by the court, a temporary
389 substitute guardian or temporary substitute conservator appointed
390 under this section has the powers stated in the order of



391 appointment of the guardian or conservator. The authority of the
392 existing guardian or conservator is suspended for as long as the
393 temporary substitute guardian or conservator has authority.

394 (3) Notice of appointment of a temporary substitute guardian
395 or temporary substitute conservator shall be given to the ward and
396 all interested parties as directed by the court.

397 (4) The court may remove a temporary substitute guardian or
398 temporary substitute conservator at any time. The temporary
399 substitute guardian or temporary substitute conservator must make
400 any report the court requires.

401 **Section 124. Registration of order; effect.** (1) If a
402 guardian has been appointed in another state for an individual,
403 and a petition for guardianship for the individual is not pending
404 in this state, the guardian appointed in the other state, after
405 giving notice to the appointing court, may register the
406 guardianship order in this state by filing certified copies of the
407 order and letters of guardianship as a foreign judgment in a court
408 of an appropriate county of this state.

409 (2) If a conservator has been appointed in another state for
410 an individual, and a petition for conservatorship for the
411 individual is not pending in this state, the conservator appointed
412 for the individual in the other state, after giving notice to the
413 appointing court, may register the conservatorship in this state
414 by filing certified copies of the order of conservatorship,
415 letters of conservatorship, and any bond or other asset-protection



416 arrangement required by the court as a foreign judgment in a court
417 of a county in which property belonging to the individual is
418 located.

419 (3) Upon registration under this section of a guardianship
420 or conservatorship order from another state, the guardian or
421 conservator may exercise in this state all powers authorized in
422 the order except as prohibited by this act and law of this state
423 other than this act. If the guardian or conservator is not a
424 resident of this state, the guardian or conservator may maintain
425 an action or proceeding in this state subject to any condition
426 imposed by this state on an action or proceeding by a nonresident
427 party.

428 (4) The court may grant any relief available under this act
429 and law of this state other than this act to enforce an order
430 registered under this section.

431 **Section 125. Transition provisions.** Except as otherwise
432 provided in this chapter:

433 (a) This chapter applies to all guardianship and
434 conservatorship proceedings commenced on or after January 1, 2020;

435 (b) This chapter applies to all guardianship and
436 conservatorship proceedings commenced before January 1, 2020,
437 unless the court finds that application of a particular provision
438 of this chapter would substantially interfere with the effective
439 conduct of the proceedings or prejudice the rights of the parties,



440 in which case the particular provision of this chapter does not
441 apply and the superseded law applies; and

442 (c) An act done before January 1, 2020, is not affected
443 by this act.

444 **ARTICLE 2**

445 **GUARDIANSHIP OF MINOR**

446 **Section 201.** Basis for appointment of guardian for minor.

447 (1) A person becomes a guardian for a minor only on appointment
448 by the court.

449 (2) The court may appoint a guardian for a minor who does
450 not have a guardian if the court finds the appointment is in the
451 minor's best interest, and:

452 (a) Each parent of the minor, after being fully
453 informed of the nature and consequences of guardianship, consents;

454 (b) All parental rights have been terminated; or

455 (c) There is clear and convincing evidence that no
456 parent of the minor is willing or able to exercise the powers the
457 court is granting the guardian.

458 **Section 202. Petition for appointment of guardian for minor.**

459 (1) A person interested in the welfare of a minor, including the
460 minor, may petition for appointment of a guardian for the minor.

461 (2) A petition under subsection (1) must comply with the
462 requirement for an affidavit under the Uniform Child Custody
463 Jurisdiction and Enforcement Act (Title 93, Chapter 27,
464 Mississippi Code of 1972) and must also include:



465 (a) The name and address of any attorney for the
466 parents of the minor;

467 (b) The reason guardianship is sought and would be in
468 the best interest of the minor;

469 (c) The name and address of any proposed guardian and
470 the reason the proposed guardian should be selected; and

471 (d) If the minor has property other than personal
472 effects, a general statement of the minor's property with an
473 estimate of its value.

474 (3) Notice of a hearing on a petition filed after the
475 appointment of a guardian which seeks an order under this article,
476 together with a copy of the petition, must be given to the
477 respondent, the guardian, and any other person the court
478 determines.

479 **Section 203. Notice of hearing for appointment of guardian**

480 **for minor.** (1) If a petition is filed under Section 202, the
481 court must set a date, time and place for a hearing, and the
482 petitioner must serve not less than seven (7) days' notice of the
483 hearing, together with a copy of the petition, on each of the
484 following who is not the petitioner:

485 (a) The minor, if the minor will be fourteen (14) years
486 of age or older at the time of the hearing;

487 (b) Each parent of the minor who can be found with
488 reasonable diligence or, if there is none, the adult nearest in
489 kinship who can be found with reasonable diligence;



490 (c) Any adult with whom the minor resides;
491 (d) Each individual who had primary care or custody of
492 the minor for at least sixty (60) days during the six (6) months
493 immediately before the filing of the petition; and
494 (e) Any other person the court determines should
495 receive service of notice.

496 (2) A petition under this article must state the name and
497 address of an attorney representing the petitioner, if any, and
498 must set forth under the style of the case and before the body of
499 the petition the following language in bold or highlighted type:

500 **"THE RELIEF SOUGHT HEREIN MAY AFFECT YOUR LEGAL RIGHTS. YOU**
501 **HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS PETITION, TO ATTEND**
502 **ANY SUCH HEARING, AND TO BE REPRESENTED BY AN ATTORNEY."**

503 (3) If a petitioner is unable to serve notice under
504 subsection (1)(a), the court may appoint a guardian ad litem for
505 the minor for the purpose of receiving notice.

506 **Section 204. Attorney for minor.** The court may appoint an
507 attorney to represent a minor who is the subject of a proceeding
508 under Section 202 if:

509 (a) Requested by the minor who is fourteen (14) years
510 of age or older;
511 (b) Recommended by a guardian ad litem; or
512 (c) The court determines the minor needs
513 representation.



514 **Section 205. Rights at hearing.** (1) The court shall
515 require a minor who is the subject of a hearing for appointment of
516 a guardian to attend the hearing and allow the minor to
517 participate in the hearing unless the court determines, by clear
518 and convincing evidence presented at the hearing or at a separate
519 hearing, that:

520 (a) The minor consistently and repeatedly refused to
521 attend the hearing after being fully informed of the right to
522 attend and, if the minor is fourteen (14) years of age or older,
523 the potential consequences of failing to do so;

524 (b) There is no practicable way for the minor to attend
525 the hearing;

526 (c) The minor lacks the ability or maturity to
527 participate meaningfully in the hearing; or

528 (d) Attendance would be harmful to the minor.

529 (2) Unless excused by the court for good cause shown, the
530 person proposed to be appointed as guardian for a minor must
531 attend a hearing for appointment of a guardian.

532 (3) Each parent of a minor who is the subject of a hearing
533 for appointment of a guardian has the right to attend the hearing.

534 **Section 206. Order on appointment; limited guardianship for**
535 **minor.** (1) After a hearing under Section 202, the court may
536 appoint a guardian for a minor, dismiss the proceeding, or take
537 other appropriate action consistent with this act or law of this
538 state other than this act.



539 (2) In appointing a guardian under subsection (1), the
540 following apply:

541 (a) The court shall appoint a person nominated as
542 guardian by a parent of the minor in a will or other record unless
543 the court finds the appointment is contrary to the best interest
544 of the minor.

545 (b) If multiple parents have nominated different
546 persons to serve as guardian, the court shall appoint the nominee
547 whose appointment is in the best interest of the minor, unless the
548 court finds that appointment of none of the nominees is in the
549 best interest of the minor.

550 (c) If a guardian is not appointed under paragraph (a)
551 or (b), the court shall appoint the person nominated by the minor
552 if the minor is fourteen (14) years of age or older unless the
553 court finds that appointment is contrary to the best interest of
554 the minor. In that case, the court shall appoint as guardian a
555 person whose appointment is in the best interest of the minor.

556 (3) In the interest of maintaining or encouraging
557 involvement by a minor's parent in the minor's life, developing
558 self-reliance of the minor, or for other good cause, the court, at
559 the time of appointment of a guardian for the minor or later, on
560 its own or on motion of the minor or other interested person, may
561 create a limited guardianship by limiting the powers otherwise
562 granted by this article to the guardian. Following the same



563 procedure, the court may grant additional powers or withdraw
564 powers previously granted.

565 (4) The court, as part of an order appointing a guardian for
566 a minor, shall state rights retained by any parent of the minor,
567 which may include contact or visitation with the minor,
568 decision-making regarding the minor's health care, education, or
569 other matter, or access to a record regarding the minor.

570 (5) An order granting a guardianship for a minor must state
571 that each parent of the minor is entitled to notice that:

572 (a) The location of the minor's residency has changed;

573 (b) The court has modified or limited the powers of the
574 guardian; or

575 (c) The court has removed the guardian.

576 **Section 207. Emergency guardian for minor.** (1) On a
577 petition by a person interested in a minor's welfare or a petition
578 filed under Section 202, the court may appoint an emergency
579 guardian for the minor if the court finds:

580 (a) Appointment of an emergency guardian is likely to
581 prevent substantial harm to the minor's health, safety, or
582 welfare; and

583 (b) No other person appears to have authority and
584 willingness to act in the circumstances.

585 (2) The duration of authority of an emergency guardian for a
586 minor may not exceed sixty (60) days, and the emergency guardian
587 may exercise only the powers specified in the order of



588 appointment. The emergency guardian's authority may be extended
589 one (1) time for not more than sixty (60) days if the court finds
590 that the conditions for appointment of an emergency guardian in
591 subsection (1) continue.

592 (3) Except as otherwise provided in subsection (4),
593 reasonable notice of the date, time, and place of a hearing on a
594 petition for appointment of an emergency guardian for a minor must
595 be given to:

596 (a) The minor, if the minor is fourteen (14) years of
597 age or older;

598 (b) Any attorney appointed under Section 204;

599 (c) Each parent of the minor;

600 (d) Any person, other than a parent, having care or
601 custody of the minor; and

602 (e) Any other person the court determines.

603 (4) The court may appoint an emergency guardian for a minor
604 under subsection (3) without notice or a hearing only if the court
605 finds from an affidavit or testimony that the minor's health,
606 safety, or welfare will be substantially harmed before a hearing
607 after notice of the appointment could be held. If the court
608 appoints an emergency guardian to an unrepresented minor or the
609 attorney for a represented minor without notice, notice of the
610 appointment must be given not later than forty-eight (48) hours
611 after the appointment to the individuals listed in subsection (3).
612 The court must hold a hearing on continuation of a guardianship



613 within five (5) days of any objection or other contest. Not later
614 than five (5) days after the appointment, the court must hold a
615 hearing on the appropriateness of the appointment.

616 (5) Appointment of an emergency guardian under this section,
617 with or without notice, is not a determination that a basis exists
618 for appointment of a guardian under Section 201.

619 (6) The court may remove an emergency guardian appointed
620 under this section at any time. The emergency guardian must
621 make any report the court requires.

622 **Section 208. Duties of guardian for minor.** (1) A guardian
623 for a minor is a fiduciary. Except as otherwise limited by the
624 court, a guardian for a minor has the duties and responsibilities
625 of a parent regarding the minor's support, care, education,
626 health, safety, and welfare. A guardian must act in the minor's
627 best interest and exercise reasonable care, diligence, and
628 prudence.

629 (2) A guardian for a minor must:

630 (a) Become personally acquainted with the minor and
631 maintain sufficient contact with the minor to know and report to
632 the court the minor's abilities, limitations, needs,
633 opportunities, and physical and mental health;

634 (b) Take reasonable care of the minor's personal
635 effects and bring a proceeding for a conservatorship if necessary
636 to protect other property of the minor;



637 (c) Expend funds of the minor that have been received
638 by the guardian for the minor's current needs for support, care,
639 education, health, safety, and welfare;

640 (d) Conserve any funds of the minor not expended under
641 paragraph (c) for the minor's future needs, but if a conservator
642 is appointed for the minor, pay the funds as directed by the court
643 to the conservator to be conserved for the minor's future needs;

644 (e) Report the condition of the minor and account for
645 funds and other property of the minor in the guardian's possession
646 or subject to the guardian's control, as required by court rule or
647 ordered by the court on application of a person interested in the
648 minor's welfare;

649 (f) Inform the court of any change in the minor's
650 dwelling or address; and

651 (g) In determining what is in the minor's best
652 interest, take into account the minor's preferences to the extent
653 actually known or reasonably ascertainable by the guardian.

654 **Section 209. Powers of guardian for minor.** (1) Except as
655 otherwise limited by court order, a guardian of a minor has the
656 powers a parent otherwise would have regarding the minor's
657 support, care, education, health, safety, and welfare.

658 (2) Except as otherwise limited by court order, a guardian
659 for a minor may:

660 (a) Apply for and receive funds up to the amount set
661 forth in Section 431 and benefits otherwise payable for the



662 support of the minor to the minor's parent, guardian, or custodian
663 under a statutory system of benefits or insurance or any private
664 contract, devise, trust, conservatorship, or custodianship.

665 (b) Unless inconsistent with a court order entitled to
666 recognition in this state, take custody of the minor and establish
667 the minor's place of dwelling and, on authorization of the court,
668 establish or move the minor's dwelling outside this state.

669 (c) If the minor is not subject to conservatorship,
670 commence a proceeding, including an administrative proceeding, or
671 take other appropriate action to compel a person to support the
672 minor or make a payment for the benefit of the minor;

673 (d) Consent to health or other care, treatment, or
674 service for the minor; or

675 (e) To the extent reasonable, delegate to the minor
676 responsibility for a decision affecting the minor's well-being.

677 (3) The court may authorize a guardian for a minor to
678 consent to the adoption of the minor if the minor does not have a
679 parent.

680 (4) A guardian for a minor may consent to the marriage of
681 the minor if authorized by the court.

682 **Section 210. Removal of guardian for minor; termination of**
683 **guardianship; appointment of successor.** (1) Guardianship for a
684 minor under this act terminates:

685 (a) On the minor's death, adoption, emancipation,
686 attainment of majority, or on a date set by the court; or



687 (b) When the court finds that the standard in Section
688 201 for appointment of a guardian is not satisfied, unless the
689 court finds that:

690 (i) Termination of the guardianship would be
691 harmful to the minor; and

692 (ii) The minor's interest in the continuation of
693 the guardianship outweighs the interest of any parent of the minor
694 in restoration of the parent's right to make decisions for the
695 minor.

696 (2) A ward or any party may petition the court to terminate
697 the guardianship, modify the guardianship, remove the guardian and
698 appoint a successor guardian.

699 (3) A petitioner under subsection (2) must give notice of
700 the hearing on the petition to the minor, if the minor is fourteen
701 (14) years of age or older and is not the petitioner, and to the
702 guardian, each parent of the minor, and any other person the court
703 determines.

704 (4) Not later than thirty (30) days after appointment of a
705 successor guardian for a minor, notice must be given of the
706 appointment to the ward, if the minor is fourteen (14) years of
707 age or older, to each parent of the minor, and to any other person
708 the court determines.

709 (5) When terminating a guardianship for a minor under this
710 section, the court may issue an order providing for transitional



711 arrangements that will assist the minor with a transition of
712 custody and that is in the best interest of the minor.

713 (6) A guardian for a minor who is removed must cooperate
714 with a successor guardian to facilitate transition of the
715 guardian's responsibilities and protect the best interest of the
716 minor.

717 **ARTICLE 3**

718 **GUARDIANSHIP OF ADULT**

719 **Section 301. Basis for appointment of guardian for adult.**

720 (1) The court may appoint a guardian for an adult when the
721 respondent lacks the ability to meet essential requirements for
722 physical health, safety or self-care because:

723 (a) The adult is unable to receive and evaluate
724 information or make or communicate decisions, even with
725 appropriate supportive services or technological assistance; or

726 (b) The adult is found to be a person with mental
727 illness or a person with an intellectual disability as defined in
728 Section 41-21-61 who is also incapable of taking care of his or
729 her person.

730 (2) The court shall grant to a guardian appointed under
731 subsection (1) only those powers necessitated by the limitations
732 and demonstrated needs of the ward and must enter orders that will
733 encourage the development of the ward's maximum self-determination
734 and independence. The court must consider any less restrictive
735 alternative that would meet the needs of the ward.



736 **Section 302. Petition for appointment of guardian for adult.**

737 (1) A proceeding under this article may be instituted by the
738 chancellor or clerk of the chancery court, any relative or friend
739 of the adult, or any other interested party, including the adult
740 for whom the order is sought, by filing a sworn petition in the
741 chancery court of the county of the residence of the adult,
742 setting forth that the adult is alleged to be in need of a
743 guardianship.

744 (2) The petition must state the name and address of an
745 attorney representing the petitioner, if any, and must set forth
746 under the style of the case and before the body of the petition
747 the following language in bold or highlighted type:

748 **"THE RELIEF SOUGHT HEREIN MAY AFFECT YOUR LEGAL RIGHTS. YOU**
749 **HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS PETITION, TO ATTEND**
750 **ANY SUCH HEARING, AND TO BE REPRESENTED BY AN ATTORNEY."**

751 **Section 303. Notice of hearing for appointment of guardian**

752 **for adult.** (1) On receipt of a petition under Section 302 for
753 appointment of a guardian for a respondent who is an adult, the
754 court must set a date, time and place for a hearing, and shall
755 cause not less than seven (7) days' notice thereof to be given to
756 the adult for whom the guardian is to be appointed, except that
757 the court may, for good cause shown, direct that a shorter notice
758 be given.

759 (2) In a proceeding on a petition under Section 302, notice
760 of the hearing must also be given to any of the persons required



761 to be listed in the petition under subsection (3) and any other
762 person the court determines is entitled to notice. Failure to
763 give notice does not preclude the court from appointing a
764 guardian.

765 (3) Unless the court finds that the adult for whom the
766 guardian is to be appointed is competent and joins in the
767 petition, the notice shall also be given to:

768 (a) Any conservator appointed to the respondent; and

769 (b) The following persons, listed in order of
770 preference, so that personal service is had on the person for whom
771 the guardian is to be appointed and on at least one (1) relative
772 who resides in Mississippi, other than the petitioner:

773 (i) Each of the spouse, children, parents and
774 siblings of the adult for whom the guardian is to be appointed,
775 but if none of those can be found, then to:

776 (ii) One (1) adult relative of the person for whom
777 the guardian is to be appointed who is not the petitioner and who
778 resides in Mississippi if that relative is within the third degree
779 of kinship. If no relative within the third degree of kinship to
780 the person for whom the guardian is to be appointed is found
781 residing in the State of Mississippi, the court shall either
782 designate some other appropriate person to receive the notice or
783 appoint a guardian ad litem to receive notice.

784 (4) If the person for whom the guardian is to be appointed
785 is entitled to any benefit, estate or income paid or payable by or



786 through the Veterans' Administration of the United States
787 government, such administration must also be given notice.

788 (5) Notice of a hearing on a petition seeking an order under
789 this article that is filed after the appointment of a guardian,
790 together with a copy of the petition, must be given to the
791 respondent, the guardian, and any other person the court
792 determines.

793 **Section 304. Appointment of guardian ad litem.** The court
794 may appoint a guardian ad litem to any respondent and allow
795 suitable compensation payable out of the estate of the respondent,
796 but the appointment shall not be made except when the court
797 considers it necessary for the protection of the interest of the
798 respondent; a judgment of any court is not void or erroneous for
799 failure to have a guardian ad litem.

800 **Section 305. Professional evaluation.** (1) The chancery
801 court must conduct a hearing to determine whether a guardian is
802 needed for the respondent. Before the hearing, the court, in its
803 discretion, may appoint a guardian ad litem to look after the
804 interest of the person in question; the guardian ad litem must be
805 present at the hearing and present the interests of the respondent
806 for whose person a guardian is to be appointed.

807 (2) The chancery judge shall be the judge of the number and
808 character of the witnesses and proof to be presented, except that
809 the proof must include certificates made after a personal
810 examination of the respondent by the following professionals, each



811 of whom shall make in writing a certificate of the result of that
812 examination to be filed with the clerk of the court and become a
813 part of the record of the case

814 (a) Two (2) licensed physicians; or

815 (b) One (1) licensed physician and either one (1)
816 licensed psychologist, nurse practitioner, or physician's
817 assistant.

818 (3) The personal examination may occur face-to-face or via
819 telemedicine, but any telemedicine examination must be made using
820 an audio-visual connection by a physician licensed in this state
821 and as defined in Section 83-9-351. A nurse practitioner or
822 physician assistant conducting an examination shall not also be in
823 a collaborative or supervisory relationship, as the law may
824 otherwise require, with the physician conducting the examination.
825 A professional conducting an examination under this section may
826 also be called to testify at the hearing.

827 **Section 306. Rights at hearing.** (1) At a hearing held
828 under Section 303, the respondent may:

829 (a) Present evidence and subpoena witnesses and
830 documents;

831 (b) Examine witnesses; and

832 (c) Otherwise participate in the hearing.

833 (2) Unless excused by the court for good cause shown, a
834 proposed guardian must attend a hearing under Section 303.



835 (3) A hearing under Section 303 must be closed upon request
836 of the respondent and a showing of good cause.

837 (4) Any person may request to participate in a hearing under
838 Section 303. The court may grant the request, with or without a
839 hearing, on determining that the best interest of the respondent
840 will be served. The court may impose appropriate conditions on
841 the person's participation.

842 **Section 307. Confidentiality of records.** (1) An adult
843 subject to a proceeding for a guardianship, an attorney designated
844 by the adult, and a person entitled to notice either under Section
845 309(4) or a court order may access court records of the proceeding
846 and resulting guardianship, including the guardian's plan under
847 Section 315 and guardian's well-being report under Section 316. A
848 person not otherwise entitled to access court records under this
849 subsection may petition the court for access to court records of
850 the guardianship, including the guardian's report and plan, for
851 good cause. The court shall grant access if access is in the best
852 interest of the respondent or ward or furthers the public interest
853 and does not endanger the welfare or financial interests of the
854 respondent or ward.

855 (2) A report under Section 304 of a guardian ad litem or a
856 professional evaluation under Section 305 may be considered
857 confidential and may be sealed on filing when determined necessary
858 by the court. If the court finds the file should be sealed, the
859 file will remain available to:



- 860 (a) The court;
- 861 (b) The individual who is the subject of the report or
862 evaluation, without limitation as to use;
- 863 (c) The petitioner, guardian ad litem, and petitioner's
864 and respondent's attorneys, for purposes of the proceeding;
- 865 (d) Unless the court orders otherwise, an agent
866 appointed under a power of attorney for health care or power of
867 attorney for finances in which the respondent is the principal;
868 and
- 869 (e) Any other person if it is in the public interest or
870 for a purpose the court orders for good cause.

871 **Section 308. Who may be guardian for adult. (1)**

872 Appointment of a guardian for an adult will be at the discretion
873 of the court and in the best interest of the respondent. If two
874 (2) or more persons have requested responsibility as guardian for
875 the adult, the court shall select as guardian the person the court
876 considers best qualified. In determining the best qualified
877 person, the court shall consider the person's relationship with
878 the respondent, the person's skills, the expressed wishes of the
879 respondent, including any designation made in a will, durable
880 power of attorney, or health-care directive, the extent to which
881 the person and the respondent have similar values and preferences,
882 and the likelihood the person will be able to perform the duties
883 of a guardian successfully. The court, acting in the best



884 interest of the respondent, may decline to appoint as guardian a
885 person requesting such an appointment.

886 (2) If a qualified guardian under this section cannot be
887 determined, or if other circumstances arise where the court
888 determines that a guardian must instead be appointed, the court,
889 at its discretion, may appoint the chancery court clerk for the
890 county in which the proceedings were filed, to serve as the
891 respondent's guardian. The chancery court clerk shall serve in
892 the capacity ordered by the court unless a conflict of interest
893 arises or the clerk presents circumstances where the court
894 determines the clerk's recusal from appointment is permitted.

895 (3) A person that provides paid services to the respondent,
896 or an individual who is employed by a person who provides paid
897 services to the respondent or is the spouse, parent, or child of
898 an individual who provides or is employed to provide paid services
899 to the respondent, may not be appointed as guardian unless:

900 (a) The individual is related to the respondent by
901 blood, marriage, or adoption; or

902 (b) The court finds by clear and convincing evidence
903 that the person is the best qualified person available for
904 appointment and the appointment is in the best interest of the
905 respondent.

906 (4) An owner, operator, or employee of a long-term-care
907 institution at which the respondent is receiving care may not be



908 appointed as guardian unless the owner, operator, or employee is
909 related to the respondent by blood, marriage, or adoption.

910 **Section 309. Order on appointment of guardian.** (1) A court
911 order appointing a guardian for an adult must:

912 (a) Include a specific finding that clear and
913 convincing evidence established that the identified needs of the
914 respondent cannot be met by a less restrictive alternative,
915 including use of appropriate supportive services and technological
916 assistance; and

917 (b) Include a specific finding that clear and
918 convincing evidence established the respondent was given proper
919 notice of the hearing on the petition.

920 (2) A court order establishing a full guardianship for an
921 adult must state the basis for granting a full guardianship and
922 include specific findings that support the conclusion that a
923 limited guardianship would not meet the functional needs of the
924 ward.

925 (3) A court order establishing a limited guardianship for an
926 adult must state the specific powers granted to the guardian.

927 (4) The court, as part of an order establishing a
928 guardianship for an adult, must identify and include the contact
929 information for any person that subsequently is entitled to:

930 (a) Notice of the rights of the adult under Section
931 310(2);



932 (b) Notice of a change in the primary dwelling of the
933 adult;

934 (c) Notice that the guardian has delegated:

935 (i) The power to manage the care of the adult;

936 (ii) The power to make decisions about where the
937 adult lives;

938 (iii) The power to make major medical decisions on
939 behalf of the adult;

940 (iv) A power that requires court approval under
941 Section 314; or

942 (v) Substantially all powers of the guardian;

943 (d) A copy of the guardian's plan under Section 315 and
944 the guardian's well-being report under Section 316;

945 (e) Access to court records relating to the
946 guardianship;

947 (f) Notice of the death or significant change in the
948 condition of the adult;

949 (g) Notice that the court has limited or modified the
950 powers of the guardian; and

951 (h) Notice of the removal of the guardian.

952 (5) A spouse and adult children of a ward are entitled to
953 notice under Section 303(3) unless the court determines notice
954 would be contrary to the preferences or prior directions of the
955 ward or not in the best interest of the ward.



956 (6) (a) If the chancellor finds from the evidence that the
957 adult is incapable of taking care of his person, the chancellor
958 shall appoint a guardian over the person.

959 (b) The costs and expenses of the proceedings shall be
960 paid out of the estate of the person if a guardian is appointed.
961 If a guardian is appointed and the adult has no estate, or if no
962 guardian is appointed, then the costs and expenses must be paid by
963 the person instituting the proceedings.

964 **Section 310. Notice of order of appointment; rights.** (1) A
965 guardian appointed under Section 309 must give the ward and all
966 other persons given notice under Section 309(4) a copy of the
967 order of appointment, together with notice of the right to request
968 termination or modification. The order and notice must be given
969 not later than fourteen (14) days after the appointment.

970 (2) Not later than fourteen (14) days after appointment of a
971 guardian under Section 309, the guardian must request from the
972 court a statement of the rights of the ward and must give the
973 statement to the ward and any other person entitled to notice
974 under Section 303(3) or a court order. The statement must notify
975 the ward of the right to:

976 (a) Seek termination or modification of the
977 guardianship, or removal of the guardian, and choose an attorney
978 to represent the adult in these matters;



979 (b) Be involved in decisions affecting the adult,
980 including decisions about the adult's care, dwelling, activities,
981 or social interactions, to the extent reasonably feasible;

982 (c) Be involved in health-care decision-making to the
983 extent reasonably feasible and supported in understanding the
984 risks and benefits of health-care options to the extent reasonably
985 feasible;

986 (d) Be notified at least fourteen (14) days before a
987 change in the adult's primary dwelling or permanent move to a
988 nursing home, mental-health facility, or other facility that
989 places restrictions on the individual's ability to leave or have
990 visitors, unless the change or move is proposed in the guardian's
991 plan under Section 315 or authorized by the court by specific
992 order;

993 (e) Object to a change or move described in paragraph
994 (d) and the process for objecting;

995 (f) Communicate, visit, or interact with others,
996 including receiving visitors, and making or receiving telephone
997 calls, personal mail, or electronic communications, including
998 through social media, unless:

999 (i) The guardian has been authorized by the court
1000 by specific order to restrict communications, visits, or
1001 interactions;

1002 (ii) A protective order is in effect that limits
1003 contact between the adult and a person; or



1004 (iii) The guardian has good cause to believe
1005 restriction is necessary because interaction with a specified
1006 person poses a risk of significant physical, psychological, or
1007 financial harm to the adult, and the restriction is:

1008 1. For a period of not more than seven (7)
1009 business days if the person has a family or pre-existing social
1010 relationship with the adult; or

1011 2. For a period of not more than sixty (60)
1012 days if the person does not have a family or pre-existing social
1013 relationship with the adult;

1014 (g) Receive a copy of the guardian's plan under Section
1015 315 and the guardian's well-being report under Section 316; and

1016 (h) Object to the guardian's plan or report.

1017 **Section 311. Emergency guardian for adult.** (1) On a
1018 petition by a person interested in an adult's welfare or a
1019 petition filed under Section 302, the court may appoint an
1020 emergency guardian for the adult if the court finds:

1021 (a) Appointment of an emergency guardian is likely to
1022 prevent substantial harm to the adult's physical health, safety,
1023 or welfare;

1024 (b) No other person appears to have authority and
1025 willingness to act in the circumstances; and

1026 (c) There is reason to believe that a basis for
1027 appointment of a guardian under Section 301 exists.



1028 (2) The duration of authority of an emergency guardian for
1029 an adult may not exceed sixty (60) days, and the emergency
1030 guardian may exercise only the powers specified in the order of
1031 appointment. The emergency guardian's authority may be extended
1032 once for not more than sixty (60) days if the court finds that the
1033 conditions for appointment of an emergency guardian in subsection
1034 (1) continue.

1035 (3) Except as otherwise provided in subsection (4),
1036 reasonable notice of the date, time, and place of a hearing on the
1037 petition must be given to the respondent, the respondent's
1038 attorney, and any other person the court determines.

1039 (4) The court may appoint an emergency guardian for an adult
1040 without notice to the adult and any attorney for the adult only if
1041 the court finds from an affidavit or testimony that the
1042 respondent's physical health, safety, or welfare will be
1043 substantially harmed before a hearing with notice on the
1044 appointment can be held. If the court appoints an emergency
1045 guardian without giving notice under subsection (3), the court
1046 must give notice of the appointment not later than forty-eight
1047 (48) hours after the appointment to:

- 1048 (a) The respondent;
- 1049 (b) The respondent's attorney;
- 1050 (c) Any other person the court determines; and
- 1051 (d) Hold a hearing on the appropriateness of the
1052 appointment not later than five (5) days after the appointment.



1053 (5) Appointment of an emergency guardian under this section
1054 is not a final determination that a basis exists for appointment
1055 of a guardian under Section 301.

1056 (6) The court may remove an emergency guardian appointed
1057 under this section at any time. The emergency guardian must make
1058 any report the court requires.

1059 **Section 312. Duties of guardian for adult.** (1) A guardian
1060 for an adult is a fiduciary. Except as otherwise limited by the
1061 court, a guardian for an adult shall make decisions regarding the
1062 support, care, education, health, and welfare of the ward to the
1063 extent necessitated by the adult's limitations.

1064 (2) A guardian for an adult promotes the self-determination
1065 of the adult and, to the extent reasonably feasible, encourages
1066 the adult to participate in decisions, act on the adult's own
1067 behalf, and develop or regain the capacity to manage the adult's
1068 personal affairs. In furtherance of this duty, the guardian may:

1069 (a) Become personally acquainted with the adult and
1070 maintain sufficient contact with the adult through regular
1071 visitation and other means, and to know the adult's abilities,
1072 limitations, needs, opportunities, and physical and mental health;

1073 (b) To the extent reasonably feasible, identify the
1074 values and preferences of the adult and involve the adult in
1075 decisions affecting the adult, including decisions about the
1076 adult's care, dwelling, activities, or social interactions; and



1077 (c) Make reasonable efforts to identify and facilitate
1078 supportive relationships and services for the adult.

1079 (3) A guardian for an adult at all times shall exercise
1080 reasonable care, diligence, and prudence when acting on behalf of
1081 or making decisions for the adult. In furtherance of this duty,
1082 the guardian shall:

1083 (a) Take reasonable care of the personal effects, pets,
1084 and service or support animals of the adult and bring a proceeding
1085 for a conservatorship if necessary to protect the adult's
1086 property;

1087 (b) Expend funds and other property of the adult
1088 received by the guardian for the adult's current needs for
1089 support, care, education, health, and welfare;

1090 (c) Conserve any funds and other property of the adult
1091 not expended under paragraph (b) for the adult's future needs, but
1092 if a conservator has been appointed for the adult, pay the funds
1093 and other property at least quarterly to the conservator to be
1094 conserved for the adult's future needs; and

1095 (d) Monitor the quality of services, including
1096 long-term care services, provided to the adult.

1097 (4) In making a decision for a ward, the guardian must make
1098 the decision the guardian reasonably believes the adult would make
1099 if the adult were able unless doing so would unreasonably harm or
1100 endanger the welfare or personal or financial interests of the
1101 adult. To determine the decision the ward would make if able, the



1102 guardian shall consider the adult's previous or current
1103 directions, preferences, opinions, values, and actions, to the
1104 extent actually known or reasonably ascertainable by the guardian.

1105 (5) If a guardian for an adult cannot make a decision under
1106 subsection (4) because the guardian does not know and cannot
1107 reasonably determine the decision the adult probably would make if
1108 able, or the guardian reasonably believes the decision the adult
1109 would make would unreasonably harm or endanger the welfare or
1110 personal or financial interests of the adult, the guardian must
1111 act in accordance with the best interest of the adult. In
1112 determining the best interest of the adult, the guardian may
1113 consider:

1114 (a) Information received from professionals and persons
1115 that demonstrate sufficient interest in the welfare of the adult;

1116 (b) Other information the guardian believes the adult
1117 would have considered if the adult were able to act; and

1118 (c) Other factors a reasonable person in the
1119 circumstances of the adult would consider, including consequences
1120 for others.

1121 (6) A guardian for an adult immediately must notify the
1122 court if the condition of the adult has changed so that the adult
1123 is capable of exercising rights previously removed.

1124 **Section 313. Powers of guardian for adult.** (1) Except as
1125 limited by court order, a guardian for an adult may:



1126 (a) Apply for and receive funds and benefits for the
1127 support of the adult, unless a conservator is appointed for the
1128 adult and the application or receipt is within the powers of the
1129 conservator;

1130 (b) Unless inconsistent with a court order, establish
1131 the adult's place of dwelling;

1132 (c) Consent to health or other care, treatment, or
1133 service for the adult;

1134 (d) If a conservator for the adult has not been
1135 appointed, commence a proceeding, including an administrative
1136 proceeding, or take other appropriate action to compel a person to
1137 support the adult or pay funds for the adult's benefit;

1138 (e) To the extent reasonable, delegate to the adult
1139 responsibility for a decision affecting the adult's well-being;
1140 and

1141 (f) Receive personally identifiable health-care
1142 information regarding the adult.

1143 (2) In exercising a guardian's power under subsection (1)(b)
1144 to establish the adult's place of dwelling, the guardian must:

1145 (a) Select a residential setting the guardian believes
1146 the adult would select if the adult were able, in accordance with
1147 the decision-making standard in Section 312(4) and (5). If the
1148 guardian does not know and cannot reasonably determine what
1149 setting the ward likely would choose if able, or if the guardian
1150 reasonably believes the decision the adult would make would



1151 unreasonably harm or endanger the welfare or personal or financial
1152 interests of the adult, the guardian must choose in accordance
1153 with Section 312(5) a residential setting that is consistent with
1154 the adult's best interest;

1155 (b) In selecting among residential settings, give
1156 priority to a residential setting in a location that will allow
1157 the adult to interact with persons important to the adult and meet
1158 the adult's needs in the least restrictive manner reasonably
1159 feasible unless to do so would be inconsistent with the
1160 decision-making standard in Section 312(4) and (5);

1161 (c) Establish or move the permanent place of dwelling
1162 of the adult to a nursing home, mental-health facility, or other
1163 facility that places restrictions on the adult's ability to leave
1164 or have visitors only if:

1165 (i) The establishment or move is in the guardian's
1166 plan under Section 315;

1167 (ii) The court authorizes the establishment or
1168 move; or

1169 (iii) The guardian gives notice of the
1170 establishment or move at least fourteen (14) days before the
1171 establishment or move to the adult and all persons entitled to
1172 notice under Section 309(4) or court order, and no objection is
1173 filed;



1174 (d) Establish or move the place of dwelling of the
1175 adult outside this state only if consistent with the guardian's
1176 plan and authorized by the court by specific order;

1177 (e) Take action that would result in the sale of or
1178 surrender of the lease to the primary dwelling of the adult only
1179 if:

1180 (i) The action is specifically included in the
1181 guardian's plan under Section 315;

1182 (ii) The court authorizes the action by specific
1183 order; or

1184 (iii) Notice of the action was given at least
1185 fourteen (14) days before the action to the adult and all persons
1186 entitled to the notice under Section 309(4) or court order and no
1187 objection has been filed; and

1188 (f) Notify the court that the adult's dwelling or
1189 permanent residence has become so damaged by fire, flood, or other
1190 emergency circumstance that the guardian has had to temporarily or
1191 permanently relocate the adult to another residential setting.

1192 (3) In exercising a guardian's power under subsection (1)(c)
1193 to make health-care decisions, the guardian shall:

1194 (a) Involve the adult in decision-making to the extent
1195 reasonably feasible, including, when practicable, by encouraging
1196 and supporting the adult in understanding the risks and benefits
1197 of health-care options;



1198 (b) Defer to a decision by an agent under an advanced
1199 healthcare directive executed by the adult and cooperate to the
1200 extent feasible with the agent making the decision; and

1201 (c) Take into account:

1202 (i) The risks and benefits of treatment options;
1203 and

1204 (ii) The current and previous wishes and values of
1205 the adult, if known or reasonably ascertainable by the guardian.

1206 **Section 314. Special limitations on guardian's power.** (1)

1207 Unless authorized by the court by specific order, a guardian for
1208 an adult does not have the power to revoke or amend an advanced
1209 health-care directive or power of attorney for finances executed
1210 by the adult. If an advanced health-care directive is in effect,
1211 unless there is a court order to the contrary, a health-care
1212 decision of an agent takes precedence over that of the guardian
1213 and the guardian must cooperate with the agent to the extent
1214 feasible. If a power of attorney for finances is in effect,
1215 unless there is a court order to the contrary, a decision by the
1216 agent which the agent is authorized to make under the power of
1217 attorney for finances takes precedence over that of the guardian
1218 and the guardian must cooperate with the agent to the extent
1219 feasible.

1220 (2) A guardian for an adult may not initiate the commitment
1221 of the adult to a mental health facility except in accordance with
1222 the state's procedure for involuntary civil commitment.



1223 (3) A guardian for an adult may not restrict the ability of
1224 the adult to communicate, visit, or interact with others,
1225 including receiving visitors and making or receiving telephone
1226 calls, personal mail, or electronic communications, including
1227 through social media, or participating in social activities,
1228 unless:

1229 (a) Authorized by the court by specific order;

1230 (b) A protective order is in effect that limits contact
1231 between the adult and a person; or

1232 (c) The guardian has good cause to believe restriction
1233 is necessary because interaction with a specified person poses a
1234 risk of significant physical, psychological, or financial harm to
1235 the adult and the restriction is:

1236 (i) For a period of not more than seven (7)
1237 business days if the person has a family or pre-existing social
1238 relationship with the adult; or

1239 (ii) For a period of not more than sixty (60) days
1240 if the person does not have a family or pre-existing social
1241 relationship with the adult.

1242 **Section 315. Guardian's plan.** (1) If required by the
1243 court, a guardian must file with the court a plan for the care of
1244 the adult no later than ninety (90) days after the court's order
1245 of appointment or order to file a plan. If a plan is required and
1246 there is a significant change in circumstances, or if the guardian
1247 seeks to deviate significantly from the guardian's plan, a



1248 guardian must file with the court a revised plan no later than
1249 ninety (90) days after the change in circumstances or decision to
1250 deviate from the plan. Every plan must be based on the needs of
1251 the adult and take into account the best interest of the adult as
1252 well as the adult's preferences, values, and prior directions, to
1253 the extent known to or reasonably ascertainable by the guardian.
1254 Along with other items determined necessary by the court, the
1255 guardian's plan must include:

1256 (a) The living arrangement, services, and supports the
1257 guardian expects to arrange, facilitate, or continue for the
1258 adult;

1259 (b) Social and educational activities the guardian
1260 expects to facilitate on behalf of the adult;

1261 (c) Any person with whom the adult has a close personal
1262 relationship or relationship involving regular visitation and any
1263 plan the guardian has for facilitating visits with the person;

1264 (d) The anticipated nature and frequency of the
1265 guardian's visits and communication with the adult;

1266 (e) Goals for the adult, including any goal related to
1267 the restoration of the adult's rights, and how the guardian
1268 anticipates achieving the goals;

1269 (f) Whether the adult has an existing plan and, if so,
1270 whether the guardian's plan is consistent with the adult's plan;
1271 and



1272 (g) A statement or list of the amount the guardian
1273 proposes to charge for each service the guardian anticipates
1274 providing to the adult.

1275 (2) A guardian must give reasonable notice of the filing of
1276 the guardian's plan under subsection (1), and a copy of the plan,
1277 to the adult ward, the adult ward's spouse, parents, children, and
1278 any other person the court determines. The notice must include a
1279 statement of the right to object to the plan and be given not
1280 later than fourteen (14) days after the filing.

1281 (3) After the guardian's plan filed under this section is
1282 approved by the court, the guardian must provide a copy of the
1283 plan to the adult ward, the adult ward's spouse, parents,
1284 children, and any other person the court determines.

1285 **Section 316. Guardian's well-being report; monitoring of**

1286 **guardianship.** (1) If there is a significant change in
1287 circumstances, or if the guardian seeks to deviate significantly
1288 from the guardian's plan, a guardian must file with the court a
1289 report in a record regarding the condition of the adult and
1290 accounting for funds and other property in the guardian's
1291 possession or subject to the guardian's control within ninety (90)
1292 days after being so ordered by the court.

1293 (2) A report under subsection (1) must state:

1294 (a) The mental, physical, and social condition of the
1295 adult;



1296 (b) The living arrangements of the adult during the
1297 reporting period;

1298 (c) A summary of any technological assistance, medical
1299 services, educational and vocational services, and other supports
1300 and services provided to the adult and the guardian's opinion as
1301 to the adequacy of the adult's care;

1302 (d) A summary of the guardian's visits with the adult,
1303 including the dates of the visits;

1304 (e) Action taken on behalf of the adult;

1305 (f) The extent to which the adult has participated in
1306 decision-making;

1307 (g) If the adult is living in a mental health facility
1308 or living in a facility that provides the adult with health-care
1309 or other personal services, whether the guardian considers the
1310 facility's current plan for support, care, treatment, or
1311 habilitation consistent with the adult's preferences, values,
1312 prior directions, and best interest;

1313 (h) Any business relation the guardian has with a
1314 person the guardian has paid or that has benefited from the
1315 property of the adult;

1316 (i) A copy of the guardian's most recently approved
1317 plan under Section 315 and a statement whether the guardian has
1318 deviated from the plan and, if so, how the guardian has deviated
1319 and why;

1320 (j) Plans for future care and support of the adult;



1321 (k) A recommendation as to the need for continued
1322 guardianship and any recommended change in the scope of the
1323 guardianship, when determined applicable by the court;

1324 (l) Whether any co-guardian or successor guardian
1325 appointed to serve when a designated event occurs is alive and
1326 able to serve;

1327 (m) Photographs of the adult ward and the adult ward's
1328 living conditions, as required by the court at its discretion; and

1329 (n) Any amounts requested for reimbursement by the
1330 guardian of fees related to the administration of the guardianship
1331 or legal fees incurred for matters related to the guardianship.

1332 (3) The court may appoint a guardian ad litem to review a
1333 report submitted under this section or any guardian's plan
1334 submitted under Section 315, interview the guardian or ward, or
1335 investigate any other matter involving the guardianship.

1336 (4) Notice of the filing under this section of a guardian's
1337 well-being report, together with a copy of the report, must be
1338 given to the adult ward, the adult ward's spouse, parents,
1339 children, and any other person the court determines. The notice
1340 and report must be delivered not later than fourteen (14) days
1341 after the filing.

1342 (5) The court must establish procedures for monitoring a
1343 report submitted under this section and review each report at
1344 least annually to determine whether:



1345 (a) The report provides sufficient information to
1346 establish if the guardian has complied with the guardian's duties;
1347 (b) The guardianship should continue; and
1348 (c) The guardian's requested fees, if any, should be
1349 approved.

1350 (6) If the court determines there is reason to believe a
1351 guardian for an adult has not complied with the guardian's duties
1352 or the guardianship should be modified or terminated, the court:

1353 (a) Shall notify the adult ward, the adult ward's
1354 spouse, parents, children, and persons entitled to notice under
1355 Section 309(4) or a court order;

1356 (b) May appoint a guardian ad litem to interview the
1357 adult or guardian or investigate any matter involving the
1358 guardianship; and

1359 (c) May hold a hearing to consider removal of the
1360 guardian, termination of the guardianship, or a change in the
1361 powers granted to the guardian or terms of the guardianship.

1362 (7) A guardian for an adult may petition the court for
1363 approval of a report filed under this section. The court after
1364 review may approve the report. If the court approves the report,
1365 there is a rebuttable presumption the report is accurate as to a
1366 matter adequately disclosed in the report.

1367 **Section 317. Removal of guardian for adult; appointment of**
1368 **successor.** (1) Upon petition and for good cause shown, the court
1369 may hold a hearing to consider whether to remove a guardian for an



1370 adult for failure to perform the guardian's duties and appoint a
1371 successor guardian to assume the duties of guardian.

1372 (2) Notice of a petition under this section must be given to
1373 the ward, the guardian, and any other person the court determines.

1374 (3) A ward who seeks to remove the guardian and have a
1375 successor guardian appointed has the right to choose an attorney
1376 for representation in this matter. The court shall award
1377 reasonable attorney's fees to the attorney for the adult as
1378 provided in Section 118.

1379 (4) Not later than ten (10) days after appointing a
1380 successor guardian, the court shall give notice of the appointment
1381 to the adult ward, the adult ward's spouse, parents, children, and
1382 any person entitled to notice under a court order.

1383 **Section 318. Termination or modification of guardianship for**
1384 **adult.** (1) Upon petition and for good cause shown, the court may
1385 hold a hearing to consider whether termination of the guardianship
1386 exists on the ground that a basis for appointment under Section
1387 301 does not exist or termination would be in the best interest of
1388 the adult or for other good cause; or modification of the
1389 guardianship exists on the ground that the extent of protection or
1390 assistance granted is not appropriate or for other good cause.

1391 (2) Notice of a petition under this section must be given to
1392 the ward, the guardian, and any other person the court determines.

1393 (3) On presentation of prima facie evidence for termination
1394 of a guardianship for an adult, the court shall order termination



1395 unless it is proven that a basis for appointment of a guardian
1396 under Section 301 exists.

1397 (4) The court shall modify the powers granted to a guardian
1398 for an adult if the powers are excessive or inadequate due to a
1399 change in the abilities or limitations of the adult, the adult's
1400 supports, or other circumstances.

1401 (5) Unless the court otherwise orders for good cause shown,
1402 before terminating or modifying a guardianship for an adult, the
1403 court shall follow the same procedures to safeguard the rights of
1404 the adult which apply to a petition for guardianship.

1405 (6) A ward who seeks to terminate or modify the terms of the
1406 guardianship has the right to choose an attorney for
1407 representation in the matter. The court shall award reasonable
1408 attorney's fees to the attorney for the adult as provided in
1409 Section 118.

1410 **ARTICLE 4**

1411 **CONSERVATORSHIP**

1412 **Section 401. Basis for appointment of conservator. (1) For**
1413 **a minor.** The court may appoint a conservator for the property or
1414 financial affairs of a minor if the court finds by clear and
1415 convincing evidence that appointment of a conservator is in the
1416 minor's best interest, and:

1417 (a) If the minor has a parent, the court gives weight
1418 to any recommendation of the parent whether an appointment is in
1419 the minor's best interest; and



1420 (b) Either:

1421 (i) The minor owns funds or other property

1422 requiring management or protection that otherwise cannot be

1423 provided;

1424 (ii) The minor has or may have financial affairs

1425 that may be put at unreasonable risk or hindered because of the

1426 minor's age; or

1427 (iii) Appointment is necessary or desirable to

1428 obtain or provide funds or other property needed for the support,

1429 care, education, health, or welfare of the minor.

1430 (2) **For an adult.** The court may appoint a conservator for

1431 the property or financial affairs of an adult if the court finds

1432 by clear and convincing evidence that:

1433 (a) The adult is unable to manage property or financial

1434 affairs because:

1435 (i) Of a limitation in the adult's ability to

1436 receive and evaluate information or make or communicate decisions,

1437 even with the use of appropriate supportive services or

1438 technological assistance;

1439 (ii) The adult is missing, detained, incarcerated,

1440 or unable to return to the United States;

1441 (b) Appointment is necessary to:

1442 (i) Avoid harm to the adult or significant

1443 dissipation of the property of the adult; or



1444 (ii) Obtain or provide funds or other property
1445 needed for the support, care, education, health, or welfare of the
1446 adult or of an individual entitled to the adult's support; and

1447 (c) The respondent's identified needs cannot be met by
1448 a less restrictive alternative.

1449 (3) The court shall grant a conservator only those powers
1450 necessitated by demonstrated limitations and needs of the
1451 respondent and issue orders that will encourage development of the
1452 respondent's maximum self-determination and independence. The
1453 court may not establish a full conservatorship if a limited
1454 conservatorship or other less restrictive alternative would meet
1455 the needs of the respondent.

1456 **Section 402. Petition for appointment of conservator;**

1457 **notice.** (1) A person interested in the estate, financial
1458 affairs, or welfare of the individual, including a person that
1459 would be adversely affected by lack of effective management of
1460 property or financial affairs of the individual, may petition for
1461 the appointment of a conservator for the individual.

1462 (2) The proceeding may be instituted by the chancellor or
1463 clerk of the chancery court, any relative or friend of the
1464 individual, or any other interested party, including the
1465 individual for whom the order is sought, by filing a sworn
1466 petition in the chancery court of the residence of the individual
1467 setting forth that the individual is alleged to be in need of a
1468 conservatorship.



1469 (3) The petition must state the name and address of an
1470 attorney representing the petitioner, if any, and must set forth
1471 under the style of the case and before the body of the petition
1472 the following language in bold or highlighted type:

1473 **"THE RELIEF SOUGHT IN THIS PETITION MAY AFFECT YOUR LEGAL**
1474 **RIGHTS. YOU HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS**
1475 **PETITION, TO ATTEND ANY HEARING, AND TO BE REPRESENTED BY AN**
1476 **ATTORNEY."**

1477 **Section 403. Notice and hearing for appointment of**
1478 **conservator.** (1) On receipt of a petition under Section 402 for
1479 appointment of a conservator for a respondent, the court must set
1480 a date, time, and place for a hearing on the petition and shall
1481 cause not less than seven (7) days' notice thereof to be given to
1482 the person for whom the conservator is to be appointed, except
1483 that the court may, for good cause shown, direct that a shorter
1484 notice be given.

1485 (2) In a proceeding on a petition under Section 402, notice
1486 of the hearing also must be given to any of the persons required
1487 to be listed in the petition under subsection (3) and any other
1488 person interested in the respondent's welfare the court
1489 determines. Failure to give notice under this subsection does not
1490 preclude the court from appointing a conservator.

1491 (3) Unless the court finds that the respondent for whom the
1492 conservator is to be appointed is competent and joins in the
1493 petition, the notice shall also be given to the following persons,



1494 listed in order of preference, so that personal service is had on
1495 the person for whom the conservator is to be appointed and on at
1496 least one (1) relative who resides in Mississippi, other than the
1497 petitioner:

1498 (i) Each of the spouse, children, parents and
1499 siblings of the respondent for whom the conservator is to be
1500 appointed, but if none of those can be found, then to:

1501 (ii) One (1) adult relative of the person for whom
1502 the conservator is to be appointed who is not the petitioner and
1503 who resides in Mississippi if that relative is within the third
1504 degree of kinship. If no relative within the third degree of
1505 kinship to the person for whom the conservator is to be appointed
1506 is found residing in the State of Mississippi, the court must
1507 either designate some other appropriate person to receive the
1508 notice or appoint a guardian ad litem to receive notice.

1509 (4) If the person for whom the conservator is to be
1510 appointed is entitled to any benefit, estate or income paid or
1511 payable by or through the Veterans' Administration of the United
1512 States government, such administration shall also be given notice.

1513 (5) Notice of a hearing on a petition seeking an order under
1514 this article that is filed after the appointment of a conservator,
1515 together with a copy of the petition, must be given to the
1516 respondent, the conservator, and any other person the court
1517 determines.



1518 **Section 404. Order to preserve or apply property while**
1519 **proceeding pending.** While a petition under Section 402 is
1520 pending, after preliminary hearing and without notice to others,
1521 the court may issue an order to preserve and apply property of the
1522 respondent as required for the support of the respondent or an
1523 individual who is in fact dependent on the respondent.

1524 **Section 405. Appointment and role of guardian ad litem.** The
1525 court may appoint a guardian ad litem to any respondent and allow
1526 suitable compensation payable out of the estate of the respondent,
1527 but the appointment shall not be made unless the court considers
1528 it necessary for the protection of the interest of the respondent;
1529 a judgment of any court is not void or erroneous because of the
1530 failure to have a guardian ad litem.

1531 **Section 406. Appointment of attorney.** If the respondent in
1532 a proceeding for appointment of a conservator is not represented
1533 by an attorney, the court, in its discretion, may appoint an
1534 attorney to represent the respondent.

1535 **Section 407. Professional evaluation.** (1) The chancery
1536 court must conduct a hearing to determine whether a conservator is
1537 needed for the respondent. Before the hearing, the court, in its
1538 discretion, may appoint a guardian ad litem to look after the
1539 interest of the person in question, and the guardian ad litem must
1540 be present at the hearing and present the interests of the
1541 respondent.



1542 (2) The chancery judge shall be the judge of the number and
1543 character of the witnesses and proof to be presented, except that
1544 the proof must include certificates made after a personal
1545 examination of the respondent by the following professionals, each
1546 of whom must make in writing a certificate of the result of that
1547 examination to be filed with the clerk of the court and become a
1548 part of the record of the case

1549 (a) Two (2) licensed physicians; or

1550 (b) One (1) licensed physician and either one (1)
1551 licensed psychologist, nurse practitioner, or physician's
1552 assistant.

1553 (3) The personal examination may occur face-to-face or via
1554 telemedicine, but any telemedicine examination must be made using
1555 an audiovisual connection by a physician licensed in this state
1556 and as defined in Section 83-9-351. A nurse practitioner or
1557 physician assistant conducting an examination shall not also be in
1558 a collaborative or supervisory relationship, as the law may
1559 otherwise require, with the physician conducting the examination.
1560 A professional conducting an examination under this section may
1561 also be called to testify at the hearing.

1562 (4) The personal examination requirement in subsections (2)
1563 and (3) shall not apply if the respondent is missing, detained or
1564 unable to return to the United States.

1565 **Section 408. Rights at hearing.** (1) At a hearing under
1566 Section 403, the respondent may:



1567 (a) Present evidence and subpoena witnesses and
1568 documents;

1569 (b) Examine witnesses; and

1570 (c) Otherwise participate in the hearing.

1571 (2) Unless excused by the court for good cause, a proposed
1572 conservator must attend a hearing under Section 403.

1573 (3) A hearing under Section 403 must be closed on request of
1574 the respondent and a showing of good cause.

1575 (4) Any person may request to participate in a hearing under
1576 Section 403. The court may grant the request, with or without a
1577 hearing, on determining that the best interest of the respondent
1578 will be served. The court may impose appropriate conditions on
1579 the person's participation.

1580 **Section 409. Confidentiality of records.** (1) An individual
1581 subject to a proceeding for a conservatorship, an attorney
1582 designated by the respondent or ward, and a person entitled to
1583 notice either under Section 411(5) or court order may access court
1584 records of the proceeding and resulting conservatorship, including
1585 the conservator's plan under Section 419 and the conservator's
1586 report under Section 423. A person not otherwise entitled to
1587 access to court records under this section for good cause may
1588 petition the court for access to court records of the
1589 conservatorship, including the conservator's plan and report. The
1590 court must grant access if access is in the best interest of the
1591 respondent or ward or furthers the public interest and does not



1592 endanger the welfare or financial interests of the respondent or
1593 individual.

1594 (2) A report under Section 405 of a guardian ad litem or
1595 professional evaluation under Section 407 may be confidential and
1596 may be sealed on filing when determined necessary by the court.
1597 If the court finds the file should be sealed, the file shall
1598 remain available to:

1599 (a) The court;

1600 (b) The individual who is the subject of the report or
1601 evaluation, without limitation as to use;

1602 (c) The petitioner, guardian ad litem and petitioner's
1603 and respondent's attorneys, for purposes of the proceeding;

1604 (d) Unless the court directs otherwise, a person
1605 appointed under a power of attorney for finances in which the
1606 respondent is identified as the principal; and

1607 (e) Any other person if it is in the public interest or
1608 for a purpose the court orders for good cause.

1609 **Section 410. Who may be conservator.** (1) Appointment of a
1610 conservator is at the discretion of the court, and in the best
1611 interest of the respondent. If two (2) or more persons have
1612 requested responsibility as conservator, the court shall select as
1613 conservator the person the court considers best qualified. In
1614 determining the best qualified person, the court shall consider
1615 the person's relationship with the respondent, the person's
1616 skills, the expressed wishes of the respondent including any



1617 designation made in a will, durable power of attorney, or
1618 health-care directive, the extent to which the person and the
1619 respondent have similar values and preferences, and the likelihood
1620 the person will be able to perform the duties of a conservator
1621 successfully. The court, acting in the best interest of the
1622 respondent, may decline to appoint as conservator a person
1623 requesting the appointment.

1624 (2) If a qualified conservator cannot be determined, the
1625 court, in its discretion, may appoint the chancery court clerk or
1626 probate administrator for the county in which the proceedings were
1627 filed to serve as the respondent's conservator. The chancery
1628 court clerk or the probate administrator shall serve in the
1629 capacity ordered by the court unless a conflict of interest arises
1630 or the clerk or the probate administrator presents circumstances
1631 where the court determines the clerk's recusal from appointment is
1632 permitted.

1633 (3) A person that provides paid services to the respondent,
1634 or an individual who is employed by a person that provides paid
1635 services to the respondent or is the spouse, parent, or child of
1636 an individual who provides or is employed to provide paid services
1637 to the respondent, may not be appointed as conservator unless:

1638 (a) The individual is related to the respondent by
1639 blood, marriage, or adoption; or

1640 (b) The court finds by clear and convincing evidence
1641 that the person is the best qualified person available for



1642 appointment and the appointment is in the best interest of the
1643 respondent.

1644 (4) An owner, operator, or employee of a long-term-care
1645 institution at which the respondent is receiving care may not be
1646 appointed as conservator unless the owner, operator, or employee
1647 is related to the respondent by blood, marriage, or adoption.

1648 **Section 411. Order on appointment of conservator.** (1) A
1649 court order appointing a conservator for a minor must include
1650 findings to support appointment of a conservator and, if a full
1651 conservatorship is granted, the reason a limited conservatorship
1652 would not meet the identified needs of the minor.

1653 (2) A court order appointing a conservator for an adult
1654 must:

1655 (a) Include a specific finding that clear and
1656 convincing evidence has established that the identified needs of
1657 the respondent cannot be met by a less restrictive alternative,
1658 including use of appropriate supportive services or technological
1659 assistance; and

1660 (b) Include a specific finding that clear and
1661 convincing evidence established that the respondent was given
1662 proper notice of the hearing on the petition.

1663 (3) A court order establishing a full conservatorship for an
1664 adult must state the basis for granting a full conservatorship and
1665 include specific findings to support the conclusion that a limited
1666 conservatorship would not meet the functional needs of the adult.



1667 (4) A court order establishing a limited conservatorship
1668 must state the specific property placed under the control of the
1669 conservator and the powers granted to the conservator.

1670 (5) The court, as part of an order establishing a
1671 conservatorship, must identify and include the contact information
1672 for any person that subsequently is entitled to:

1673 (a) Notice of the rights of the ward under Section
1674 412(2);

1675 (b) Notice of a sale of or surrender of a lease to the
1676 primary dwelling of the individual;

1677 (c) Notice that the conservator has delegated a power
1678 that requires court approval under Section 414 or substantially
1679 all powers of the conservator;

1680 (d) Notice that the conservator will be unavailable to
1681 perform the conservator's duties for more than one (1) month;

1682 (e) A copy of the conservator's plan under Section 419
1683 and the conservator's report under Section 423;

1684 (f) Access to court records relating to the
1685 conservatorship;

1686 (g) Notice of a transaction involving a substantial
1687 conflict between the conservator's fiduciary duties and personal
1688 interests;

1689 (h) Notice of the death or significant change in the
1690 condition of the individual;



1691 (i) Notice that the court has limited or modified the
1692 powers of the conservator; and

1693 (j) Notice of the removal of the conservator.

1694 (6) If a ward is an adult, the spouse and adult children of
1695 the ward are entitled under subsection (5) to notice unless the
1696 court determines notice would be contrary to the preferences or
1697 prior directions of the ward or are not in the best interest of
1698 the ward.

1699 (7) If a ward is a minor, each parent and adult sibling of
1700 the minor is entitled to notice under subsection (5) unless the
1701 court determines notice would not be in the best interest of the
1702 minor.

1703 (8) (a) If the chancellor finds from the evidence that the
1704 person is in need of a conservatorship, the chancellor must
1705 appoint a conservator over the person.

1706 (b) The costs and expenses of the proceedings shall be
1707 paid out of the estate of the respondent if a conservator is
1708 appointed. If a conservator is not appointed, the costs and
1709 expenses shall be paid by the person instituting the proceedings.

1710 **Section 412. Notice of order of appointment; rights.** (1) A
1711 conservator appointed under Section 411 must give to the ward and
1712 to all other persons given notice under Section 403 a copy of the
1713 order of appointment. The order and notice must be given not
1714 later than fourteen (14) days after the appointment.



1715 (2) Not later than fourteen (14) days after appointment of a
1716 conservator under Section 411, the court must give to the ward,
1717 the conservator, and any other person entitled to notice under
1718 Section 411(5), a statement of the rights of the ward and
1719 procedures to seek relief if the ward is denied those rights. The
1720 statement must be in plain language, in at least sixteen-point
1721 font, and to the extent feasible, in a language in which the ward
1722 is proficient. The statement must notify the ward of the right
1723 to:

1724 (a) Seek termination or modification of the
1725 conservatorship, or removal of the conservator, and choose an
1726 attorney to represent the individual in these matters;

1727 (b) Participate in decision-making to the extent
1728 reasonably feasible;

1729 (c) Receive a copy of the conservator's plan under
1730 Section 419, the conservator's inventory under Section 420, and
1731 the conservator's report under Section 423; and

1732 (d) Object to the conservator's inventory, plan, or
1733 report.

1734 (3) If a conservator is appointed for the reasons stated in
1735 Section 401(2)(a)(ii) and the ward is missing, notice under this
1736 section to the individual is not required.

1737 **Section 413. Emergency conservator.** (1) Upon a petition by
1738 a person interested in an individual's welfare or a petition filed



1739 under Section 402, the court may appoint an emergency conservator
1740 for the individual if the court finds:

1741 (a) Appointment of an emergency conservator is likely
1742 to prevent substantial and irreparable harm to the individual's
1743 property or financial interests;

1744 (b) No other person appears to have authority and
1745 willingness to act in the circumstances; and

1746 (c) There is reason to believe that a basis for
1747 appointment of a conservator under Section 401 exists.

1748 (2) The duration of authority of an emergency conservator
1749 may not exceed sixty (60) days and the emergency conservator may
1750 exercise only the powers specified in the order of appointment.
1751 The emergency conservator's authority may be extended once for not
1752 more than sixty (60) days if the court finds that the conditions
1753 for appointment of an emergency conservator under subsection (1)
1754 continue.

1755 (3) Except as otherwise provided in subsection (4),
1756 reasonable notice of the date, time, and place of a hearing on the
1757 petition must be given to the respondent, the respondent's
1758 attorney, and any other person the court determines.

1759 (4) The court may appoint an emergency conservator without
1760 notice to the respondent and any attorney for the respondent only
1761 if the court finds from an affidavit or testimony that the
1762 respondent's property or financial interests will be substantially
1763 and irreparably harmed before a hearing with notice on the



1764 appointment can be held. If the court appoints an emergency
1765 conservator without giving notice under subsection (3), the court
1766 must give notice of the appointment not later than forty-eight
1767 (48) hours after the appointment to:

- 1768 (a) The respondent;
- 1769 (b) The respondent's attorney;
- 1770 (c) Any other person the court determines; and
- 1771 (d) Hold a hearing on the appropriateness of the
1772 appointment not later than five (5) days after the appointment.

1773 (5) Appointment of an emergency conservator under this
1774 section is not a determination that a basis exists for appointment
1775 of a conservator under Section 401.

1776 (6) The court may remove an emergency conservator appointed
1777 under this section at any time. The emergency conservator shall
1778 make any report the court requires.

1779 **Section 414. Powers of conservator requiring court approval.**

1780 (1) Except as otherwise ordered by the court, a conservator must
1781 give notice to persons entitled to notice under Section 411(5) and
1782 receive specific authorization by the court before the conservator
1783 may exercise with respect to the conservatorship the power to:

- 1784 (a) Make a gift;
- 1785 (b) Sell, encumber an interest in, or surrender a lease
1786 to the primary dwelling of the ward;
- 1787 (c) Convey, release, or disclaim a contingent or
1788 expectant interest in property, including marital property and any



1789 right of survivorship incident to joint tenancy or tenancy by the
1790 entireties;

1791 (d) Exercise or release a power of appointment;

1792 (e) Create a revocable or irrevocable trust of property
1793 of the conservatorship estate, whether or not the trust extends
1794 beyond the duration of the conservatorship, or revoke or amend a
1795 trust revocable by the ward;

1796 (f) Exercise a right to elect an option or change a
1797 beneficiary under an insurance policy or annuity or surrender the
1798 policy or annuity for its cash value;

1799 (g) Exercise a right to an elective share in the estate
1800 of a deceased spouse of the ward or renounce or disclaim a
1801 property interest;

1802 (h) Grant a creditor priority for payment over
1803 creditors of the same or higher class if the creditor is providing
1804 property or services used to meet the basic living and care needs
1805 of the ward and preferential treatment otherwise would be
1806 impermissible under Section 427(6);

1807 (i) Make, modify, amend, or revoke the will of the ward
1808 in compliance with Section 91-5-1 et seq.;

1809 (j) Pay premiums on any insurance policy issued on the
1810 life of the ward if the individual is a minor, the policy was
1811 issued during the lifetime of the individual's deceased parent,
1812 and the court finds the policy's continuance is warranted;



1813 (k) Acquire or dispose of real property, including real
1814 property in another state, for cash or on credit, at public or
1815 private sale, and manage, develop, improve, exchange, partition,
1816 change the character of, or abandon property;

1817 (l) Make repairs or alterations in a building or other
1818 structure, demolish any improvement, or raze an existing or erect
1819 a new wall or building if costs exceed Two Thousand Five Hundred
1820 Dollars (\$2,500.00);

1821 (m) Subdivide or develop land, dedicate land to public
1822 use, make or obtain the vacation of a plat and adjust a boundary,
1823 adjust a difference in valuation of land, exchange or partition
1824 land by giving or receiving consideration, and dedicate an
1825 easement to public use without consideration;

1826 (n) Enter for any purpose into a lease of property as
1827 lessor or lessee, with or without an option to purchase or renew,
1828 for a term within or extending beyond the term of the
1829 conservatorship;

1830 (o) Enter into a lease or arrangement for exploration
1831 and removal of minerals or other natural resources or a pooling or
1832 unitization agreement;

1833 (p) Borrow funds, with or without security, to be
1834 repaid from the conservatorship estate or otherwise;

1835 (q) Pay or contest a claim, settle a claim by or
1836 against the conservatorship estate or the ward by compromise,
1837 arbitration, or otherwise, or release, in whole or in part, a



1838 claim belonging to the conservatorship estate to the extent the
1839 claim is uncollectible; or

1840 (r) Bring an action, claim, or proceeding in any
1841 jurisdiction for the protection of the conservatorship estate or
1842 the conservator in the performance of the conservator's duties;

1843 (2) In approving a conservator's exercise of a power listed
1844 in subsection (1), the court must consider the ward's prior or
1845 current directions, preferences, opinions, values, and actions, to
1846 the extent actually known or reasonably ascertainable by the
1847 conservator. The court also must consider:

1848 (a) The financial needs of the ward and individuals who
1849 are in fact dependent on the ward for support, and the interests
1850 of creditors of the individual;

1851 (b) Possible reduction of income, estate, inheritance,
1852 or other tax liabilities;

1853 (c) Eligibility for governmental assistance;

1854 (d) The previous pattern of giving or level of support
1855 provided by the individual;

1856 (e) Any existing estate plan or lack of estate plan of
1857 the individual;

1858 (f) The life expectancy of the individual and the
1859 probability the conservatorship will terminate before the ward's
1860 death; and

1861 (g) Any other relevant factor.



1862 (3) A conservator may not revoke or amend a power of
1863 attorney for finances executed by the ward. If a power of
1864 attorney for finances is in effect, a decision of the conservator
1865 takes precedence over that of the attorney-in-fact only to the
1866 extent of the authorization granted to the conservator by court
1867 order.

1868 **Section 415. Petition for order after appointment.** A ward
1869 or a person interested in the welfare of the individual may
1870 petition for an order:

1871 (a) Requiring the conservator to furnish a bond or
1872 collateral or additional bond or collateral or allowing a
1873 reduction in a bond or collateral previously furnished;

1874 (b) Requiring an accounting for the administration of
1875 the conservatorship estate;

1876 (c) Directing distribution;

1877 (d) Removing the conservator and appointing a temporary
1878 or successor conservator;

1879 (e) Modifying the type of appointment or powers granted
1880 to the conservator, if the extent of protection or management
1881 previously granted is excessive or insufficient to meet the
1882 individual's needs, including because the individual's abilities
1883 or supports have changed;

1884 (f) Rejecting or modifying the conservator's plan under
1885 Section 419, the conservator's inventory under Section 420, or the
1886 conservator's report under Section 423; or



1887 (g) Granting other appropriate relief.

1888 **Section 416. Bond; oath; waiver; financial institutions;**
1889 **alternative asset-protection arrangement.** (1) Except as
1890 otherwise provided in subsection (3), the court shall require a
1891 conservator to furnish a bond with a surety the court specifies,
1892 or require an alternative asset-protection arrangement,
1893 conditioned on faithful discharge of all duties of the
1894 conservator. The court may waive or partially waive the
1895 requirement if:

1896 (a) The respondent is a minor and the minor's parent
1897 has waived the requirement in a valid holographic will or another
1898 instrument to take effect at the parent's death that is signed by
1899 the parent and attested by two (2) or more credible witnesses, not
1900 including the person nominated as conservator; or

1901 (b) Part of the assets of the ward's estate are
1902 deposited in one or more banking corporations, building and loan
1903 associations or savings and loan associations ("financial
1904 institutions") in this state if the deposits are fully insured by
1905 the Federal Deposit Insurance Corporation (FDIC) and will remain
1906 on deposit in that institution until further order of the court, a
1907 certified copy or MEC-filed copy of the order for deposit having
1908 been furnished to the depository or depositories and its receipt
1909 acknowledged in a form that substantially complies with subsection
1910 (7); or



1911 (c) The court finds that a bond or other
1912 asset-protection arrangement is not necessary to protect the
1913 interests of the individual subject to conservatorship. Except as
1914 otherwise provided in subsection (3), the court may not waive the
1915 requirement of bond or other asset-protection arrangement if the
1916 conservator is in the business of serving as a conservator and is
1917 being paid for the conservator's service.

1918 (2) Unless the court directs otherwise, the bond required
1919 under this section must be in the amount of the aggregate capital
1920 value of the conservatorship estate, plus one (1) year's estimated
1921 income, less the value of property deposited under an arrangement
1922 requiring a court order for its removal and real property the
1923 conservator lacks power to sell or convey without specific court
1924 authorization. The court, in place of surety on a bond, may
1925 accept collateral for the performance of the bond, including a
1926 pledge of securities or a mortgage of real property.

1927 (3) A banking institution insured by the FDIC qualified to
1928 do trust business in this state is not required to give a bond
1929 under this section.

1930 (4) Every bond must be filed in the records of the chancery
1931 court and may be put in suit for any breach of the condition,
1932 whether the appointment be legal or not; and the condition shall
1933 be as follows:

1934 "The condition of the above obligation is that if the above
1935 bound, as conservator of _____ in _____ County



1936 shall faithfully discharge all the duties required of him by law,
1937 then the above obligation shall cease."

1938 The conservator must also take and subscribe on oath, at or
1939 before the conservator's appointment, faithfully to discharge the
1940 duties of conservator of the ward according to law.

1941 (5) A financial institution that substantially complies with
1942 the provisions of this article when acting as a depository of
1943 conservatorship funds is not liable to any person for so acting
1944 except for willful default, gross negligence or malfeasance.

1945 (6) A financial institution that acts as a depository of the
1946 funds may charge a fee for servicing the account.

1947 (7) ACKNOWLEDGMENT OF RECEIPT OF ORDER FOR DEPOSIT
1948 AND RECEIPT OF CASH FUNDS

1949 The Chancery Court of _____ County, Mississippi,
1950 having rendered its order in the above-entitled and numbered cause
1951 on the ____ day of _____, _____, designating a
1952 banking institution insured by the Federal Deposit Insurance
1953 Corporation as the depository of the funds of
1954 _____, by and through
1955 _____, as conservator, and the
1956 conservator, having elected to use
1957 _____ (Name of Financial
1958 Institution) as the aforesaid depository, I, acting pursuant to my
1959 authority in and for said bank, do hereby acknowledge that I have
1960 received a copy of the order of the chancery court, duly certified



1961 as true and correct by the chancery clerk of _____
1962 County, Mississippi, or a MEC-filed copy of the order of the
1963 chancery court. I further note that said order provides that all
1964 funds so deposited to the account shall remain on deposit until
1965 further order of the court.

1966 Receipt is also hereby acknowledged of the funds in the
1967 amount of \$ _____ in this matter.
1968 _____ (Name of Financial Institution)
1969 hereby acknowledges that the funds, described above, shall not be
1970 disbursed without further order of this court.

1971 This the _____ day of _____, _____.

1972 STATE OF MISSISSIPPI

1973 COUNTY OF _____

1974 Personally came and appeared before me, the undersigned
1975 authority in and for the jurisdiction aforesaid, the within named
1976 _____ (Name of Bank Officer), who is
1977 _____ (Job Title) of
1978 _____ (Name of Financial Institution) and
1979 who acknowledged to me that he/she signed and delivered the above
1980 and foregoing Acknowledgment of Receipt of Order for Deposit and
1981 Receipt of Cash Funds as the act and deed of said bank, he/she
1982 being first duly authorized so to do.

1983 Given under my hand and official seal, this the
1984 _____ day of _____, _____.
1985 _____



1986 Notary Public My commission expires

1987 **Section 417. Terms and requirements of bond.** (1) The
1988 following rules apply to the bond required under Section 416:

1989 (a) Except as otherwise provided by the bond, the
1990 surety and the conservator are jointly and severally liable.

1991 (b) By executing a bond provided by a conservator, the
1992 surety submits to the personal jurisdiction of the court that
1993 issued letters of office to the conservator in a proceeding
1994 relating to the duties of the conservator in which the surety is
1995 named as a party. Notice of the proceeding must be given to the
1996 surety at the address shown in the records of the court in which
1997 the bond is filed and any other address of the surety then known
1998 to the person required to provide the notice.

1999 (c) On petition of a successor conservator or person
2000 affected by a breach of the obligation of the bond, a proceeding
2001 may be brought against the surety for breach of the obligation of
2002 the bond.

2003 (d) A proceeding against the bond may be brought until
2004 liability under the bond is exhausted.

2005 (2) A proceeding may not be brought under this section
2006 against a surety of a bond on a matter as to which a proceeding
2007 against the conservator is barred.

2008 (3) If a bond under Section 416 is not renewed by the
2009 conservator, the surety or sureties immediately must give notice
2010 to the court and the attorney for the conservatorship.



2011 **Section 418. Duties of conservator.** (1) A conservator is a
2012 fiduciary and has duties of prudence and loyalty to the ward.

2013 (2) A conservator must promote the self-determination of the
2014 ward and, to the extent feasible, encourage the ward to
2015 participate in decisions, act on the ward's own behalf, and
2016 develop or regain the capacity to manage the ward's personal
2017 affairs.

2018 (3) In making a decision for a ward, the conservator must
2019 make the decision the conservator reasonably believes the ward
2020 would make if able, unless doing so would fail to preserve the
2021 resources needed to maintain the ward's well-being and lifestyle
2022 or otherwise unreasonably harm or endanger the welfare or personal
2023 or financial interests of the ward. To determine the decision the
2024 ward would make if able, the conservator must consider the ward's
2025 prior or current directions, preferences, opinions, values, and
2026 actions, to the extent actually known or reasonably ascertainable
2027 by the conservator.

2028 (4) If a conservator cannot make a decision under subsection
2029 (3) because the conservator does not know and cannot reasonably
2030 determine the decision the ward probably would make if able, or
2031 the conservator reasonably believes the decision the individual
2032 would make would fail to preserve resources needed to maintain the
2033 ward's well-being and lifestyle or otherwise unreasonably harm or
2034 endanger the welfare or personal or financial interests of the
2035 ward, the conservator shall act in accordance with the best



2036 interest of the ward. In determining the best interest of the
2037 ward, the conservator shall consider:

2038 (a) Information received from professionals and persons
2039 who demonstrate sufficient interest in the welfare of the ward;

2040 (b) Other information the conservator believes the ward
2041 would have considered if the ward were able to act; and

2042 (c) Other factors a reasonable person in the
2043 circumstances of the ward would consider, including consequences
2044 for others.

2045 (5) Except when inconsistent with the conservator's duties
2046 under subsections (1) through (4), and where investments other
2047 than in FDIC-insured investments are permitted in the court's
2048 order approving the conservator's plan, a conservator must invest
2049 and manage the conservatorship estate as a prudent investor would,
2050 by considering:

2051 (a) The circumstances of the ward and the
2052 conservatorship estate;

2053 (b) General economic conditions;

2054 (c) The possible effect of inflation or deflation;

2055 (d) The expected tax consequences of an investment
2056 decision or strategy;

2057 (e) The role of each investment or course of action in
2058 relation to the conservatorship estate as a whole;

2059 (f) The expected total return from income and
2060 appreciation of capital;



2061 (g) The need for liquidity, regularity of income, and
2062 preservation or appreciation of capital; and

2063 (h) The special relationship or value, if any, of
2064 specific property to the ward.

2065 (6) The propriety of a conservator's investment and
2066 management of the conservatorship estate is determined in light of
2067 the facts and circumstances existing when the conservator decides
2068 or acts and not by hindsight.

2069 (7) A conservator must make a reasonable effort to verify
2070 facts relevant to the investment and management of the
2071 conservatorship estate.

2072 (8) A conservator that has special skills or expertise, or
2073 is named conservator in reliance on the conservator's
2074 representation of special skills or expertise, has a duty to use
2075 the special skills or expertise in carrying out the conservator's
2076 duties.

2077 (9) In investing, selecting specific property for
2078 distribution, and invoking a power of revocation or withdrawal for
2079 the use or benefit of the ward, a conservator must consider any
2080 estate plan of the ward known or reasonably ascertainable to the
2081 conservator and may examine the will or other donative,
2082 nominative, or appointive instrument of the individual.

2083 (10) A conservator must maintain insurance on the insurable
2084 real and personal property of the ward, unless the conservatorship



2085 estate lacks sufficient funds to pay for insurance or the court
2086 finds:

2087 (a) The property lacks sufficient equity; or

2088 (b) Insuring the property would unreasonably dissipate
2089 the conservatorship estate or otherwise not be in the best
2090 interest of the ward.

2091 (11) A conservator has access to and authority over a
2092 digital asset of the ward to the extent provided by the Revised
2093 Uniform Fiduciary Access to Digital Assets Act (Title 91, Chapter
2094 23, Mississippi Code of 1972).

2095 (12) A conservator for an adult must notify the court if the
2096 condition of the adult has changed so that the adult has become
2097 capable of autonomy in exercising rights previously delegated to
2098 the conservator. The notice must be given immediately on learning
2099 of the change.

2100 **Section 419. Conservator's plan.** (1) If required by the
2101 court, a conservator must file with the court a plan for
2102 investing, protecting, managing, expending, and distributing the
2103 assets of the conservatorship estate no later than ninety (90)
2104 days after the court's order of appointment or order to file a
2105 plan. If a plan is required and there is a significant change in
2106 circumstances, or if the conservator seeks to deviate
2107 significantly from the conservator's plan, a conservator must file
2108 with the court a revised plan no later than ninety (90) days after
2109 the change in circumstances or decision to deviate from the plan.



2110 Every plan must be based on the needs of the ward and take into
2111 account the best interest of the ward as well as the ward's
2112 preferences, values, and prior directions, to the extent known to
2113 or reasonably ascertainable by the conservator. Along with other
2114 items determined necessary by the court, the conservator's plan
2115 must include:

2116 (a) A budget containing projected expenses and
2117 resources, including an estimate of the total amount of fees the
2118 conservator anticipates charging per year and a statement or list
2119 of the amount the conservator proposes to charge for each service
2120 the conservator anticipates providing to the individual;

2121 (b) How the conservator will involve the individual in
2122 decisions about management of the conservatorship estate;

2123 (c) Any step the conservator plans to take to develop
2124 or restore the ability of the ward to manage the conservatorship
2125 estate; and

2126 (d) An estimate of the duration of the conservatorship.

2127 (2) A conservator must give reasonable notice of the filing
2128 of the conservator's plan under subsection (1), together with a
2129 copy of the plan, to the ward, a person entitled to notice under
2130 Section 411(5) or a court order, and any other person the court
2131 determines. The notice must include a statement of the right to
2132 object to the plan and be given not later than fourteen (14) days
2133 after the filing.



2134 (3) A ward and any person entitled under subsection (2) to
2135 receive notice and a copy of the conservator's plan may object to
2136 the plan.

2137 (4) The court must review the conservator's plan filed under
2138 subsection (1) and determine whether to approve the plan or
2139 require a new plan. In deciding whether to approve the plan, the
2140 court shall consider objections made under subsection (3) and
2141 whether the plan is consistent with the conservator's duties and
2142 powers. The court may not approve the plan until thirty (30) days
2143 after its filing.

2144 (5) After a conservator's plan under this section is
2145 approved by the court, the conservator must provide a copy of the
2146 plan to the ward, a person entitled to notice under Section 411(5)
2147 or a court order, and any other person the court determines.

2148 **Section 420. Inventory; records.** (1) Unless the inventory
2149 requirement has been waived, not later than ninety (90) days after
2150 appointment, a conservator must prepare and file with the
2151 appointing court a detailed inventory of the conservatorship
2152 estate, together with an oath or affirmation that the inventory is
2153 believed to be complete and accurate as far as information
2154 permits.

2155 (2) A conservator must give reasonable notice of the filing
2156 of an inventory to the ward, a person entitled to notice under
2157 Section 411(5) or a court order, and any other person the court



2158 determines. The notice must be given not later than fourteen (14)
2159 days after the filing.

2160 (3) A conservator must keep records of the administration of
2161 the conservatorship estate and make them available for examination
2162 on reasonable request of the ward, a guardian for the ward, or any
2163 other person the conservator or the court determines.

2164 **Section 421. Administrative powers of conservator not**
2165 **requiring court approval.** (1) Except as otherwise provided in
2166 Section 414 or qualified or limited in the court's order of
2167 appointment and stated in the letters of conservatorship, a
2168 conservator has all powers granted in this section and any
2169 additional power granted to a trustee by law of this state other
2170 than this act.

2171 (2) The court may authorize the conservator in a court order
2172 to execute powers not listed in Section 414 without prior specific
2173 court authorization or confirmation, including by way of
2174 illustration, but not limited to, the following:

2175 (a) To collect, hold, and retain property, including
2176 property in which the conservator has a personal interest and real
2177 property in another state, until the conservator determines
2178 disposition of the property should be made;

2179 (b) To receive additions to the conservatorship estate;

2180 (c) To continue or participate in the operation of a
2181 business or other enterprise;



- 2182 (d) To acquire an undivided interest in property in
2183 which the conservator, in a fiduciary capacity, holds an undivided
2184 interest;
- 2185 (e) To acquire or dispose of personal property;
- 2186 (f) To continue to invest assets;
- 2187 (g) To deposit funds or other property in a financial
2188 institution, including one operated by the conservator;
- 2189 (h) To grant an option involving disposition of
2190 property or accept or exercise an option for the acquisition of
2191 property;
- 2192 (i) To vote a security, in person or by general or
2193 limited proxy;
- 2194 (j) To pay a call, assessment, or other sum chargeable
2195 or accruing against or on account of a security;
- 2196 (k) To sell or exercise a stock subscription or
2197 conversion right;
- 2198 (l) To consent, directly or through a committee or
2199 agent, to the reorganization, consolidation, merger, dissolution,
2200 or liquidation of a corporation or other business enterprise;
- 2201 (m) To hold a security in the name of a nominee or in
2202 other form without disclosure of the conservatorship so that title
2203 to the security may pass by delivery;
- 2204 (n) To insure:



2205 (i) The conservatorship estate, in whole or in
2206 part, against damage or loss in accordance with Section 418(10);
2207 and

2208 (ii) The conservator against liability with
2209 respect to a third person;

2210 (o) Advance funds for the protection of the
2211 conservatorship estate or the ward and all expenses, losses, and
2212 liability sustained in the administration of the conservatorship
2213 estate or because of holding any property for which the
2214 conservator has a lien on the conservatorship estate;

2215 (p) Pay a tax, assessment, compensation of the
2216 conservator or any guardian, and other expense incurred in the
2217 collection, care, administration, and protection of the
2218 conservatorship estate;

2219 (q) Pay a sum distributable to the ward or an
2220 individual who is in fact dependent on the ward by paying the sum
2221 to the distributee or for the use of the distributee:

2222 (i) To the guardian for the distributee;

2223 (ii) To the custodian of the distributee under the
2224 Uniform Transfers to Minors Act, Section 91-20-1 et seq.; or

2225 (iii) If there is no guardian, custodian, or
2226 custodial trustee, to a relative or other person having physical
2227 custody of the distributee;



2228 (r) Defend an action, claim, or proceeding in any
2229 jurisdiction for the protection of the conservatorship estate or
2230 the conservator in the performance of the conservator's duties;

2231 (s) Structure the finances of the ward to establish
2232 eligibility for a public benefit, including by making gifts
2233 consistent with the ward's preferences, values, and prior
2234 directions, if the conservator's action does not jeopardize the
2235 ward's welfare and otherwise is consistent with the conservator's
2236 duties; and

2237 (t) Execute and deliver any instrument that will
2238 accomplish or facilitate the exercise of a power of the
2239 conservator.

2240 **Section 422. Distribution from conservatorship estate.**

2241 Except as otherwise provided in Section 414 or qualified or
2242 limited in the court's order of appointment and stated in the
2243 letters of conservatorship, and unless contrary to a conservator's
2244 plan under Section 419, the conservator may expend or distribute
2245 income or principal of the conservatorship estate for the support,
2246 care, education, health, or welfare of the ward or an individual
2247 who is in fact dependent on the ward, including the payment of
2248 child or spousal support, without specific court authorization or
2249 confirmation in accordance with the following rules:

2250 (a) The conservator shall consider a recommendation
2251 relating to the appropriate standard of support, care, education,
2252 health, or welfare for the ward or individual who is dependent on



2253 the ward, made by a guardian for the ward, if any, and, if the
2254 ward is a minor, a recommendation made by a parent of the minor.
2255 If the minor has a father or mother, the court shall determine
2256 whether the expense of maintaining and educating the minor shall
2257 be borne by the ward's estate.

2258 (b) The conservator acting in compliance with the
2259 conservator's duties under Section 418 is not liable for an
2260 expenditure or distribution made based on a recommendation under
2261 paragraph (a) unless the conservator knows the expenditure or
2262 distribution is not in the best interest of the ward.

2263 (c) In making an expenditure or distribution under this
2264 section, the conservator must consider:

2265 (i) The size of the conservatorship estate, the
2266 estimated duration of the conservatorship, and the likelihood the
2267 ward, at some future time, may be fully self-sufficient and able
2268 to manage the individual's financial affairs and the
2269 conservatorship estate;

2270 (ii) The accustomed standard of living of the ward
2271 and individual who is dependent on the ward;

2272 (iii) Other funds or sources used for the support
2273 of the ward; and

2274 (iv) The preferences, values, and prior directions
2275 of the ward.

2276 (d) Funds expended or distributed under this section
2277 may be paid by the conservator to any person, including the ward,



2278 as reimbursement for expenditures the conservator might have made,
2279 or in advance for services to be provided to the ward or
2280 individual who is dependent on the ward if it is reasonable to
2281 expect the services will be performed and advance payment is
2282 customary or reasonably necessary under the circumstances.

2283 **Section 423. Conservator's report and accounting;**

2284 **monitoring.** (1) Except as otherwise provided under subsection
2285 (11), a conservator must file a report in a record regarding the
2286 administration of the conservatorship estate with the court
2287 annually unless the court otherwise directs, if provided by will,
2288 or made necessary by resignation or removal, or termination of the
2289 conservatorship. A conservator must petition the court for
2290 approval of a report filed under this section. The court, after
2291 review, may approve the report.

2292 (2) A report under subsection (1) must state or contain:

2293 (a) An accounting that lists property included in the
2294 conservatorship estate and the receipts, disbursements,
2295 liabilities, and distributions during the period for which the
2296 report is made;

2297 (b) A list of the services provided to the ward;

2298 (c) A statement whether the conservator has deviated
2299 from the plan and, if so, how the conservator has deviated and
2300 why;



2301 (d) A recommendation as to the need for continued
2302 conservatorship and any recommended change in the scope of the
2303 conservatorship;

2304 (e) Anything of more than de minimis value which the
2305 conservator, any individual who resides with the conservator, or
2306 the spouse, parent, child, or sibling of the conservator has
2307 received from a person providing goods or services to the ward;
2308 and

2309 (f) Any business relationship the conservator has with
2310 a person the conservator has paid or that has benefited from the
2311 property of the ward.

2312 (3) The court, in its discretion, may request a copy of the
2313 most recent reasonably available financial statements evidencing
2314 the status of bank accounts, investment accounts, and mortgages or
2315 other debts of the ward with all but the last four (4) digits of
2316 the account numbers and social security number redacted;

2317 (4) The court may appoint a guardian ad litem to review a
2318 report under this section or a conservator's plan under Section
2319 419, to interview the ward or conservator, or to investigate any
2320 other matter involving the conservatorship. In connection with
2321 the report, the court may order the conservator to submit the
2322 conservatorship estate to appropriate examination in a manner the
2323 court directs.

2324 (5) Reasonable notice of the filing under this section of a
2325 conservator's report, together with a copy of the report, must be



2326 provided to the ward, a person entitled to notice under Section
2327 411(5) or a court order, and other persons the court determines.
2328 The notice and report must be given not later than fourteen (14)
2329 days after filing.

2330 (6) The court may establish procedures for monitoring a
2331 report submitted under this section and review each report at
2332 least annually unless otherwise directed by the court. The court
2333 must consider whether:

2334 (a) The reports provide sufficient information to
2335 establish that the conservator has complied with the conservator's
2336 duties;

2337 (b) The conservatorship should continue; and

2338 (c) The conservator's requested fees, if any, should be
2339 approved.

2340 (7) If the court determines there is reason to believe a
2341 conservator has not complied with the conservator's duties or the
2342 conservatorship should not continue, the court:

2343 (a) Shall notify the ward, the conservator, and any
2344 other person entitled to notice under Section 411(5) or a court
2345 order;

2346 (b) May require additional information from the
2347 conservator;

2348 (c) May appoint a guardian ad litem to interview the
2349 ward or conservator or investigate any matter involving the
2350 conservatorship; and



2351 (d) Consistent with Sections 429 and 430, may hold a
2352 hearing to consider removal of the conservator, termination of the
2353 conservatorship, or a change in the powers granted to the
2354 conservator or terms of the conservatorship.

2355 (8) If the court has reason to believe fees requested by a
2356 conservator are not reasonable, the court shall hold a hearing to
2357 determine whether to adjust the requested fees.

2358 (9) An order may be entered, after notice and consideration
2359 by the court, approving a report of a conservator filed under this
2360 section.

2361 (10) A conservator may seek an order, after notice and
2362 hearing, approving a report filed under this section that
2363 discharges the conservator from all liabilities, claims, and
2364 causes of action by a person given notice of the report and the
2365 hearing as to a matter adequately disclosed in the report.

2366 (11) When the funds and personal property of the ward do not
2367 exceed the sum or value of Ten Thousand Dollars (\$10,000.00) and
2368 there is no foreseeable prospect of further receipt to come into
2369 the hands of the conservator other than interest thereon, or in
2370 conservatorships in which the only funds on hand or to be received
2371 by the guardian are funds paid or to be paid by a government
2372 agency providing protective services to adults or children for the
2373 benefit of the ward, the chancery court or chancellor in vacation,
2374 for good cause shown, in the chancellor's discretion and upon
2375 being satisfied it is to the best interest and welfare of the



2376 ward, may authorize the guardian to dispense with further annual
2377 accounts, except for a final account.

2378 **Section 424. Attempted transfer of property by the ward.**

2379 (1) The interest of a ward in property included in the
2380 conservatorship estate is not transferrable or assignable by the
2381 ward and is not subject to levy, garnishment, or similar process
2382 for claims against the ward unless allowed under Section 427.

2383 (2) If a ward enters into a contract after the right to
2384 enter the contract has been delegated to another by the court, the
2385 contract is void against the ward and the ward's property but is
2386 enforceable against the person that contracted with the ward.

2387 (3) A person other than the conservator that deals with a
2388 ward with respect to property included in the conservatorship
2389 estate is entitled to protection provided by law of this state
2390 other than this act.

2391 **Section 425. Transaction involving conflict of interest.** A

2392 transaction involving a conservatorship estate which is affected
2393 by a substantial conflict between the conservator's fiduciary
2394 duties and personal interests is voidable unless the transaction
2395 is authorized by court order after notice to persons entitled to
2396 notice under Section 411(5) or a court order. A transaction
2397 affected by a substantial conflict includes a sale, encumbrance,
2398 or other transaction involving the conservatorship estate entered
2399 into by the conservator, an individual with whom the conservator
2400 resides, the spouse, descendant, sibling, or attorney of the



2401 conservator, or a corporation or other enterprise in which the
2402 conservator has a substantial beneficial interest.

2403 **Section 426. Protection of person dealing with conservator.**

2404 (1) A person that assists or deals with a conservator in good
2405 faith and for value in any transaction, other than a transaction
2406 requiring a court order under Section 414, is protected as though
2407 the conservator properly exercised any power in question. Mere
2408 knowledge by a person that the person is dealing with a
2409 conservator does not require the person to inquire into the
2410 existence of authority of the conservator or the propriety of the
2411 conservator's exercise of authority, but restrictions on authority
2412 stated in letters of conservatorship, or otherwise provided by
2413 law, are effective as to the person. A person that pays or
2414 delivers property to a conservator is not responsible for proper
2415 application of the property.

2416 (2) Protection under subsection (1) extends to a procedural
2417 irregularity or jurisdictional defect in the proceeding leading to
2418 the issuance of letters of conservatorship and does not substitute
2419 for protection for a person that assists or deals with a
2420 conservator provided by comparable provisions in law of this state
2421 other than this act relating to a commercial transaction or
2422 simplifying a transfer of securities by a fiduciary.

2423 **Section 427. Presentation and allowance of claim.** (1) A
2424 conservator may pay, or secure by encumbering property included in
2425 the conservatorship estate, a claim against the conservatorship



2426 estate or the ward arising before or during the conservatorship,
2427 on presentation and allowance in accordance with the priorities
2428 under subsection (5) or (6). A claimant may present a claim by
2429 filing the claim with the court, in a form acceptable to the
2430 court, and sending or delivering a copy of the claim to the
2431 conservator.

2432 (2) A presented claim is allowed if it is not disallowed in
2433 whole or in part by the conservator in a record sent or delivered
2434 to the claimant not later than ninety (90) days after its
2435 presentation. Before payment, the conservator may change an
2436 allowance of the claim to a disallowance in whole or in part, but
2437 not after allowance under a court order or order directing payment
2438 of the claim. Presentation of a claim tolls the running of a
2439 statute of limitations that has not expired relating to the claim
2440 until thirty (30) days after disallowance of the claim.

2441 (3) A claimant whose claim has not been paid may petition
2442 the court to determine the claim at any time before it is barred
2443 by a statute of limitations, and the court may order its
2444 allowance, payment, or security by encumbering property included
2445 in the conservatorship estate. If a proceeding is pending against
2446 the ward at the time of appointment of the conservator or is
2447 initiated after the appointment, the moving party must give the
2448 conservator notice of the proceeding if it could result in
2449 creating a claim against the conservatorship estate.



2450 (4) If a conservatorship estate is likely to be exhausted
2451 before all existing claims are paid, the provisions of the law on
2452 proceedings to insolvency and distribution of assets of insolvent
2453 estates shall, as far as applicable and not otherwise provided, be
2454 observed and enforced.

2455 (5) When the claims are established and the amount of assets
2456 ascertained, the court shall adjudge the pro rata share of each
2457 claimant, deducting first the preference claims in the following
2458 order:

2459 (a) Costs and expenses of administration;

2460 (b) A claim of the federal or state government having
2461 priority under law other than this article;

2462 (c) A claim incurred by the conservator for support,
2463 care, education, health, or welfare previously provided to the
2464 ward or an individual who is in fact dependent on the ward;

2465 (d) A claim arising before the conservatorship; and

2466 (e) All other claims.

2467 (6) Preference may not be given in the payment of a claim
2468 under subsection (5) over another claim of the same class. A
2469 claim due and payable may not be preferred over a claim not due
2470 unless:

2471 (a) Doing so would leave the conservatorship estate
2472 without sufficient funds to pay the basic living and health-care
2473 expenses of the ward; and



2474 (b) The court authorizes the preference under Section
2475 414(1) (h) .

2476 (7) If assets of a conservatorship estate are adequate to
2477 meet all existing claims, the court, acting in the best interest
2478 of the ward, may order the conservator to grant a security
2479 interest in the conservatorship estate for payment of a claim at a
2480 future date.

2481 **Section 428. Personal liability of conservator.** (1) Except
2482 as otherwise agreed by a conservator, the conservator is not
2483 personally liable on a contract properly entered into in a
2484 fiduciary capacity in the course of administration of the
2485 conservatorship estate unless the conservator fails to reveal the
2486 conservator's representative capacity in the contract or before
2487 entering into the contract.

2488 (2) A conservator may be personally liable for an obligation
2489 arising from control of property of the conservatorship estate or
2490 an act or omission occurring in the course of administration of
2491 the conservatorship estate only if the conservator is personally
2492 grossly negligent or in breach of fiduciary duty.

2493 (3) A claim based on a contract entered into by a
2494 conservator in a fiduciary capacity, an obligation arising from
2495 control of property included in the conservatorship estate, or a
2496 tort committed in the course of administration of the
2497 conservatorship estate may be asserted against the conservatorship
2498 estate in a proceeding against the conservator in a fiduciary



2499 capacity, whether or not the conservator is personally liable for
2500 the claim.

2501 (4) A question of liability between a conservatorship estate
2502 and the conservator personally may be determined in a proceeding
2503 for accounting, surcharge, or indemnification or another
2504 appropriate proceeding or action.

2505 **Section 429. Removal of conservator; appointment of**
2506 **successor.** (1) The court may remove a conservator for failure to
2507 perform the conservator's duties or other good cause and appoint a
2508 successor conservator to assume the duties of the conservator.

2509 (2) The court must hold a hearing to determine whether to
2510 remove a conservator and appoint a successor on:

2511 (a) A petition of the ward, conservator, or person
2512 interested in the welfare of the ward that contains allegations
2513 which, if true, would support a reasonable belief that removal of
2514 the conservator and appointment of a successor may be appropriate,
2515 but the court may decline to hold a hearing if a petition based on
2516 the same or substantially similar facts was filed during the
2517 preceding six (6) months;

2518 (b) Communication from the ward, conservator, or person
2519 interested in the welfare of the ward which supports a reasonable
2520 belief that removal of the conservator and appointment of a
2521 successor may be appropriate; or

2522 (c) Determination by the court that a hearing would be
2523 in the best interest of the ward.



2524 (3) Notice of a petition under subsection (2)(a) must be
2525 given to the ward, the conservator, and any other person the court
2526 determines.

2527 (4) A ward who seeks to remove the conservator and have a
2528 successor appointed has the right to choose an attorney to
2529 represent the ward in this matter. If the ward is not represented
2530 by an attorney, the court may appoint an attorney under the same
2531 conditions as in Section 406. The court may award reasonable
2532 attorney's fees to the attorney as provided in Section 118.

2533 (5) In selecting a successor conservator, the court must
2534 follow the priorities under Section 410.

2535 **Section 430. Termination or modification of conservatorship.**

2536 (1) A conservatorship must be terminated when the minor becomes
2537 an adult, becomes emancipated, or dies; the termination must
2538 comply with Section 423, but a conservatorship may continue into
2539 adulthood when the court finds the ward qualifies for
2540 conservatorship as an adult under the provisions of subsections
2541 (5) and (6).

2542 (2) A ward, the conservator, or a person interested in the
2543 welfare of the individual may petition for:

2544 (a) Termination of the conservatorship on the ground
2545 that a basis for appointment under Section 401 does not exist or
2546 termination would be in the best interest of the ward or for other
2547 good cause; or



2548 (b) Modification of the conservatorship on the ground
2549 that the extent of protection or assistance granted is not
2550 appropriate or for other good cause shown.

2551 (3) The court must hold a hearing to determine whether
2552 termination or modification of a conservatorship is appropriate
2553 on:

2554 (a) A petition that contains allegations which, if
2555 true, would support a reasonable belief that termination or
2556 modification of the conservatorship may be appropriate, but the
2557 court may decline to hold a hearing if a petition based on the
2558 same or substantially similar facts was filed within the preceding
2559 six (6) months;

2560 (b) A communication from the ward, conservator, or
2561 person interested in the welfare of the ward which supports a
2562 reasonable belief that termination or modification of the
2563 conservatorship may be appropriate, including because the
2564 functional needs of the ward or supports or services available to
2565 the ward have changed;

2566 (c) A report from a guardian or conservator which
2567 indicates that termination or modification may be appropriate
2568 because the functional needs or supports or services available to
2569 the ward have changed or other less restrictive alternative is
2570 available; or

2571 (d) A determination by the court that a hearing would
2572 be in the best interest of the ward.



2573 (4) Notice of a petition under this section must be given to
2574 the ward, the conservator, and any other person the court
2575 determines.

2576 (5) On presentation of prima facie evidence for termination
2577 of a conservatorship, the court must order termination unless it
2578 is proven that a basis for appointment of a conservator under
2579 Section 401 exists.

2580 (6) The court must modify the powers granted to a
2581 conservator if the powers are excessive or inadequate due to a
2582 change in the abilities or limitations of the ward, the ward's
2583 supports, or other circumstances.

2584 (7) Unless the court otherwise orders for good cause, before
2585 terminating a conservatorship, the court shall follow the same
2586 procedures to safeguard the rights of the ward which apply to a
2587 petition for conservatorship.

2588 (8) A ward who seeks to terminate or modify the terms of the
2589 conservatorship has the right to choose an attorney to represent
2590 the ward in this matter. If the ward is not represented by an
2591 attorney, the court may appoint an attorney under the same
2592 conditions as in Section 406. The court may award reasonable
2593 attorney's fees to the attorney as provided in Section 118.

2594 (9) On termination of a conservatorship other than by reason
2595 of the death of the ward, property of the conservatorship estate
2596 passes to the ward. The order of termination must direct the



2597 conservator to file a final report and petition for discharge on
2598 approval by the court of the final report.

2599 (10) If a ward dies testate, the conservator must deliver
2600 the will to the named representative and certify that delivery to
2601 the court. If the ward dies intestate, Section 91-7-68 governs.

2602 **Section 431. Transfer for benefit of minor without**
2603 **appointment of conservator.** (1) Unless a person required to
2604 transfer funds or other property to a minor knows that a
2605 conservator for the minor has been appointed or a proceeding is
2606 pending for conservatorship, the person may transfer an amount or
2607 value not exceeding Twenty-five Thousand Dollars (\$25,000.00) in a
2608 twelve-month period to:

2609 (a) A person who has care or custody of the minor and
2610 with whom the minor resides;

2611 (b) A guardian for the minor;

2612 (c) A custodian under the Uniform Transfers to Minors
2613 Act, Section 91-20-1 et seq.; or

2614 (d) A financial institution as a deposit in an account
2615 or certificate solely in the name of the minor; notice of the
2616 deposit must be given to the minor; or

2617 (e) An Achieving a Better Life Experience (ABLE)
2618 account.

2619 (2) A person that transfers funds or other property under
2620 this section is not responsible for its proper application.



2621 (3) A person that receives funds or other property for a
2622 minor under subsection (1)(a) or (b) may apply it only to the
2623 support, care, education, health, or welfare of the minor, and may
2624 not derive a personal financial benefit from it, except for
2625 reimbursement for necessary expenses. Funds not applied for these
2626 purposes must be preserved for the future support, care,
2627 education, health, or welfare of the minor, and the balance, if
2628 any, transferred to the minor when the minor becomes an adult or
2629 otherwise is emancipated.

2630 (4) Contributions to an ABLE account, and the provisions for
2631 permissible disbursements from such account, are governed by 26
2632 U.S.C. Section 529A and the terms of the applicable ABLE plan.
2633 The amount of annual contributions is subject to 26 U.S.C. Section
2634 2503(b).

2635 Section 2. Section 9-1-49, Mississippi Code of 1972, is
2636 amended as follows:

2637 9-1-49. (1) The clerk of the court shall prepare and
2638 forward to the Department of Public Safety the information
2639 described by subsection (2) of this section not later than the
2640 thirtieth day after the date the court:

2641 (a) Judicially determines that a person is a person
2642 with mental illness or person with an intellectual disability
2643 under Title 41, Chapter 21, Mississippi Code of 1972, whether
2644 ordered for inpatient treatment, outpatient treatment, day
2645 treatment, night treatment or home health services treatment;



2646 (b) Acquits a person in a criminal case by reason of
2647 insanity or on a ground of intellectual disability, without regard
2648 to whether the person is ordered by a court to receive inpatient
2649 treatment or residential care under Section 99-13-7;

2650 (c) Appoints a guardian or conservator under * * *
2651 Article 2, 3 or 4 of Section 1 of this act, based on the
2652 determination that the person is incapable of managing his own
2653 person or estate * * *;

2654 (d) Determines that a person is incompetent to stand
2655 trial pursuant to Rule 9.06 of the Mississippi Rules of Circuit
2656 and County Court Practice;

2657 (e) Finds under Section * * * 318 or 430 of Section 1
2658 of this act that a person has been restored to reason; or

2659 (f) Enters an order of relief from a firearms
2660 disability under Section 97-37-5(4).

2661 (2) The clerk of the court shall prepare and forward the
2662 following information:

2663 (a) The complete name, race, and sex of the person;

2664 (b) Any known identifying number of the person,
2665 including social security number, driver's license number, or
2666 state identification card number;

2667 (c) The person's date of birth; and

2668 (d) The federal prohibited-person information that is
2669 the basis of the report required by this section.



2670 (3) If practicable, the clerk of the court shall forward to
2671 the Department of Public Safety the information described by
2672 subsection (2) of this section in an electronic format prescribed
2673 by the department.

2674 (4) If an order previously reported to the department under
2675 subsection (1) of this section is reversed by order of any court,
2676 the clerk shall notify the department of the reversal not later
2677 than thirty (30) days after the clerk receives the court order or
2678 the mandate from the appellate court.

2679 (5) The duty of a clerk to prepare and forward information
2680 under this section is not affected by:

- 2681 (a) Any subsequent appeal of the court order;
- 2682 (b) Any subsequent modification of the court order; or
- 2683 (c) The expiration of the court order.

2684 Section 3. Section 43-47-29, Mississippi Code of 1972, is
2685 amended as follows:

2686 43-47-29. In addition to the powers granted under the
2687 provisions of this chapter, the department is authorized to
2688 petition the court under the provisions of Section * * * 401 or
2689 402 of Section 1 of this act for appointment of a conservator for
2690 any vulnerable person.

2691 Section 4. Section 45-9-103, Mississippi Code of 1972, is
2692 amended as follows:

2693 45-9-103. (1) In this section, "federal prohibited-person
2694 information" means information that identifies an individual as:



2695 (a) A person who has been judicially determined by a
2696 court as a person with mental illness or person with an
2697 intellectual disability under Title 41, Chapter 21, Mississippi
2698 Code of 1972, whether ordered for inpatient treatment, outpatient
2699 treatment, day treatment, night treatment or home health services
2700 treatment;

2701 (b) A person acquitted in a criminal case by reason of
2702 insanity or on a ground of intellectual disability, without regard
2703 to whether the person is ordered by a court to receive inpatient
2704 treatment or residential care under Section 99-13-7;

2705 (c) An adult individual for whom a court has appointed
2706 a guardian or conservator under * * * Article 2, 3 or 4 of Section
2707 1 of this act based on the determination that the person is
2708 incapable of managing his own person or estate * * *; or

2709 (d) A person determined to be incompetent to stand
2710 trial by a court pursuant to Rule 9.06 of the Mississippi Rules of
2711 Circuit and County Court Practice.

2712 (2) The Department of Public Safety by rule shall establish
2713 a procedure to provide federal prohibited-person information to
2714 the Federal Bureau of Investigation for use with the National
2715 Instant Criminal Background Check System. Except as otherwise
2716 provided by state law, the department may disseminate federal
2717 prohibited-person information under this subsection only to the
2718 extent necessary to allow the Federal Bureau of Investigation to
2719 collect and maintain a list of persons who are prohibited under



2720 federal law from engaging in certain activities with respect to a
2721 firearm.

2722 (3) The department shall grant access to a person's own
2723 federal prohibited-person information to the person who is the
2724 subject of the information.

2725 (4) Federal prohibited-person information maintained by the
2726 department is confidential information for the use of the
2727 department and, except as otherwise provided by this section and
2728 other state law, is not a public record and may not be
2729 disseminated by the department.

2730 (5) The department by rule shall establish a procedure to
2731 correct department records and transmit those corrected records to
2732 the Federal Bureau of Investigation when a person provides:

2733 (a) A copy of a judicial order or finding under
2734 Section * * * 318 or 430 of Section 1 of this act that a person
2735 has been restored to reason;

2736 (b) Proof that the person has obtained notice of relief
2737 from disabilities under 18 USC, Section 925; or

2738 (c) A copy of a judicial order of relief from a
2739 firearms disability under Section 97-37-5(4).

2740 Section 5. Section 81-5-62, Mississippi Code of 1972, is
2741 amended as follows:

2742 81-5-62. Accounts payable at death may be established under
2743 the following conditions:



2744 (a) An account in a bank, including a national bank,
2745 may be opened by any person or persons with directions to make
2746 such an account payable on the death of the person or persons
2747 opening such an account to the named beneficiary or beneficiaries.
2748 When an account is so opened, the bank shall pay any monies to the
2749 credit of the account from time to time to, or pursuant to the
2750 order of, the person or persons opening such an account during his
2751 or their lifetime in the same manner as if the account were in the
2752 sole name or names of such person or persons. The term "accounts"
2753 or "account" as used in this section shall include, but not be
2754 limited to, any form of deposit or account, such as a savings
2755 account, checking account, time deposit, demand deposit or
2756 certificate of deposit, whether negotiable, nonnegotiable or
2757 otherwise.

2758 (b) If the named beneficiary or one (1) of the
2759 beneficiaries so named is an individual beneficiary and the
2760 individual beneficiary or beneficiaries survive the death of the
2761 person opening such an account, and the individual beneficiary or
2762 all of the individual beneficiaries so named are sixteen (16)
2763 years of age or over at the death of the person opening such an
2764 account, the bank shall pay the monies to the credit of the
2765 account, less all setoffs and charges, to the named individual
2766 beneficiary or beneficiaries or upon his or their order, as
2767 hereinafter provided, and such payment by the bank shall be valid,
2768 notwithstanding any lack of legal age of the named beneficiary or



2769 beneficiaries; provided, however, where such an account is opened
2770 or subsequently held by more than one (1) person, the death of one
2771 (1) of such persons shall not terminate the account and the
2772 account shall continue as to the surviving person or persons and
2773 the named beneficiary or beneficiaries subject to the provisions
2774 of paragraphs (c) through (j) of this section. For purposes of
2775 this section, the term "individual beneficiary" shall refer to a
2776 living person who is the named beneficiary of a payable on death
2777 account.

2778 (c) If the named individual beneficiary or all of the
2779 individual beneficiaries so named survive the death of the person
2780 or persons opening such an account and are under sixteen (16)
2781 years of age at such time, the bank shall pay the monies to the
2782 credit of the account, less all setoffs and charges:

2783 (i) When or after the named individual beneficiary
2784 becomes sixteen (16) years of age, to the named beneficiary or
2785 upon his order; or

2786 (ii) When more than one (1) individual beneficiary
2787 is named, the bank shall pay to each individual beneficiary so
2788 named his proportionate interest in such account as each severally
2789 becomes sixteen (16) years of age; or

2790 (iii) To the legal guardian of the named
2791 individual beneficiary, wherever appointed and qualified, or where
2792 more than one (1) beneficiary is named, the bank shall pay such
2793 individual beneficiary's proportionate interest in such account to



2794 his legal guardian wherever and whenever appointed and qualified;
2795 or

2796 (iv) * * * If no guardian is appointed and
2797 qualified, payment may be made in accordance with the provisions
2798 of Section * * * 209 or 431 of Section 1 of this act in situations
2799 to which such section or sections are applicable.

2800 (d) Where the death of the person or persons opening
2801 such an account terminates the account under the provisions of
2802 paragraphs (b) and (c) of this section, and where one or more of
2803 the named individual beneficiaries are under sixteen (16) years of
2804 age and the remainder of the named individual beneficiaries are
2805 sixteen (16) years of age or over, the bank shall pay the monies,
2806 less all setoffs and charges, to:

2807 (i) The named individual beneficiaries sixteen
2808 (16) years of age or over at the time of termination of such
2809 account pursuant to paragraph (b) of this section; and

2810 (ii) The named individual beneficiaries under
2811 sixteen (16) years of age at the time of termination of such
2812 account pursuant to paragraph (c) of this section.

2813 (e) If the named beneficiary or one (1) of the
2814 beneficiaries so named is a revocable trust, evidenced by a
2815 written trust agreement, which trust is still in existence at the
2816 death of the person opening such an account, the bank shall pay
2817 the monies to the credit of the account, less all setoffs and
2818 charges, to the trustee of the named revocable trust or upon his



2819 or their order, as hereinafter provided, upon being presented an
2820 affidavit by the trustee stating that the name of the trust, the
2821 names of the current trustees, and that the trust is still in
2822 existence at the time of presentment of the affidavit. Such
2823 payment by the bank shall be valid, notwithstanding any lack of
2824 actual authority by the trustee, and the bank shall be discharged
2825 and released to the same extent as if the bank had dealt with the
2826 personal representative of the decedent. Such bank shall not be
2827 required to see to the proper application of the monies or
2828 evidence thereof or to inquire into the truth of any statement
2829 presented in the affidavit by the trustee.

2830 (f) Where such account is opened or subsequently held
2831 by more than one (1) person, the bank, in the absence of any
2832 written instructions to the contrary which are consented to by the
2833 bank, shall accept payments made to such account and may pay any
2834 monies to the credit of such account from time to time to, or
2835 pursuant to the order of, either or any of such persons during
2836 their life or lives in the same manner as if the account were in
2837 the sole name of either or any of such persons.

2838 (g) When a person or persons open an account in a bank
2839 in the form set forth in paragraph (a) of this section, and makes
2840 a payment or payments to such account or causes a payment or
2841 payments to be made to such account, it shall be conclusively
2842 presumed that such person or persons intend to vest in the named
2843 beneficiary or beneficiaries a present beneficial interest in such



2844 payment so made and in the monies to the credit of the account
2845 from time to time, to the end that, if the named beneficiary or
2846 beneficiaries survive the person or persons opening such an
2847 account, all the right and title of the person or persons opening
2848 such an account in and to the monies to the credit of the account
2849 at the death of such person or persons, less all setoffs and
2850 charges, shall, at such death, vest solely and indefeasibly in the
2851 named beneficiary or beneficiaries subject to the conditions and
2852 limitations of paragraphs (b) through (j) of this section.

2853 (h) If the named individual beneficiary predeceases the
2854 person opening such an account, or if the named beneficiary is a
2855 revocable trust that is terminated, the present beneficial
2856 interest presumed to be vested in the named beneficiary pursuant
2857 to paragraph (g) of this section shall terminate at the death of
2858 the named individual beneficiary or upon the termination of the
2859 revocable trust named as a beneficiary. In such case, the
2860 personal representatives of the named individual beneficiary, the
2861 beneficiaries of the revocable trust, and all others claiming
2862 through or under the named beneficiary, shall have no right in or
2863 title to the monies to the credit of the account, and the bank
2864 shall pay such monies, less all setoffs and charges, to the person
2865 opening such an account or pursuant to his order in the same
2866 manner as if the account were in the sole name of the person
2867 opening such an account; provided, however, where such an account
2868 names more than one (1) beneficiary, the death of one (1) of the



2869 individual beneficiaries or the termination of a revocable trust
2870 beneficiary so named shall not terminate the account and the
2871 account shall continue as to the surviving beneficiary or
2872 beneficiaries subject to the provisions of paragraphs (b) through
2873 (j) of this section.

2874 (i) A bank which makes any payment pursuant to
2875 paragraphs (b) through (h) of this section, prior to service upon
2876 the bank of an order of court restraining such payment, shall, to
2877 the extent of each payment so made, be released from all claims of
2878 the person or persons opening such an account, the named
2879 beneficiary or beneficiaries, their legal representatives, and all
2880 others claiming through or under them.

2881 (j) When an account is opened in a form described in
2882 paragraph (a) of this section, the right of the named beneficiary
2883 or beneficiaries to be vested with sole and indefeasible title to
2884 the monies to the credit of the account on the death of the person
2885 or persons opening such an account shall not be denied, abridged
2886 or in anyway affected because such right has not been created by a
2887 writing executed in accordance with the law of this state
2888 prescribing the requirements to effect a valid testamentary
2889 disposition of property.

2890 Section 6. Section 81-12-145, Mississippi Code of 1972, is
2891 amended as follows:

2892 81-12-145. Accounts payable at death may be established
2893 under the following conditions:



2894 (a) An account in an association may be opened by any
2895 person or persons with directions to make such an account payable
2896 on the death of the person or persons opening such an account to
2897 the named beneficiary or beneficiaries. When an account is so
2898 opened, the association shall pay any monies to the credit of the
2899 account from time to time to, or pursuant to the order of the
2900 person or persons opening such an account during his or their
2901 lifetime in the same manner as if the account were in the sole
2902 name or names of such person or persons.

2903 (b) If the named beneficiary or one (1) of the
2904 beneficiaries so named survive the death of the person opening
2905 such an account and the beneficiary or all of the beneficiaries so
2906 named are sixteen (16) years of age or over at the death of the
2907 person opening such an account, the association shall pay the
2908 monies to the credit of the account, less all proper setoffs and
2909 charges, to the named beneficiary or beneficiaries or upon his or
2910 their order, as hereinafter provided, and such payment by the
2911 association shall be valid, notwithstanding any lack of legal age
2912 of the named beneficiary or beneficiaries; provided, however,
2913 where such an account is opened or subsequently held by more than
2914 one (1) person, the death of one (1) of such persons shall not
2915 terminate the account and the account shall continue as to the
2916 surviving person or persons and the named beneficiary or
2917 beneficiaries subject to the provisions of subsections (c) through
2918 (i) of this section.



2919 (c) If the named beneficiary or all of the
2920 beneficiaries so named survive the death of the person or persons
2921 opening such an account and are under sixteen (16) years of age at
2922 such time, the association shall pay the monies to the credit of
2923 the account, less all proper setoffs and charges:

2924 (i) When or after the named beneficiary becomes
2925 sixteen (16) years of age, to the named beneficiary or upon his
2926 order; or

2927 (ii) When more than one (1) beneficiary is named,
2928 the association shall pay to each beneficiary so named his
2929 proportionate interest in such account as each severally becomes
2930 sixteen (16) years of age; or

2931 (iii) To the legal guardian of the named
2932 beneficiary, wherever appointed and qualified, or where more than
2933 one (1) beneficiary is named, the association shall pay such
2934 beneficiary's proportionate interest in such account to his legal
2935 guardian wherever and whenever appointed and qualified; or

2936 (iv) * * * If no guardian is appointed and
2937 qualified, payment may be made in accordance with the provisions
2938 of Section * * * 209 or 431 of Section 1 of this act in situations
2939 to which such section or sections are applicable.

2940 (d) Where the death of the person or persons opening
2941 such an account terminates the account under the provisions
2942 of * * * paragraphs (b) and (c) of this section and where one or
2943 more of the named beneficiaries are under sixteen (16) years of



2944 age and the remainder of the named beneficiaries are sixteen (16)
2945 years of age or over, the association shall pay the monies to the
2946 credit of the trust, less all proper setoffs and charges, to:

2947 (i) The named beneficiaries sixteen (16) years of
2948 age or over at the time of termination of said account pursuant
2949 to * * * paragraph (b) of this section, and

2950 (ii) The named beneficiaries under sixteen (16)
2951 years of age at the time of termination of said account pursuant
2952 to * * * paragraph (c) of this section.

2953 (e) Where such account is opened or subsequently held
2954 by more than one (1) person, the association, in the absence of
2955 any written instructions to the contrary, consented to by the
2956 association, shall accept payments made to such account and may
2957 pay any monies to the credit of such account from time to time to,
2958 or pursuant to the order of, either or any of said persons during
2959 their life or lives in the same manner as if the account were in
2960 the sole name of either or any of such persons.

2961 (f) When a person or persons opens an account in an
2962 association, in the form set forth in * * * paragraph (a) of this
2963 section, and makes a payment or payments to such account, or
2964 causes a payment or payments to be made to such account, such
2965 person or persons shall be conclusively presumed to intend to vest
2966 in the named beneficiary or beneficiaries a present beneficial
2967 interest in such payment so made, and in the monies to the credit
2968 of the account from time to time, to the end that, if the named



2969 beneficiary or beneficiaries survive the person or persons opening
2970 such an account, all the right and title of the person or persons
2971 opening such an account in and to the monies to the credit of the
2972 account at the death of such person or persons, less all proper
2973 setoffs and charges, shall, at such death, vest solely and
2974 indefeasibly in the named beneficiary or beneficiaries subject to
2975 the conditions and limitations of * * * paragraphs (c) through (i)
2976 of this section.

2977 (g) If the named beneficiary predeceases the person
2978 opening such an account, the present beneficial interest presumed
2979 to be vested in the named beneficiary pursuant to * * * paragraph
2980 (f) of this section shall terminate at the death of the named
2981 beneficiary. In such case, the personal representatives of the
2982 named beneficiary, and all others claiming through or under the
2983 named beneficiary, shall have no right in or title to the monies
2984 to the credit of the account, and the association shall pay such
2985 monies, less all proper setoffs and charges, to the person opening
2986 such an account, or pursuant to his order, in the same manner as
2987 if the account were in the sole name of the person opening such an
2988 account; provided, however, where such an account names more than
2989 one (1) beneficiary, the death of one (1) of the beneficiaries so
2990 named shall not terminate the account and the account shall
2991 continue as to the surviving beneficiary or beneficiaries subject
2992 to the provisions of * * * paragraphs (c) through (i) of this
2993 section.



2994 (h) An association which makes any payment pursuant
2995 to * * * paragraphs (c) through (g) of this section, prior to
2996 service upon the association or an order of court restraining such
2997 payment, shall, to the extent of each payment so made, be released
2998 from all claims of the person or persons opening such an account,
2999 the named beneficiary or beneficiaries, their legal
3000 representatives, and all others claiming through or under them.

3001 (i) When an account is opened in a form described
3002 in * * * paragraph (a) of this section, the right of the named
3003 beneficiary or beneficiaries to be vested with sole and
3004 indefeasible title to the monies to the credit of the account on
3005 the death of the person or persons opening such an account shall
3006 not be denied, abridged or in anywise affected because such right
3007 has not been created by a writing executed in accordance with the
3008 law of this state prescribing the requirements to effect a valid
3009 testamentary disposition of property.

3010 Section 7. Section 81-14-363, Mississippi Code of 1972, is
3011 amended as follows:

3012 81-14-363. (1) An account in a savings bank may be opened
3013 by any person or persons with directions to make such account
3014 payable upon his or their death to the named beneficiary or
3015 beneficiaries. When an account is so opened, the savings bank
3016 shall pay any money to the person or persons opening such account
3017 during his or their lifetime in the same manner as if the account
3018 were in the sole name or names of such person or persons.



3019 (2) If the named beneficiary or one (1) of the named
3020 beneficiaries survive the death of the person opening such an
3021 account and the beneficiary or all of the beneficiaries so named
3022 are sixteen (16) years of age or over at the death of such person,
3023 the savings bank shall pay the money to the credit of the account,
3024 less all proper setoffs and charges, to the named beneficiary or
3025 beneficiaries or upon his or their order, as hereinafter provided.
3026 Such payment by the savings bank shall be valid, notwithstanding
3027 any lack of legal age of the named beneficiary or beneficiaries.
3028 However, where such an account is opened or subsequently held by
3029 more than one (1) person, the death of one (1) of such persons
3030 shall not terminate the account and the account shall continue as
3031 to the surviving person or persons and the named beneficiary or
3032 beneficiaries subject to the provisions of subsection (3).

3033 (3) If the named beneficiary or all of the named
3034 beneficiaries survive the death of the person or persons opening
3035 such an account and are under sixteen (16) years of age at such
3036 time, the savings bank shall pay the money to the credit of the
3037 account, less all proper setoffs and charges:

3038 (a) When or after the named beneficiary becomes sixteen
3039 (16) years of age, to the named beneficiary or upon his order; or

3040 (b) When more than one (1) beneficiary is named, the
3041 savings bank shall pay to each beneficiary so named his
3042 proportionate interest in such account as each severally becomes
3043 sixteen (16) years of age; or



3044 (c) To the legal guardian of the named beneficiary,
3045 wherever appointed and qualified, or where more than one (1)
3046 beneficiary is named, the savings bank shall pay such
3047 beneficiary's proportionate interest in such account to his legal
3048 guardian wherever and whenever appointed and qualified; or

3049 (d) * * * If no guardian is appointed and qualified,
3050 payment may be made in accordance with the provisions of
3051 Section * * * 209 or 431 of Section 1 of this act in situations to
3052 which such sections are applicable.

3053 (4) Where the death of the person or persons opening such an
3054 account terminates the account under the provisions of subsections
3055 (2) and (3) of this section and where one or more of the named
3056 beneficiaries are under sixteen (16) years of age and the
3057 remainder of the named beneficiaries are sixteen (16) years of age
3058 or over, the savings bank shall pay the money to the credit of the
3059 trust, less all proper setoffs and charges, to:

3060 (a) The named beneficiaries sixteen (16) years of age
3061 or over at the time of termination of said account pursuant to
3062 subsection (2) of this section; and

3063 (b) The named beneficiaries under sixteen (16) years of
3064 age at the time of termination of said account pursuant to
3065 subsection (3) of this section.

3066 (5) Where such account is opened or subsequently held by
3067 more than one (1) person, the savings bank in the absence of any
3068 written instructions to the contrary, consented to by the savings



3069 bank, shall accept payments made to such account and may pay any
3070 money to the credit of such account from time to time to, or
3071 pursuant to the order of, either or any of such persons during
3072 their life or lives in the same manner as if the account were in
3073 the sole name of either of such persons.

3074 (6) When a person or persons opens an account in a savings
3075 bank in the form set forth in subsection (1) of this section, and
3076 makes a payment or payments to such account, or causes a payment
3077 or payments to be made to such account, such person or persons
3078 shall be conclusively presumed to intend to vest in the named
3079 beneficiary or beneficiaries a present beneficial interest in such
3080 payments made, and in the money to the credit of the account from
3081 time to time, to the end that, if the named beneficiary or
3082 beneficiaries survive the person or persons opening such an
3083 account, all the right and title of the person or persons opening
3084 such an account in and to the money to the credit of the account
3085 at the death of such person or persons, less all proper setoffs
3086 and charges, shall at such death, vest solely and indefeasibly in
3087 the named beneficiary or beneficiaries subject to the conditions
3088 and limitations of subsection (3).

3089 (7) If the named beneficiary predeceases the person opening
3090 such an account, the present beneficial interest presumed to be
3091 vested in the named beneficiary pursuant to subsection (6) of this
3092 section shall terminate at the death of the named beneficiary. In
3093 such case, the personal representatives of the named beneficiary,



3094 and all others claiming through or under the named beneficiary,
3095 shall have no right in or title to the money to the credit of the
3096 account, and the savings bank shall pay such money, less all
3097 proper setoffs and charges, to the person opening such an account,
3098 or pursuant to his order, in the same manner as if the account
3099 were in the sole name of the person opening such an account;
3100 provided, however, where such an account names more than one (1)
3101 beneficiary, the death of one (1) of the beneficiaries so named
3102 shall not terminate the account and the account shall continue as
3103 to the surviving beneficiary or beneficiaries subject to the
3104 provisions of subsection (3) of this section.

3105 (8) A savings bank which makes any payment pursuant to
3106 subsection (3) of this section, prior to service upon the savings
3107 bank of an order of court restraining such payment shall, to the
3108 extent of each payment so made, be released from all claims of the
3109 person or persons opening such an account, the named beneficiary
3110 or beneficiaries, their legal representatives, and all others
3111 claiming through or under them.

3112 (9) When an account is opened in a form described in
3113 subsection (1) of this section, the right of the named beneficiary
3114 or beneficiaries to be vested with sole and indefeasible title to
3115 the money to the credit of the account on the death of the person
3116 or persons opening such an account shall not be denied, abridged
3117 or in anyway affected because such right has not been created by a
3118 writing executed in accordance with the law of this state



3119 prescribing the requirements to effect a valid testamentary
3120 disposition of property.

3121 Section 8. Section 91-8-103, Mississippi Code of 1972, is
3122 amended as follows:

3123 91-8-103. In this chapter:

3124 (1) "Action," with respect to an act of a trustee,
3125 includes a failure to act.

3126 (2) "Ascertainable standard" means a standard relating
3127 to an individual's health, education, support, or maintenance
3128 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the
3129 Internal Revenue Code of 1986, as in effect on July 1, 2014, or as
3130 later amended.

3131 (3) "Beneficial interest" means a distribution interest
3132 or a remainder interest; provided, however, a beneficial interest
3133 specifically excludes a power of appointment or a power reserved
3134 by a settlor.

3135 (4) "Beneficiary" means a person that:

3136 (A) Has a present or future beneficial interest in
3137 a trust, vested or contingent; or

3138 (B) In a capacity other than that of trustee,
3139 holds a power of appointment over trust property.

3140 (5) "Beneficiary surrogate" means a person, including a
3141 trust protector or trust advisor, other than a trustee, designated
3142 by the settlor in the trust instrument or in a writing delivered
3143 to the trustee, or designated in a writing delivered to the



3144 trustee by a trust protector or trust advisor with power under the
3145 terms of the trust instrument to receive notices, information, and
3146 reports otherwise required to be provided to a beneficiary under
3147 Section 91-8-813(a) and (b), or to represent a beneficiary under
3148 Section 91-8-303(8).

3149 (6) "Charitable trust" means a trust, or portion of a
3150 trust, created for a charitable purpose described in Section
3151 91-8-405(a).

3152 (7) "Conservator" means a person appointed by the court
3153 to administer the estate of a minor or adult individual * * * as
3154 defined in Section * * * 102 of Section 1 of this act.

3155 (8) "Directed trust" means a trust where through the
3156 terms of the trust, one or more persons are given the authority to
3157 direct or consent to a fiduciary's actual or proposed investment
3158 decision, distribution decision, or any other decision of the
3159 fiduciary.

3160 (9) "Distribution interest" means:

3161 (A) An interest, other than a remainder interest,
3162 held by an eligible distributee or permissible distributee under a
3163 trust and may be a current distribution interest or a future
3164 distribution interest;

3165 (B) A distribution interest is classified as
3166 either a mandatory interest, a support interest or a discretionary
3167 interest; and although not the exclusive means to create each such
3168 respective distribution interest, absent clear and convincing



3169 evidence to the contrary, use of the example language accompanying
3170 the following definitions of each such respective distribution
3171 interest results in the indicated classification of distribution
3172 interest:

3173 (i) A mandatory interest means a distribution
3174 interest in which the timing of any distribution must occur within
3175 one (1) year from the date the right to the distribution arises
3176 and the trustee has no discretion in determining whether a
3177 distribution shall be made or the amount of such distribution;
3178 example distribution language indicating a mandatory interest
3179 includes, but is not limited to:

3180 a. All income shall be distributed to a
3181 named beneficiary; or

3182 b. One Hundred Thousand Dollars
3183 (\$100,000.00) a year shall be distributed to a named beneficiary;

3184 (ii) A support interest means a distribution
3185 interest that is not a mandatory interest but still contains
3186 mandatory language such as "shall make distributions" and is
3187 coupled with a standard capable of judicial interpretation;
3188 example distribution language indicating a support interest
3189 includes, but is not limited to:

3190 a. The trustee shall make distributions
3191 for health, education, maintenance, and support;

3192 b. Notwithstanding the distribution
3193 language used, if a trust instrument containing such distribution



3194 language specifically provides that the trustee exercise
3195 discretion in a reasonable manner with regard to a discretionary
3196 interest, then notwithstanding any other provision of this
3197 subparagraph defining distribution interests, the distribution
3198 interest shall be classified as a support interest;

3199 (iii) A discretionary interest means any
3200 interest that is not a mandatory or a support interest and is any
3201 distribution interest where a trustee has any discretion to make
3202 or withhold a distribution; example distribution language
3203 indicating a discretionary interest includes, but is not limited
3204 to:

3205 a. The trustee may, in the trustee's
3206 sole and absolute discretion, make distributions for health,
3207 education, maintenance, and support;

3208 b. The trustee, in the trustee's sole
3209 and absolute discretion, shall make distributions for health,
3210 education, maintenance, and support;

3211 c. The trustee may make distributions
3212 for health, education, maintenance, and support;

3213 d. The trustee shall make distributions
3214 for health, education, maintenance, and support; however, the
3215 trustee may exclude any of the beneficiaries or may make unequal
3216 distributions among them; or



3217 e. The trustee may make distributions
3218 for health, education, maintenance, support, comfort, and general
3219 welfare;

3220 f. A discretionary interest may also be
3221 evidenced by:

3222 1. Permissive distribution language
3223 such as "may make distributions";

3224 2. Mandatory distribution language
3225 that is negated by the discretionary distribution language
3226 contained in the trust such as "the trustee shall make
3227 distributions in the trustee's sole and absolute discretion";

3228 g. An interest that includes mandatory
3229 distribution language such as "shall" but is subsequently
3230 qualified by discretionary distribution language shall be
3231 classified as a discretionary interest and not as a support or a
3232 mandatory interest;

3233 (C) (i) To the extent a trust contains
3234 distribution language indicating the existence of any combination
3235 of a mandatory, support and discretionary interest, that combined
3236 interest of the trust shall be divided and treated separately as
3237 follows:

3238 a. The trust shall be a mandatory
3239 interest only to the extent of the mandatory distribution
3240 language;



3241 b. The trust shall be a support interest
3242 only to the extent of such support distribution language; and

3243 c. The remaining trust property shall be
3244 held as a discretionary interest;

3245 (ii) For purposes of this subparagraph (C), a
3246 support interest that includes mandatory distribution language
3247 such as "shall" but is subsequently qualified by discretionary
3248 distribution language, shall be classified as a discretionary
3249 interest and not as a support interest.

3250 (10) "Environmental law" means a federal, state, or
3251 local law, rule, regulation, or ordinance relating to protection
3252 of the environment.

3253 (11) "Excluded fiduciary" means any trustee, trust
3254 advisor, or trust protector to the extent that, under the terms of
3255 a trust:

3256 (A) The trustee, trust advisor, or trust protector
3257 is excluded from exercising a power, or is relieved of a duty; and

3258 (B) The power or duty is granted or reserved to
3259 another person.

3260 (12) "Fiduciary" means:

3261 (A) A trustee, conservator, guardian, agent under
3262 any agency agreement or other instrument, an executor, personal
3263 representative or administrator of a decedent's estate, or any
3264 other party, including a trust advisor or a trust protector, who



3265 is acting in a fiduciary capacity for any person, trust, or
3266 estate;

3267 (B) For purposes of subparagraph (A), an agency
3268 agreement includes, but is not limited to, any agreement under
3269 which any delegation is made, either pursuant to Section 91-8-807
3270 or by anyone holding a power or duty pursuant to Article 12;

3271 (C) For purposes of the definition of fiduciary in
3272 Section 91-8-103, fiduciary does not mean any person who is an
3273 excluded fiduciary as such is defined in Section 91-8-103.

3274 (13) "Guardian" means a person appointed by the
3275 court * * * to make decisions regarding the support, care,
3276 education, health, and welfare of a minor or adult individual as
3277 defined in Section 102 of Section 1 of this act. The term does
3278 not include a guardian ad litem.

3279 (14) "Interests of the beneficiaries" means the
3280 beneficial interests provided in the terms of the trust.

3281 (15) "Internal Revenue Code" means the Internal Revenue
3282 Code of 1986, as in effect on July 1, 2014, or as later amended.

3283 (16) "Jurisdiction," with respect to a geographic area,
3284 includes a state or country.

3285 (17) "Person" means an individual, corporation,
3286 business trust, estate, trust, partnership, limited liability
3287 company, association, joint venture, government; governmental
3288 subdivision, agency, or instrumentality; public corporation, or
3289 any other legal or commercial entity.



3290 (18) "Power of appointment" means:

3291 (A) An inter vivos or testamentary power to direct
3292 the disposition of trust property, other than a distribution
3293 decision made by a trustee or other fiduciary to a beneficiary;

3294 (B) Powers of appointment are held by the person
3295 to whom such power has been given, and not by a settlor in that
3296 person's capacity as settlor.

3297 (19) "Power of withdrawal" means a presently
3298 exercisable general power of appointment other than a power: (A)
3299 exercisable by a trustee and limited by an ascertainable standard;
3300 or (B) exercisable by another person only upon consent of the
3301 trustee or a person holding an adverse interest.

3302 (20) "Property" means anything that may be the subject
3303 of ownership, whether real or personal, legal or equitable, or any
3304 interest therein.

3305 (21) "Qualified beneficiary" means a beneficiary who,
3306 on the date the beneficiary's qualification is determined:

3307 (A) Is a distributee or permissible distributee of
3308 trust income or principal;

3309 (B) Would be a distributee or permissible
3310 distributee of trust income or principal if the interests of the
3311 distributees described in subparagraph (A) terminated on that date
3312 without causing the trust to terminate; or



3313 (C) Would be a distributee or permissible
3314 distributee of trust income or principal if the trust terminated
3315 on that date.

3316 (22) "Remainder interest" means an interest under which
3317 a trust beneficiary will receive property held by a trust outright
3318 at some time during the future.

3319 (23) "Reserved power" means a power held by a settlor.

3320 (24) "Revocable," as applied to a trust, means
3321 revocable by the settlor without the consent of the trustee or a
3322 person holding an adverse interest.

3323 (25) "Settlor" means a person, including a testator,
3324 who creates, or contributes property to, a trust. If more than
3325 one (1) person creates or contributes property to a trust, each
3326 person is a settlor of the portion of the trust property
3327 attributable to that person's contribution except to the extent
3328 another person has the power to revoke or withdraw that portion.

3329 (26) "Spendthrift provision" means a term of a trust
3330 which restrains both voluntary and involuntary transfer of a
3331 beneficiary's interest.

3332 (27) "State" means a state of the United States, the
3333 District of Columbia, Puerto Rico, the United States Virgin
3334 Islands, or any territory or insular possession subject to the
3335 jurisdiction of the United States. The term includes an Indian
3336 tribe or band recognized by federal law or formally acknowledged
3337 by a state.



3338 (28) "Successors in interest" means the beneficiaries
3339 under the settlor's will, if the settlor has a will, or in the
3340 absence of an effective will provision, the settlor's heirs at
3341 law.

3342 (29) "Terms of a trust" means the manifestation of the
3343 settlor's intent regarding a trust's provisions as expressed in
3344 the trust instrument or as may be established by other evidence
3345 that would be admissible in a judicial proceeding.

3346 (30) "Trust advisor" means any person described in
3347 Section 91-8-1201(a).

3348 (31) "Trust instrument" means an instrument executed by
3349 the settlor that contains terms of the trust, including any
3350 amendments thereto.

3351 (32) "Trustee" includes an original, additional, and
3352 successor trustee, and a cotrustee.

3353 (33) "Trust protector" means any person described in
3354 Section 91-8-1201(a).

3355 Section 9. Section 93-14-102, Mississippi Code of 1972, is
3356 amended as follows:

3357 93-14-102. In this chapter:

3358 (1) "Adult" means an individual who has attained * * *
3359 twenty-one (21) years of age.

3360 (2) "Conservator" means a person appointed by the court
3361 to administer the property of an adult, including a person
3362 appointed under * * * Article 4 of Section 1 of this act.



3363 (3) "Guardian" means a person appointed by the court to
3364 make decisions regarding the person of an adult, including a
3365 person appointed under * * * Article 2 or 3 of Section 1 of this
3366 act.

3367 (4) "Guardianship order" means an order appointing a
3368 guardian.

3369 (5) "Guardianship proceeding" means a judicial
3370 proceeding in which an order for the appointment of a guardian is
3371 sought or has been issued.

3372 (6) "Incapacitated person" means an adult for whom a
3373 guardian has been appointed.

3374 (7) "Party" means the respondent, petitioner, guardian,
3375 conservator, or any other person allowed by the court to
3376 participate in a guardianship or protective proceeding.

3377 (8) "Person," except in the term incapacitated person
3378 or protected person, means an individual, corporation, business
3379 trust, estate, trust, partnership, limited liability company,
3380 association, joint venture, public corporation, government or
3381 governmental subdivision, agency, or instrumentality, or any other
3382 legal or commercial entity.

3383 (9) "Protected person" means an adult for whom a
3384 protective order has been issued.

3385 (10) "Protective order" means an order appointing a
3386 conservator or other order related to management of an adult's
3387 property.



3388 (11) "Protective proceeding" means a judicial
3389 proceeding in which a protective order is sought or has been
3390 issued.

3391 (12) "Record" means information that is inscribed on a
3392 tangible medium or that is stored in an electronic or other medium
3393 and is retrievable in perceivable form.

3394 (13) "Respondent" means an adult for whom a protective
3395 order or the appointment of a guardian is sought.

3396 (14) "State" means a state of the United States, the
3397 District of Columbia, Puerto Rico, the United States Virgin
3398 Islands, a federally recognized Indian tribe, or any territory or
3399 insular possession subject to the jurisdiction of the United
3400 States.

3401 Section 10. Section 93-14-302, Mississippi Code of 1972, is
3402 amended as follows:

3403 93-14-302. (a) To confirm transfer of a guardianship or
3404 conservatorship transferred to this state under provisions similar
3405 to Section 93-14-301, the guardian or conservator must petition
3406 the court in this state to accept the guardianship or
3407 conservatorship. The petition must include a certified copy of
3408 the other state's provisional order of transfer.

3409 (b) Notice of a petition under subsection (a) must be given
3410 to those persons that would be entitled to notice if the petition
3411 were a petition for the appointment of a guardian or conservator
3412 or issuance of a protective order in both the transferring state



3413 and this state. The notice must be given in the same manner as
3414 notice is required to be given in this state.

3415 (c) On the court's own motion or on request of the guardian
3416 or conservator, the incapacitated or protected person, or other
3417 person required to be notified of the proceeding, the court shall
3418 hold a hearing on a petition filed pursuant to subsection (a).

3419 (d) The court shall issue an order provisionally granting a
3420 petition filed under subsection (a) unless:

3421 (1) An objection is made and the objector establishes
3422 that transfer of the proceeding would be contrary to the interests
3423 of the incapacitated or protected person; or

3424 (2) The guardian or conservator is ineligible for
3425 appointment in this state.

3426 (e) The court shall issue a final order accepting the
3427 proceeding and appointing the guardian or conservator as guardian
3428 or conservator in this state upon its receipt from the court from
3429 which the proceeding is being transferred of a final order issued
3430 under provisions similar to Section 93-14-301 transferring the
3431 proceeding to this state.

3432 (f) Not later than ninety (90) days after issuance of a
3433 final order accepting transfer of a guardianship or
3434 conservatorship, the court shall determine whether the
3435 guardianship or conservatorship needs to be modified to conform to
3436 the law of this state.



3437 (g) In granting a petition under this section, the court
3438 shall recognize a guardianship or conservatorship order from the
3439 other state, including the determination of the incapacitated or
3440 protected person's incapacity and the appointment of the guardian
3441 or conservator.

3442 (h) The denial by a court of this state of a petition to
3443 accept a guardianship or conservatorship transferred from another
3444 state does not affect the ability of the guardian or conservator
3445 to seek appointment as guardian or conservator in this state
3446 under * * * Article 2, 3 or 4 of Section 1 of this act or under
3447 Section 35-5-1 et seq., if the court has jurisdiction to make an
3448 appointment other than by reason of the provisional order of
3449 transfer.

3450 Section 11. Sections 93-13-3, 93-13-5, 93-13-7, 93-13-9,
3451 93-13-11, 93-13-13, 93-13-15, 9-13-17, 93-13-19, 93-13-21,
3452 93-13-23, 93-13-25, 93-13-27, 93-13-29, 93-13-31, 93-13-33,
3453 93-13-35, 93-13-37, 93-13-38, 93-13-39, 93-13-41, 93-13-43,
3454 93-13-45, 93-13-47, 93-13-49, 93-13-51, 93-13-53, 93-13-55,
3455 93-13-57, 93-13-59, 93-13-61, 93-13-63, 93-13-65, 93-13-67,
3456 93-13-69, 93-13-71, 93-13-73, 93-13-75, 93-13-77 and 93-13-79,
3457 Mississippi Code of 1972, dealing with wards generally, are
3458 repealed.

3459 Section 12. Section 93-13-111, Mississippi Code of 1972,
3460 dealing with wards in need of mental treatment, is repealed.



3461 Section 13. Sections 93-13-121, 93-13-123, 93-13-125,
3462 93-13-127, 93-13-128, 93-13-129, 93-13-131, 93-13-133 and
3463 93-13-135, Mississippi Code of 1972, dealing with the appointment
3464 of guardians for incompetent adults, are repealed.

3465 Section 14. Section 93-13-151, Mississippi Code of 1972,
3466 dealing with the procedure following restoration of reason, is
3467 repealed.

3468 Section 15. Section 93-13-161, Mississippi Code of 1972,
3469 dealing with the appointment of a guardian for the estate of a
3470 person in the armed forces listed as missing, is repealed.

3471 Section 16. Sections 93-13-181, 93-13-183, 93-13-185 and
3472 93-13-187, Mississippi Code of 1972, dealing with nonresident
3473 guardians, is repealed.

3474 Section 17. Sections 93-13-211, 93-13-213, 93-13-215,
3475 93-13-217 and 93-13-219, Mississippi Code of 1972, dealing with
3476 small transactions performed without guardianship, are repealed.

3477 Section 18. Sections 93-13-251, 93-13-253, 93-13-255,
3478 93-13-257, 93-13-259, 93-13-261, 93-13-263, 93-13-265 and
3479 93-13-267, Mississippi Code of 1972, dealing with conservators,
3480 are repealed.

3481 Section 19. Section 93-13-281, Mississippi Code of 1972,
3482 dealing with the joinder of parties in suits involving wards, is
3483 repealed.

3484 Section 20. The editor is directed to retitle Title 93,
3485 Chapter 13, Mississippi Code of 1972, appropriately.



3486 Section 21. This act does not affect a suit, complaint,
3487 petition, claim, application, proceeding (including an
3488 administrative or quasi judicial proceeding), appeal or other
3489 cause of action commenced and pending before the court under those
3490 laws of this state which are in effect on December 31, 2019, but
3491 subject to repeal on January 1, 2020, by Senate Bill 2828, 2019
3492 Regular Session; and the provisions of those laws in effect on
3493 December 31, 2019, are expressly continued in full force, effect
3494 and operation for each such suit, complaint, petition, claim,
3495 application, proceeding (including administrative and quasi
3496 judicial proceedings), appeal or other cause of action that has
3497 not had a final order, decree, judgment, adjudication or other
3498 final disposition entered as of the effective date of House Bill
3499 No. 260, 2020 Regular Session.

3500 **SECTION 2.** This act shall take effect and be in force from
3501 and after its passage.

